**Acadiensis**

ACADIENSIS

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Volume 3, numéro 2, spring 1974

URI : https://id.erudit.org/iderudit/acad3_2art02

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Éditeur(s)

The Department of History of the University of New Brunswick

ISSN

0044-5851 (imprimé)
1712-7432 (numérique)

Découvrir la revue

Citer cet article

Beck, J. M. (1974). "A Fool for a Client":: The Trial of Joseph Howe. *Acadiensis*, *3*(2), 27–44.

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# "A Fool for a Client": The Trial of Joseph Howe

On the morning of Monday, March 2, 1835, Joseph Howe walked across Granville Street from the office of the *Novascotian* on the west side to Province House on the east side. He had done it many times before to report the debates of the Assembly. But this time it was to face criminal charges in the Supreme Court, then located in what is now the Legislative Library. For the Howes of Halifax this was something new. Joseph's Loyalist father, old John Howe, had always been the very epitome of respectability, and his three sons by his first wife, Martha Minns, had never felt the urge to challenge the existing order in any way. But his second wife, Mary Ede, even though she appeared to play a subordinate role in the household, may have bequeathed qualities to her son Joseph that were lacking in his half-brothers. Joseph Howe wrote in 1826: "If I could be content to go along quietly and peaceably like my neighbours [and half-brothers?] and at the end of some fifty or sixty years tumble into my grave and be dust, I should be happy — very happy. But this infernal feeling, whatever it be, still points to something ahead which is viewless and undefined — and would, right or wrong — have me pursue it."[1]

Nonetheless, throughout 1827, while Howe was editor and part-owner of the *Acadian*, he pursued a line of conduct so circumspect that he might have been labelled "a mild Tory." When he took over the *Novascotian* in 1828 he still summed up his political creed as "The Constitution, the *whole* Constitution, and *nothing but* the Constitution,"[2] and he generally supported things as they were. Apocryphal statements are often wide of the mark, but one that is attributed to Howe — "the Pictou Scribblers have converted me from the error of my ways" — has solid foundations. It was, in fact, the taunts and gibes of Jotham Blanchard and the *Colonial Patriot* of Pictou, that forced Howe to probe more deeply into the motive forces in Nova Scotia political

1 Letter of 26 March 1826, manuscript collection of Howe's letters, collected by J.A. Chisholm, p. 4, Public Archives of Nova Scotia [hereafter PANS].
2 *Novascotian*, 3 January 1828.

and social life, and his own open-mindedness that led him to conclude that things were not as he thought them to be. Hence, in the celebrated Brandy Dispute of 1830, he was in the forefront of those who castigated the Council for asserting a right over money bills that the House of Lords had previously abandoned. Somewhat naively, Howe seemed to believe that the election of 1830, by repudiating the Council's actions on the brandy question, had solved Nova Scotia's major political problems, but, from 1832 onwards, he knew it was not so. Gradually his attitude towards the Assembly hardened; more and more he accused its members of betraying the trust of their constituents; less and less he accepted the motives which they said guided their legislative behaviour. His attitude towards them became ever sterner after the summer of 1833 when they failed to take the action he thought was necessary to cope with a serious economic recession and, indirectly at least, threatened the existence of the *Novascotian* itself.[3]

Meanwhile, his ceaseless probing into a manifold range of government activities at the provincial level had extended itself to the local government of Halifax. In 1758, the First General Assembly of Nova Scotia had decided to adopt the Virginian, rather than the New England practice of local government. The result was that, instead of having functions at the municipal level performed by town meetings and the officials whom they elected, these responsibilities were exhausted jointly to the justices in the sessions, who were selected by the Governor and Council, and the grand juries, which were composed of substantial proprietors chosen by lot.[4] The system was undemocratic enough, but it became even more so over the years, because of the tendency to "subtract from the authority of the grand jury, itself no democratic institution, and to add to that of the even more undemocratic sessions."[5] Moreover, in the course of time a large number of largely autonomous boards were set up on an *ad hoc* basis to supervise the Poor House, the Bridewell or house of correction, the public markets, the police department, and other public institutions. Indeed, Professor David Sutherland has shown that local government in Halifax had "developed into a complex bureaucratic maze where officials were responsible only to themselves or their immediate associates" and that "a small inter-locking oligarchy monopolized the key offices in the municipal administration."[6] This oligarchy consisted largely of justices acting in an individual capacity, or their relatives and

3 Howe's fears on this score are reflected in the letters he wrote to his wife Susan Ann during his rambles in 1833 and 1834. See Joseph Howe Papers [hereafter JHP], reel 23, in PANS (original in Harvard University Library).

4 See J.M. Beck, *The Government of Nova Scotia* (Toronto, 1957), p. 40.

5 *Ibid.*, p. 136.

6 See David Sutherland, "Gentlemen vs. Shopkeepers: Urban Reform in Early 19th Century Halifax," paper read at the annual meeting of the Canadian Historical Association, 1972.

hangers-on.[7]

In the 1820's there were proposals to introduce an elective system of local government, but Howe opposed any such innovation, declaring that he would "rather bear the ills we have than fly to others we know not of" and that he had "no wish to have the peace periodically disturbed by the election of civic dignitaries — and by all the mighty nothings attendant on a Corporation."[8] By acquiring the *Novascotian*, he became possessed of the substantial property that was required of a grand juror, and he served in that capacity in 1832. Although the grand juries of the 1820's had sporadically made strong presentments against the quality of the municipal administration, they had little to show for their efforts. That did not daunt the grand juries of the 1830's, which provided the political education for the leading Reformers of Halifax, Howe included. In the spring the grand jury on which Howe sat sought unsuccessfully to remove a County Treasurer whose accounts were unintelligible,[9] and in its final presentment in December, in scathing language, some of it clearly that of Howe, it lambasted the local government of Halifax, especially for its financial maladministration.[10] It also refused, in perhaps the strongest move a grand jury had ever adopted, to levy any assessment for 1833, on the grounds that, if back taxes were collected and economies effected, there would be more than sufficient revenue to carry on the county's business.

These proceedings received little publicity, even by way of editorial comment in the *Novascotian*. Howe, as yet, had no burning zeal for reform, perhaps because an attack on the justices meant, in effect, an attack on his father and half-brother John, both members of the sessions. By the fall of 1834, however, the circumstances had altered. The business stagnation of 1833 had continued to deepen until, in mid-1834, the *Acadian Recorder* reported "Traders and Dealers failing in groupes, workmen idle, persons born or long resident in the county emigrating, Jails full, and a melancholy

7 Professor Sutherland pictures the magistracy as essentially an "upper middle class" institution, in which the principal qualifications for selection were substantial wealth (e.g., an annual income of at least £500), a "respectable" occupation, genteel social graces, family connections, religious affiliations, and ethnic background. He also notes that the magisterial board developed into a merchantocracy: "out of a total of 41 magistrates serving between 1830 and 1841, 31 were merchants." His over-all conclusion is that the board "increasingly resembled an homogeneous family compact." *Ibid.*

8 *Novascotian*, 20 March 1828.

9 See proceedings of 20 March 1832, "Grand Jury Minute Book," 1828-34, RG 34, vol. 16, PANS and proceedings of 22 March 1832, "Minutes of the Court of Quarter Sessions," RG 34, vol.10, PANS. Throughout this article the references to the County of Halifax and county officials might more appropriately be to the District of Halifax and district officials, since Colchester and Pictou, although still part of the County of Halifax, each constituted a separate sessional district. The literature, however, almost invariably uses the designation "county", and, to avoid confusion, it has been retained in this article.

10 See proceedings of 18 December 1832, "Grand Jury Minute Book," 1828-34, RG 34, vol. 16.

foreboding stampt on every second countenance . . . ."[11] Indeed, economic recession seriously impaired Howe's ability to collect subscriptions in both Halifax and the country districts, threatened his solvency at the banks, and delayed the day of financial independence he had prophesied for his wife Susan Ann and himself.[12] Howe and the "middling" classes,[13] whose interests he espoused, considered the county rates to be a particularly heavy burden in a time of stress, and the waste of tax money and the ability of some large property-holders to avoid paying their taxes only added to their exasperation.[14] Hoping to press the latter issue, Howe declined to pay his own taxes in 1834, but his manoeuvre failed; he had no choice but to pay following a summons to court, and the general ill continued.[15]

*Cholera Morbus* provided an additional propellant to action against the ills in municipal government. By September, Howe in the *Novascotian* and Phillip Holland, publisher and editor of the *Acadian Recorder*, were lamenting the lack of precautions against the spread of that disease in Halifax. Both feared that the health services of Halifax were collapsing at a time when they were most needed. As Howe put it, "nearly three weeks of very precious time have been wasted while the lay Members of the Board [of Health] have been accusing the Doctors of a desire to create jobs and pocket the public money; and the Doctors have retorted [with] charges of inhumanity, and a disregard of the sufferings of the poor."[16]

The outcome was that Howe disregarded any inhibitions arising from the membership of his father and half-brother on the sessions, and decided to assist the grand jury of 1834, which was no less militant than that of 1832 on which he had sat, in seeing that this time the sessions would not escape. By his own admission, he still had "no taste for the constant canvassings, the petty intrigues, and dirty little factions [that municipal corporations] engen-

11 *Acadian Recorder*, 14 June 1834.

12 This is a recurring theme in Howe's letters to his wife during 1833 and 1834. See JHP, reel 23, PANS.

13 Howe used the term "middling" often during these years, and while it cannot be defined with precision, he generally meant it to include those who had the property qualification required of a grand furor (in 1833 a £15 freehold or personality of £300), in other words, the substantial middle class. Sometimes he included as well anyone who had "a stake in the kingdom," i.e., the lower middle class; on other occasions he included both groups in the description: "middling and lower classes."

14 See, for example, proceedings of 18 December 1832, and 17 November and 16 December 1834, "Grand Jury Minute Book," 1828-34, RG 34, vol. 16.

15 Howe's speech to the jury, cited in Joseph A. Chisholm, *The Speeches and Public Letters of Joseph Howe* (Halifax, 1908), I, p. 45.

16 *Novascotian*, 28 August 1834. The *Recorder* (13 September 1834) told the members of the Board that, if they disliked the unpleasant duties of their office, they ought to resign "instead of allowing their names to appear a false ground of confidence to those who suppose them active."

der;"[17] indeed, he made it clear, in a moderate editorial of November 6, that he was opening a campaign, not to transform the local government, but simply to reform its abuses. Two weeks later he published the first of two letters signed "The People", written by his friend George Thompson, which sounded a clarion call to action.[18] From then until January, 1835, Howe was largely content to sit on the side-lines, merely printing the editorials and presentments that his friends on the grand jury, especially James Leishman, asked him to publicize.[19] So sweeping and so complete was the grand jury's indictment of the magistrates in sessions, that its memorial to the new governor, Sir Colin Campbell, led to the appointment of a special committee of the Council to investigate the conduct of the county's finances, while its final presentment of the year contained much of the ammunition that Howe was to use against the sessions at his trial.[20] Because this material took up so much space, it was not until January 1, 1835, that Thompson's second letter signed "The People" finally saw the light of day. It alleged that "from the pockets of the poor and distressed at least £1000 is drawn annually, and pocketed by men whose services the country might well spare," and that "during the lapse of the last thirty years, the Magistracy and Police have, by one stratagem or other, taken from the pockets of the people, in over exactions, fines, etc. etc., a sum that would exceed in the gross amount of £30,000."[21] Clearly Howe had thrown the gauntlet to the sessions.

The magistrates might have weathered the grand jury's memorial to the governor and carried on much as before. But Howe's action placed them on the horns of a dilemma, for they had only two choices, both unpleasant. They might ignore the letter and, by implication, plead guilty before the bar of public opinion; or they might demand legal action against Howe and run the certain risk of unpleasant, even damaging revelations. Within a week they had asked the Governor to take immediate steps to prosecute the person who had made the charges.[22] Howe might have still have escaped prosecution had he been willing to divulge the name of the letter-writer, but he was not asked to do so, and on February 4, Attorney-General S.G.W. Archibald informed him of his intention to proceed against him on a charge of criminal

17 *Novascotian*, 9 October 1834.

18 *Ibid.*, 20 November 1834. Except for his writing the two letters signed "The People", little is known about Thompson.

19 Leishman, engaged in the woollen trade, strongly supported reform causes in the 1830's and was prominent in the Reform organization of Halifax in the 1840's.

20 See proceedings of 16 December 1834, "Grand Jury Minute Book," 1828-34, RG 34, vol. 16.

21 *Novascotian*, 1 January 1835.

22 Letter of magistrates to Campbell, 8 January 1835, RG 1, vol. 237, doc. 141, PANS. John Howe Sr. was not among the twelve magistrates who made the request, but John Howe Jr. was. While his motives are not entirely clear, he probably acted as he did because of an entire lack of sympathy with his half-brother's methods of bringing about municipal reform. There is a remote possibility, however, that Joseph may have asked him to support any action by the sessions that could give added publicity to the charges in the letter.

libel. It must have brought nothing but gloomy foreboding to some of the magistrates when Howe told them that, even if they gained a victory, they would not "bear their banners unsullied from the field."[23]

Howe quickly discovered he had any number of willing helpers. When "Justice" wrote to the *Acadian Recorder* asking its readers to supply any information that might help Howe to contend against "the phalanx of corruption,"[24] the response was overwhelming. "The next day," said Howe, "I could not get into my office; it was crammed and the passage leading to it, with people, every one of whom had suffered some exaction, had some complaint to expose, or had had justice denied or delayed."[25] Even the magistrates, led by Richard Tremain — next to John Howe Sr. the ranking member of the sessions in years of service — appeared before Chief Justice Halliburton, requesting that Howe be afforded every facility to substantiate the charges.[26] But to Howe this was a cynical, hypocritical act and he wondered that they could perform it "with [such] amazing power of face."[27]

The suggestion that Howe could not get a lawyer to take his case has no basis in fact. What is true is that every lawyer whom he consulted told him he had no case. "I went to two or three lawyers in succession, showed them the Attorney-General's notice of trial, and asked them if the case could be successfully defended. The answer was, *No*: there was no doubt that the letter was a libel; that I must make my peace, or submit to fine and imprisonment."[28] As the law of libel then stood they were right, for although there was no positive law in England or Nova Scotia defining libel, it was libellous to publish any matter calculated to degrade the persons at whom it was aimed or disturb the public peace.[29] Further, at common law a publisher could not defend himself by demonstrating the truth of his publication, and his motive or intent, especially whether or not he acted from malice, was to be inferred only from a reading of the published matter. To allow evidence of intention to be given in any other way was unknown to the law of the day.[30]

Nonetheless, Howe borrowed books from the lawyers, read libel law for a week, and then told Susan Ann — but no one else — that if he "had the nerve and power to put the whole case before a jury, as it rested in [his] own mind, and they were fair and rational men, they must acquit [him]."[31] Yet on a stroll to Fort Massey the night before the trial, he confessed his

23 *Novascotian*, 5 February 1835.
24 *Acadian Recorder*, 14 February 1835.
25 Howe's speech to the jury, cited in Chisholm, *Speeches and Letters*, I, p. 57.
26 See *Acadian Recorder*, 28 February 1835.
27 Howe's speech to the jury, cited in Chisholm, *Speeches and Letters*, I, p. 35.
28 Comments of Howe to his friends, cited in *ibid.*, p. 23.
29 Attorney-General Archibald's speech to the jury, cited in *ibid.*, p. 75.
30 *Ibid.*, p. 78.
31 Letter to half-sister, 17 March 1835, cited in Joseph A. Chisholm, "More Letters of Joseph Howe", *Dalhousie Review*, XII (January 1933), p. 482.

doubts to Susan Ann. He was worried because he had not had time to commit to memory anything more than the two opening paragraphs of his address to the jury. Other questions also crossed his mind: could he get out of his head what he had put into it, or would he break down because of the novelty of the situation and the want of practice?[32] When he entered the court room the next morning, the scene, he said, beggared all description. The room was "crammed to overflowing, and as hot as a furnace." While he noted the presence of a goodly representation of the Halifax establishment, including some of the magistrates under attack, he saw many more of the "middling" members of the society, whose cause had been his cause, and upon whose sympathies he relied. Indeed, he was confident that, except for the magistrates and their immediate friends, "all ranks and classes, from the highest to the lowest, were in [his] favour." He also knew that they feared — because the charges against the sessions were "so glaring and so gross" — that he would be convicted, and that they were prepared to "console [him] during a 3 months' imprisonment, and to pay from £100 to £300 of a fine, which would have been done in two hours, by subscription."[33]

Howe had little to rejoice about in the principal officers of the court. It was not a trial with a single judge and jury, but "a trial at bar before the whole bench of judges and a [special] jury."[34] Presiding over the court was Brenton Halliburton, the Chief Justice, whose conduct Howe had more than once criticized, and whose appointment he had condemned because Halliburton had "mingled much and warmly in politics" and was considered to be "the head of a party, exclusive in its views and violent in its measures."[35] Acting as chief prosecutor was Attorney-General Archibald, who, while he still called Howe a friend, could hardly have been pleased by the latter's attacks on an Assembly over which he presided and in which he did much to set the tone. Nevertheless, Howe had things going for him too. By mid-January the committee of the Council had confirmed many of the charges of the grand jury,[36] and this meant that the sessions already stood condemned in the eyes of the public by a body which could in no sense be said to be biased against them. Of even greater significance was the composition of the jury. Five of the

32 Comments of Howe to his friends, cited in Chisholm, *Speeches and Letters*, I, p. 24.

33 Letter to half-sister, 17 March 1835, cited in Chisholm, "More Letters", p. 482.

34 Joseph A. Chisholm, "The King v. Joseph Howe: Prosecution for Libel," *Canadian Bar Review*, VII (October 1935), p. 587. All causes in the Supreme Court of Nova Scotia had been tried by two or more judges up to 1834, when, because the practice had been found "difficult and inconvenient," the Legislature made it lawful for one judge to sit by himself (4 Wm. IV, c. IV). While, for some unexplained reason, the old practice was continued in the Howe trial, there are no records to indicate how many judges actually sat with the Chief Justice.

35 *Novascotian*, 7 February 1833.

36 Reports of Committee of Council to Campbell, 14 January 1835, RG 1, vol. 312, doc. 108, PANS.

jurors had served with Howe on the militant grand jury of 1832,[37] and one of them, Edward Pryor Jr., had been kept out of the County Treasurership by the arbitrary action of the sessions.[38] Howe must surely have realized that these men were unlikely to agree to his conviction.

The Crown did not take long to present its case. James F. Gray, who was assisting Archibald, outlined the position of the prosecution and then called his only witness, Hugh Blackadar, an employee of the *Acadian Recorder*, to establish the publication of the alleged libel. When Blackadar hesitated about testifying against a fellow newspaperman, Howe made all the admissions that were required. The prothonotary read the letter signed "The People" into the record and the Crown rested its case. Howe called no witnesses and started his address to the jury forthwith.[39]

If the law had been as it once was, he might as well have given up at this stage. Formerly the jury had simply established the fact of publication and the judge had determined the existence of a libel, but both these functions had become the prerogative of the jury.[40] Hence, whatever the Chief Justice thought about the publication, it was of no consequence if Howe could convince the jury otherwise. Although Howe had been reminded of the old maxim that "he who pleads his own case has a fool for a client," his wisdom in acting on his own behalf was now apparent.[41] Any lawyer who took his case would have been restricted by the court to reading excerpts from the letter in an attempt to show that it was not calculated to degrade the magistrates or disturb the peace, and therefore was not a libel. Howe, on the other hand, might come up with an unorthodox defence and, as a non-lawyer, be given every leeway to use it.

Certainly he missed not a trick, even to the point of being utterly irrelevant. In the normal language of the indictments of that day, he was accused of "wickedly, maliciously, and seditiously contriving, devising, and intending to stir up and excite discontent and sedition among His Majesty's subjects."[42] This gave him the opportunity to quote *in extenso* from one of his "sermons on sedition," an article entitled "England and her Colonies," which had been published in the *Novascotian* five years earlier, and which has seldom been bettered in its professions of loyalty.[43] Howe continued:

> While I sat in my office penning these passages, which were to excite disaffection and rebellion, some of their worships were plundering the poor;

37 David Hall, Robert Lawson, Samuel Mitchell, Edward Pryor Jr., and Robert Story.

38 See proceedings of 22 March 1832, "Minutes of the Court of Quarter Sessions,' RG 34, vol. 10.

39 See record of the trial in Chisholm, *Speeches and Letters,* I, p. 30.

40 See speech of James F. Gray, cited in *ibid.*, p. 26.

41 See comments of Howe to his friends, cited in *ibid.*, p. 24.

42 Howe's speech to the jury, cited in *ibid.*, p. 37.

43 *Novascotian*, 11 November 1830.

> and others, by their neglect, were tacitly sanctioning petty frauds and grinding sanctions; and if His Majesty sat upon that bench . . . [he] would tell them that he who robs the subjects makes war upon the King; . . . he would tell them they were the rebels, and that against them and not against me, this bill of indictment should have been filed.[44]

Sometimes, in his preliminary remarks, Howe was anything but fair to his prosecutors. Scornfully, he referred to Richard Tremain and the magistrates piously asking the Chief Justice to allow him every opportunity to substantiate his charges, even though they knew they had put him in a strait-jacket from which no judge could remove him. But Howe's own delving into the law had shown him that the magistrates' course of action was severely limited. Only if they had proceeded against him in a civil action would he have had the opportunity to justify the charges against them. But the charges were against the whole body of magistrates, and there was no way under the existing law that a public body could vindicate itself in a civil action.[45] Indeed, Attorney-General Archibald had taken every precaution to ensure that Howe could not allege unfair treatment. He might have proceeded through an *ex-officio* information or a bill of indictment, but had decided against the former since it would have denied Howe the right to have the charges against him considered in the first instance by a grand jury.[46] Neither method would have permitted Howe to demonstrate the truth of the charges, and for him it was just as well they did not. He would then have had to prove wrongdoing against anyone who had served on the sessions in Halifax over the preceding thirty years, something he neither was able nor wanted to do.

Howe raised the most merriment, heaped the greatest scorn, and enjoyed his fullest success when he managed, through the back door, to introduce material supporting his charges that no judge would have admitted by the front door. He told the jury that, if he read the law correctly, the court would not permit him to demonstrate that the charges in the letter were true. But as he understood the law relating to motive and intention he was mermitted — in fact, it was his duty — to show that, when he published the letter, his state of mind was such that he was thinking in terms, not of tempting others to a breach of the peace, but of restoring and preserving the peace. So repeatedly throughout his address he asked the jury if he would not have failed in his duty of restoring and preserving the peace had he not acquainted the public with the facts in the letter, and by this means he was able to examine the ills of local government much as he willed under the guise of conforming

44 Howe's speech to the jury, cited in Chisholm, *Speeches and Letters,* I, p. 40.

45 It was Howe's contention, nonetheless, that W.H. Roach and possibly Richard Tremain might have requested damages for themselves in a civil suit. *Ibid.*, p. 54.

46 See speech of Archibald, cited in *ibid.*, p. 74.

to his own views of motive and intention.[47]

In developing his case, Howe turned first to the ills he attributed to the magistracy as a whole. Here there was little new. Howe simply repeated the complaints of earlier grand juries, many of which had been confirmed by the committee of the Council, that the method of collecting taxes was partial and unjust, and that the burden was borne by only a part of the community, instead of being equally divided among the whole. He contended that, if taxes had been collected on all the ratable property at the prevailing rate, the total yield would have been £4,500 even though only £700 to £800 per annum was required. On that basis, he concluded that his charges that the method of raising the taxes had in itself wrought injustice in the amount of £1,000 a year were conservative, and that his accusations of over-exactions of £30,000 in 30 years were fully justified.[48]

In his blanket indictment Howe included all the magistrates. "The law makes a looker-on at a felony a participator in the crime. These men looked on for years [and declined to] take any step to produce a reform till driven to it by the refusal of grand juries any longer to assess."[49] In turning to specific magistrates, Howe — except in the case of Richard Tremain — simply made use of the evidence which had been collected first-hand by the grand juries, particularly that of 1834,[50] and which was never successfully refuted. First on Howe's list was magistrate W. H. Roach, the acting Commissioner of Bridewell and Inspector of Flour, who, according to the grand jury, had used the Bridewell, its employees, and its inmates as if they were his own property. Its woodhouse had become a stable for his horse, the wood being piled out in the yard; one of its cells contained his celery packed in earth, another the rest of his vegetables. The under-keeper inspected his flour; one prisoner manufactured buckets for him; another made boots and shoes for his relatives and his friends; other prisoners fed and watered his horse, or banked his house. "He was in truth," said Howe, "like the ruler in Scripture, who said to one 'go, and he goeth; and to another do this, and he doeth it'." What, Howe asked the jury, would be "the moral effect of all this upon the poor petty larceny wretches confined in Bridewell . . . for the purpose of reformation"?[51]

Next, Howe turned to Richard Tremain, who for many years had been one of the commissioners regulating the Poor Asylum, and who, contrary to law, Howe said, had furnished supplies, often of an inferior quality and at an exorbitant price, to an institution he helped to regulate. "What would not a

47 Howe's speech to the jury, *ibid.*, p. 36.

48 *Ibid.*, pp. 44-5. Howe based his calculations on "an actual and very low" property valuation of £1,200,950, but his authority for this valuation cannot be determined.

49 *Ibid.*, p. 45.

50 See proceedings of 11, 13, and 16 December 1834, "Grand Jury Minute Book," 1828-34, RG 34, vol. 16.

51 Howe's speech to the jury, cited in Chisholm, *Speeches and Letters*, I, pp. 50-1.

man do," Howe asked, "who would thus wring a profit from an establishment dedicated to the comfort of the poor and destitute, who would thus filch from mendicants to put money in his purse?"[52] Finally Howe turned his attention to the operations of the so-called brick-building, where the business of the clerk of the peace, the police office, and the commissioners' court was conducted. Here, apparently, his chief target was a third justice, Matthew Richardson, whom he pointedly asked: why was there never any accounting of fees and fines, and why were the fines "levied by fits and starts in an arbitrary and desultory manner, by which the law is made onerous, and yet contemptible?"[53] Through all his recital of specific ills Howe never failed to interject a question explanatory of his motive: "Now, gentlemen, with this evidence before me . . . could I have dared to refuse publication to that letter?"[54]

Howe was done with the magistrates. He concluded with an appeal to the jurors, asking them to do what an English jury might be expected to do in similar cases. "Will you, my countrymen, the descendants of these men, warmed by their blood, inheriting their language, and having the principles for which they struggled confined to your care, allow them to be violated in your hands?"[55] But even if he were convicted he would not desert his principles, but toil on in the hope of better times. "Yes, gentlemen, come what will, while I live, Nova Scotia shall have the blessing of an open and unshackled press."[56] Howe had previously spoken only once or twice in public, but he now emerged, almost overnight, as a full-blown orator. On this occasion his oratory displayed all the characteristics that were to play a substantial role in his later political success. He himself realized how effective he had been; indeed, as he watched the tears flowing copiously down the cheeks of an elderly juror, he knew beyond all doubt that he could not be convicted.[57] But although it was magnificent, from the point of view of the law it was magnificently irrelevant. Furthermore, for all his skill, had Howe made a tactical error? By speaking six hours and a quarter he had so extended the sitting of the court that it was found necessary to adjourn for the day. In the interval not only might the Crown "reconstruct [its] case,"[58] but the effect of Howe's speech might be dissipated.

Nonetheless, the events of March 3 were an anti-climax. Attorney-General Archibald, in a calm, unemotional manner, told the jury that Howe had "stated a great variety of things which could not be evidence, which are mere

52 *Ibid.*, p. 53. Howe did not mention Tremain by name.
53 *Ibid.*, p. 56.
54 *Ibid.*, p. 52.
55 *Ibid.*, p. 70.
56 *Ibid.*, p. 71.
57 Comments of Howe to his friends, *ibid.*, p. 24.
58 This was the argument used by the lawyer Beamish Murdoch when he intervened on Howe's behalf. Chisholm, *Speeches and Letters*, I, p. 72.

heresay, and which the court would not have permitted counsel to use,"[59] and suggested that the law was so definite and Howe's power of reasoning so clear that, were he a member of the jury, he might be persuaded to convict himself. Then it was the Chief Justice's turn. Clearly Halliburton had been in an extremely difficult position throughout the trial, especially because he was trying one who, on the one hand, had subjected him to attack and who, on the other, obviously had the sympathy of most of the spectators in the court room.[60] Accordingly he had followed the line of least resistance as the course best calculated not to damage his own position as a judge. Early in Howe's speech Halliburton had reached an understanding with the spectators that, while they might laugh at Howe's "occasional corruscations [sic] of humour,"[61] they were not to applaud; he had also decided to permit Howe any amount of irrelevancy without intervention. In concluding his charge to the jury, he simply said:

> In my opinion, the paper charged is a libel, and your duty is, to state by your verdict that it is libellous. You are not bound by my opinion. . . . If you think that this is not a libel, as a consequence, you must think that it bears no reflections injurious to the complaining parties. If this is your opinion say so; I leave the case in your hands.[62]

It was in the jury's hands barely ten minutes; that was all the time it needed to decide to take its view of libel, not from Archibald, not from Halliburton, but from Howe, and bring in a verdict of "not guilty." For a moment there was a breathless silence, then shouts of approbation from the crowds in and around the court house. For the rest of the day and the next most of Halifax celebrated. All the sleds in town turned out in procession to serenade Howe. Everyone joined in the festivities, wrote the *Recorder*, except those who, if they had been able to confine Howe in prison or mulct him to their satisfaction, might have made "the exposure of abuses . . . a dangerous amusement."[63] Every newspaperman in Halifax hailed Howe's success, even his old enemy Edmund Ward, formerly the editor of the *Free Press* and now of the *Temperance Recorder*, who wrote that the verdict was "received with an expression of feeling never before witnessed in this community, and a universal satisfaction seemed to enliven every countenance."[64] Nova Scotians beyond Halifax got a full account of the trial, first in the *Novascotian* of March 12, which published the speeches verbatim, and later in a pamphlet that was

59 *Ibid.*, p. 74.

60 The newspaper reports are clear on this point. See, e.g., *Halifax Journal*, 9 March 1835.

61 *Ibid.*

62 Chisholm, *Speeches and Letters*, I, p. 82.

63 *Acadian Recorder*, 7 March 1835. The *Recorder* suggested that the sessions could "no longer sit on misdemeanors or offences, till it has clean hands and sets its house in order."

64 Quoted from the *Temperance Recorder* in the *Halifax Journal*, 9 March 1835.

sold at county newspaper offices throughout the province.[65]

In the first issue of the *Novascotian* after the trial, Howe boasted that "the press of Nova-Scotia is Free," and it is often stated that Howe established the freedom of the press through his acquittal in 1835. This is a myth that has little basis in fact. Howe had, in effect, convinced the jury that the law applicable to the case was "an ass". But, as Sir Joseph Chisholm has pointed out, "the law is not changed by the verdict of juries [even though] it is sometimes disregarded by juries in their verdicts."[66] In the matter of civil libel, Howe was to learn at close hand that the press of Nova Scotia was not free when, in December 1843, Richard Nugent, his successor as proprietor of the *Novascotian*, was forced to give up the newspaper and actually suffered imprisonment because he was unable to pay the damages awarded against him in a series of actions taken against him by the Tories.[67] In the matter of criminal libel, there would not be freedom of the press until the truth of the libel could be used as a defence. Not until 1834 did the British Parliament enact a statute which permitted that defence, if it could be shown that the publication of the alleged libel was for the public benefit.[68] But obviously there was no connection between Howe's libel suit in 1835 and the action of the British Parliament eight years later.

The immediate outcome of the trial was to create a shambles in the local government of Halifax. W. H. Roach and Matthew Richardson resigned from the sessions within two days of Howe's acquittal, and Roach also relinquished the Commissionership of the Poor. Even stronger evidence of the traumatic shock being experienced by the magistrates was the resignation of four other justices, all identified with the highly conservative wing of the sessions. James Tidmarsh was unwilling to retain an office in which he found neither "*Comfort*, *Respect*, or *Character*;"[69] Joseph Starr got out because "the very name of Magistrate [had become] a byword & reproach in the place, and they are treated with insult by all classes from the highest to the lowest."[70] The worst was still to come. To meet the emergency in the sessions, the governor and council appointed 13 new magistrates on March 11, only to have a reaction that was unprecedented in Nova Scotia. Within a day six of their designates had declined the office, and within the week three others. Most of them said that the pressures of their own concerns forced them to decline, but they

65 The reporter at the trial was Howe's friend, John Sparrow Thompson, who was to be the father of a prime minister of Canada. A year later, on the anniversary of the trial, Howe offered Thompson a gift of money for his services, only to be told by Thompson that he was already too much in Howe's debt. See Thompson to Howe, 2 March 1836, JHP, vol. 1, pp. 9-10.

66 Chisholm, "The King v. Joseph Howe," p. 592.

67 See letters of Nugent in *Novascotian*, 11 and 25 December 1843.

68 Chisholm, "The King v. Joseph Howe," p. 589. Nova Scotia continued to rely on the British exemplar and did not enact a libel law of its own.

69 Tidmarsh to Provincial Secretary George, 4 March 1835, RG 1, vol. 252, doc. 7, PANS.

70 Starr to George, 4 March 1835, *ibid.;* doc. 8.

may have been less forthright than the merchant Lawrence Hartshorne, who gave as his reason:

> the result of the late trial, by which it appears that the Editor of a licentious News Paper may, with impunity, first libel the whole Bench of Magistrates, and then in the face of a Court attempt to brand with impunity one of that body [Tremain] who has been on the Commission of the Peace upwards of thirty years, and in my humble opinion conducted himself honorably and zealously.[71]

Simultaneously with the gazetting of the new magistrates, William Q. Sawers, a Halifax lawyer who was already serving as Custos Rotulorum and Judge of the Inferior Court of Common Pleas of the Eastern District of the province, was also appointed Custos Rotulorum or ranking magistrate of the District of Halifax, and concomitantly the supervisor of its police establishment.[72] To Howe Sawers was a man who was notoriously deficient in order and regularity, who was wont to mingle in street affrays, and who had no redeeming virtue of which he was aware,[73] but it might be suggested that he was simply reflecting the bad feeling that had existed between Sawers and the Howes since 1832. In that year John Howe Sr. had presided over a court in which Sawers, acting as counsel for the defence, had assailed some of the institutions and values that the old man held most dear. Sawers had dared to suggest that a governor could not place sentries wherever the King's service required them, had so abused the members of the jury that convicted his clients that its foreman felt obliged to ask the protection of the court, and had openly charged the court with tyranny and injustice. But it was not only John Howe who was outraged, for the entire body of magistrates, Richard Tremain alone dissenting, condemned Sawers' actions and declined to let him practice before them until he had made a public apology.[74] In March 1835 the *Times*, which could in no sense be considered friendly to the Howes, suggested that the failure to fill up the Halifax magistracy resulted from objections to Sawers' appointment as Custos Rotulorum.[75] A little later some residents of Pictou in the Eastern District denounced Sawers for his allegedly irregular conduct.[76] To say the least, Sawers did not seem suited to leading Halifax into a new era in local government. Indeed, to Howe it was clear proof that Governor Campbell was still in the clutches of men who had no desire to reform the existing abuses in the conduct of county affairs.

71 Hartshorne to George, 11 March 1835, *ibid.*, doc. 12. For the other resignations, see *ibid.*, docs. 13 to 20.

72 "Minutes of Council," 11 March 1835, RG 3, vol. 214 1/2, p. 121, PANS.

73 *Novascotian*, 26 March 1835.

74 See proceedings of 6 March 1832, "Minutes of the Court of Quarter Sessions," RG 34, vol. 10.

75 *Times*, 31 March 1835.

76 *Novascotian*, 23 April 1835.

His reaction was, at long last, to give up all thought of reforming the sessions – grand jury system; henceforth, he thought only in terms of elective local institutions.[77]

The repercussions of the trial were to draw Howe into conflict in an even more personal way. Late in March the *Novascotian* published a letter signed "G", which unabashedly credited Sawers with being the first to point out the ills in the judiciary.[78] The next issue of the paper contained a reply by John Howe Sr., in which the 82-year old man, bursting with indignation, stated in no uncertain terms what he thought of Sawers. In his eyes, it was nothing less than monstrous to picture Sawers as a reformer of the courts; rather, he should have been castigated for making "a lawless and impudent attack upon a court which was fairly and impartially performing its duties . . . ."[79] John Howe's action was all the more astounding, coming as it did from one of the most respected members of the community, who had avoided partisan controversy like the plague during all his adult life, and had seldom, if ever, before seen fit to write a letter to a newspaper.[80] Joseph Howe, who revered his father above all other men, had exempted him from his general condemnation of the magistracy: "He never carried the municipal bag; he never took a shilling of the fees to which he was entitled; he had nothing to do with their dirty accounts and paltry peculations . . . if he had a fault, it was that, being an honest man himself, he could not believe that there was a scoundrel on the face of the earth."[81] Two or three years earlier Joseph had said that his father was performing "the duties of a magistrate as ably and energetically as ever."[82] But there had been a marked change in his mental processes since that time. Always friendly to the poor, he had become obsessed with the idea that he ought to devote the remaining portion of his life to improving their condition. Accordingly, he was seeking to settle as many of them as possible on a large tract of land on the Dartmouth side of Halifax Harbour. To that end he placed orders for ploughs, harrows and spinning wheels, and he would have incurred large obligations if the younger John Howe had not prevented his orders from being carried into effect.[83]

While there was nothing irrational about the older Howe's letter to the *Novascotian*, the mystery is that Joseph permitted it to be published, knowing that

77 See e.g., *ibid.*, 22 December 1836.

78 *Ibid.*, 26 March 1835.

79 *Ibid.*, 2 April 1835.

80 During the trial Attorney-General Archibald had said that John Howe's "unsullied reputation would never have left him obnoxious to any such charge" as was brought against other magistrates. Chisholm, *Speeches and Letters*, I, p. 78.

81 *Ibid.*, pp. 51-2. Attorney-General Archibald concurred: "I readily assent to all that has been said by a son of a father who is an honour to him." *Ibid.*, p. 78.

82 Reference to John Howe by Joseph Howe in January 1832, extracts sent by Sydenham Howe to George Johnson, p. 30, in George Johnson Papers. Public Archives of Canada.

83 John Howe Jr. to George Hutton of Dundee, 23 May 1838, JHP, reel 22, PANS.

it was certain to lead to ferocious attacks on his father. In his letter old John Howe had not only chastised Sawers, but also stated — somewhat mistakenly — that the sessions had refused to sit with Tremain until he had taken steps to clear his name.[84] Naturally Tremain was indignant that the "Father of the Bench" had written a letter so much at variance with his professions, and asked pointedly: "If he took any part, should it not rather have been to breathe peace and good will among men," or at least to reconcile his two sons on these matters?[85] Meanwhile Tremain told Governor Campbell that the two Howes were conducting a vendetta against him, suggesting at the same time that, because of the outcome of the trial, no magistrate, however pure his conduct, could hope to launch a successful action against an editor: "If Public men are to seek the approval of Editors of Newspapers, instead of the Government from whence their authority is derived, soon will they become the master power, and great & small must court their countenance."[86] Tremain also defended his thirty-year stewardship in local government in the Halifax *Journal*.[87] Only in his case had Howe not based his charges on documentary evidence and relied on what he claimed to be personal knowledge. Since Tremain's letter in the *Journal* failed to address itself to the specific accusations made by Howe, the latter told him to do one of two things: either to institute proceedings against him, or to have a full public discussion of his conduct, during which Howe would admit any errors on his part, but also show Tremain where his defence was weak and where he needed to provide further information. "Let him take the choice of the two courses — we are prepared for either."[88] Whatever the reason, Tremain chose not to reply.

The confrontation with Sawers developed along much nastier lines. Not unexpectedly, Sawers and his friends reacted violently to old John Howe's statement that there were "not many in [the Town] who have the least confidence in the person, to whom, it appears, its most important affairs have been committed."[89] The outcome was a rancorous debate, carried on largely by correspondents in the *Acadian Recorder*, and later the *Times*, which lasted until early June. For the first time in his life John Howe was the target of angry, bitter criticism, allegedly because he had allowed a pitiful squabble at the Court of Sessions to colour his judgment and cause him to proceed malevolently against Sawers. In the *Acadian Recorder*, "Nemo" told him that he had long been an encumbrance to the Sessions and that its younger members respected

84 Actually the sessions had voted down a motion to this effect by 4 to 3, Dr. Head, Fairbanks, Albro and Joseph Starr opposing J.L. Starr. Russell and John Howe Jr. See proceedings of 5 March 1835, "Minutes of Court of Quarter Sessions," RG 34, vol. 10.

85 *Novascotian*, 16 April 1835.

86 See letters of Tremain to Campbell, 9 and 21 March 1835, RG 1, vol. 412, docs. 137 and 138, PANS.

87 *Halifax Journal*, 20, 27 April 1835.

88 *Novascotian*, 7 May 1835.

89 *Ibid.*, 2 April 1835.

his age, but pitied his imbecility.[90] In the *Times*, "Investigator" wrote that his letter did "not manifest the disposition of a follower of the meek and lowly Lamb,"[91] while "Inquirer" suggested that his "language and style would far better suit the mouth of a Billingsgate fish wife" than a devout Christian.[92]

Joseph Howe held his peace, even though one of the letter-writers asked why "the keen mind of the son had not prevented instead of laying open to the public gaze a parent's failing."[93] But, in the end, as Howe himself put it many years later, "I had . . . to take up my pen, and clear the decks of these scribblers which I did giving Sawers some deserved hard knocks in return for those given to my father."[94] In three separate editorials, he lashed out at "the little knot of brainless boobies" who were criticizing the newspapers' treatment of Sawers. If the people of Halifax had foisted upon them "as their Chief Magistrate a man, known to them only by his vices . . . to whom can [they] look but to the Press?"[95] With that editorial Howe was done with Sawers, and he was also content to let "Richard Rabblehater" and "Philo Booby" continue the controversy without reply.[96] Amidst the acrimony there was one pleasant note: Howe appeared in the Long Room of the Exchange Coffee House on June 2 to receive a piece of plate from his fellow countrymen in New York for his defence of the freedom of the press.[97]

Because of the repercussions of the trial, it was not until late in June that Howe set out on the kind of ramble that, since 1829, had had the effect of an invigorating tonic and restored his normal zest for action. For three weeks he made his way through the Musquodoboit and Stewiacke valleys to Truro and Amherst; across the Bay of Fundy to Windsor, Lunenburg, and Liverpool; back to Windsor and home. As usual, he spared neither himself nor his horse, and by the time he reached Windsor the horse's back was so chafed that he was forced to leave it at Windsor until he returned from the South Shore.[98] The further he went the more he appreciated the dangers he had incurred in risking a heavy fine for libel. Everywhere recession had laid its heavy hand on the land, and the debts on his books remained almost uncollectable. At Truro he dunned doctors and lawyers all morning, but collected not a pound. From Amherst he reported that he had ridden between two and

90 *Acadian Recorder*, 18 April 1835.
91 *Times*, 14 April 1835.
92 *Ibid.*, 21 April 1835.
93 See letter of "Inquirer", *ibid.*
94 See reminiscences of Howe in JHP, reel 22.
95 *Novascotian*, 30 April 1835. The editorial is headed, "Mr. Sawers and His Friends."
96 See *Acadian Recorder*, 9 May to 6 June 1835.
97 A silver pitcher, about twelve inches in height, and holding nearly three quarts, with a handsome gilt stand four inches high. See *Times*, 2 June 1835.
98 Howe to Susan Ann, Windsor, 7 July 1835 (second letter), JHP, reel 23.

three hundred miles in eight days, and had only £7 to show for his efforts.[99] If anything, his finances were in a worse snarl than usual, and his instructions to Susan Ann on the best way to manipulate his outstanding notes so as to ensure the continued accommodation of the two Halifax banks are bewildering beyond description. "I do not by any means despair of getting through," he told her, "although the prospect seems cloudy enough."[100]

However inhospitable the weather and the roads, and however poor the collections, Howe's reception in the towns, the hamlets, and the countryside exceeded anything he had anticipated:

> the trial has given me a lift and a hold upon the hearts of the population that I could not have dreamed of. I believe from my heart that I could beat [S.G.W.] Archibald in a contest for Colchester without an hour's canvas [sic]. But Musquodoboit which will belong to the new County of Halifax[101] will note for me to a man before any other candidates that may offer — there will be no election, however, until next year, of which I am very glad.[102]

Here perhaps for the first time, Howe was making it clear that he intended to run in the next general election; here, too, he let it be known that he had established a special kind of *rapport* with many of his countrymen:

> If I meet a man in the very depth of the forest — or men under a shed out of the rain — persons I never saw or heard of, the moment they find out my name, greet me with good wishes, and talk about the trial — . . . the New York Present — and do me any service in their power. Please God, if I once get [into] my hands a little force, I will endeavor to do something more worthy of all than anything I have done yet.[103]

The trial and its aftermath left its mark on Howe, and indirectly on Nova Scotia, in more ways than one. Above all, it convinced Howe that his countrymen would not secure the rights of Englishmen on either the provincial or municipal level through newspaper writing alone. He was now prepared to take the next step and let himself be nominated for the Assembly.

99 Howe to Susan Ann, Amherst, 3 July 1835, reel 23. Surprisingly, he did considerably better in Liverpool and Lunenburg, and he later reported: "shall be able to bring about £20 with me — very little for all our wants, but better than nothing." Howe to Susan Ann, Windsor, 13 July 1835, JHP, reel 23.

100 Howe to Susan Ann, Windsor, 7 July 1835 (first letter), JHP, reel 23.

101 A bill of the Nova Scotia Legislature separating the District of Pictou and the District of Colchester from the County of Halifax was waiting approval in England.

102 Howe to Susan Ann, Amherst, 5 July 1835, JHP, reel 23.

103 *Ibid.*