

The True Witness.

CATHOLIC CHRONICLE,

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MONTREAL, FRIDAY, FEB. 22, 1861.

NEWS OF THE WEEK.

THE King of Naples still holds his own gallantly at Gaeta, and it is said that the Sardinians now commence to despair of reducing the place except by famine. It is satisfactory to know that Francis II. is abundantly supplied with provisions and materiel of all kinds.

The brave Sardinians have been more fortunate in their hostilities against religious communities than they have been hitherto against a fortress. About the 22nd ult. they valiantly attacked the Convent of Casamale in the Roman States, put the monks to flight, and heroically proceeded to burn the Convent itself. In these kind of exploits the Sardinians are generally very successful, for an attack upon unarmed monks is far more to their taste, than an assault upon batteries, or a charge against a column of disciplined soldiers. The valor of the Sardinians, when they have only monks or nuns to deal with, can only be exceeded by their extreme prudence in the presence of bearded men, with arms in their hands.

It would appear also that other engagements betwixt the Sardinian invaders and the Neapolitan patriots, in which the former had reaped but scanty laurels, had taken place, and that in consequence large reinforcements to the invading army were on the march through Umbria. It is not easy however from the mass of confused, and apparently contradictory statements which reach us through the press, and the telegrams, to distinguish betwixt rumor and fact.

Garibaldi has suddenly left Caprera, it is supposed with the design of stirring up insurrection in the Eastern Provinces of the Austrian Empire, and thus creating a diversion in favor of Sarinaia, should the latter attempt an attack upon Venetia. If this hypothesis is correct, the armed intervention of Prussia and Russia may be anticipated; and indeed the latter Power is said to be already concentrating its troops, in such a manner as to be able at any moment to direct them upon any point of the Austrian Empire that may be threatened.

The French Legislature was opened on the 4th inst. by the Emperor in person, with an unusually pacific speech, which has of course created considerable panic in England, and had its natural depressing effect upon the Funds. Louis Napoleon is one of those men whose designs can not indeed be altogether known, but of whom it may at any moment be confidently asserted that he does not entertain any particular given design. Every one knows, for instance, that when he gives pacific assurances, he is meditating war, though it may be uncertain when, or on whom, the thunderbolt will fall; when he reiterates as the policy of his Government, the principle of non-interference we can no longer doubt that he meditates active interference in the affairs of his neighbors, though in what form, or with whom, that interference will display itself, no one can even guess. From these data therefore, as well as from the activity prevailing in all French arsenals, we have good reasons to expect a speedy outbreak of hostilities in Europe.

The Queen opened Parliament on the 3rd inst., in person. The Royal Speech alluded to, and deplored the domestic troubles of the United States. The Commercial intelligence reports a slight and steady advance in bread-stuffs.

The Nova Scotian brings Italian dates to the 7th inst. The fire of the Sardinians was beginning to tell upon the citadel of Gaeta, but the King of Naples displayed no symptoms of a disposition to yield. An armistice of 48 hours had been agreed to.

THE ANDERSON CASE.—This "cause celebre" of Upper Canada, and which has excited as much interest in Great Britain as in North America, was brought to a close on Saturday last, by the discharge of Anderson from custody. The Court based their decision to discharge Anderson, not upon the merits of the case—for on the question of Law, the previous decision of the Court of Queen's Bench was apparently sustained—but upon a technical defect in the warrant for his commitment. This has much modified the pleasure created by the liberation of the prisoner;—and as it is too often forgotten that the sole legitimate function of a Judge is—not either to make or criticize law, but simply to apply the

existing law without regard to consequences, no matter how iniquitous or absurd that law may be, the action of the Judges is rather harshly commented upon by the Canadian press. The Montreal Gazette, one of the most moderate, in this respect, of our cotemporaries, has the following remarks upon the subject:—

Anderson is discharged upon a technical flaw in the warrant. The principle that we do not cannot and never will recognize the slave-code in the British dominions still remains unasserted—nay, so far as our courts have gone, its recognition has been declared to be a duty imposed on British subjects in Canada! We were degraded in the eyes of the civilized world by the interpretation which the law officers and the judges put upon the treaty; that degradation has not been removed. Anderson, it is true, has been released; but proceedings will lead recommended in Missouri to-morrow which will lead to his being again arrested ten days or a fortnight to the law of Upper Canada, at least, that he who strikes a manly blow to rescue himself from slavery is no longer safe there! Upper Canada is no longer a safe refuge for the slave who has fought his way to freedom! This is a bitter humiliation for a nation of freemen. This conduct of the judges looks like a contemptible evasion of a great public duty.—What need was there of these quibblings about technicalities? Why evade a decision upon the merits? Why not proclaim that our law is indeed a Bejjal's law, and so let the people decide whether they would submit, or vindicate a higher law and break this. Time has been gained, however, for one thing—a duty which we hope the Imperial and Canadian Parliaments will lose no time in performing. It will devolve upon both to pass declaratory Acts interpreting the Acts executory of the treaty, forever preventing the recognition of such claims as these. Anderson will have to keep out of the way of the bloodhounds until this is done. Then he may return to his home and the cultivation of his fields, and Canada will be once more a safe refuge. The people will thus vindicate the honor of the country, and this most unhappy discussion will be brought to a close. One point is already gained. Let us be thankful for that. The Court of Queen's Bench dealt with the case, as if it were its duty to strain a point to oblige Missouri slave-owners in the rigid execution of the Treaty. The Common Pleas happily sees a little more clearly. The demand to give up a fugitive seeking shelter here is one we are bound to regard with jealousy. The parties claiming to take a man out of the jurisdiction of the Government and Courts of this country must make out their case *strictissimi juris*. This is the improved rendering of the law by the Common Pleas.

The law may be bad, the terms of the "Ashburton Treaty," upon which that law is based, may be very defective; but these are reasons, not for impugning the wisdom or integrity of our Judges, but for amending the law, and for reconsidering the terms of our international arrangements with the United States. In the case of Anderson, we believe that the Canadian Judges have well and honorably discharged their duties; and assuredly, in refraining from usurping the functions of legislators, though almost invited to do so by public opinion, they have shown great wisdom, great respect for the fundamental principles of our Constitution, have upheld the dignity of the Bench, and given reasons for increased confidence in the tribunals over which they are called upon to preside, as the impregnable bulwarks of our liberties.

The course advocated by the Gazette, as the proper course for the Judges to have pursued, is one which no enlightened statesman, which no one qualified to direct, or to exercise influence over public opinion can commend. It is not the business of the Judge, it lies not within the limits of his legitimate and strictly defined functions, to give any opinion, favorable or unfavorable, upon the merits of the law which he is sworn to administer; it would not be to his credit, or in the interests of liberty, were he to abnegate his functions, as recommended by the Gazette, in favor of public opinion, as the minister of that "higher law" to which our cotemporary appeals, imprudently and most inconsistently with the sound Conservative principles of which he makes profession. The best guarantee for our liberties is to be found in that separation of the functions of the Legislator and of the Judge which underlies our whole system of Jurisprudence; and any, the slightest encroachment of the one upon the functions of the other, would be immediately and irretrievably ruinous to our civil and personal liberties—of which the essential conditions are, that the Legislature may not in any case apply or administer, and that the Judiciary may in no conceivable case make, or modify, Law.

The Gazette, and others of our cotemporaries, seem in their commendable zeal for the cause of personal liberty—of that liberty which British law confers upon all who tread British soil, to forget or cast aside these simple but fundamental truths. "Un petit mal pour un grand bien" is, perhaps unconsciously, the principle which in their sincere aversion to slavery and oppression, they would fain have seen applied in the Anderson case. It is well however, for the cause of our international integrity, well for the cause of law and order, well for the cause of personal liberty, that our Judges have had the courage to adopt a different principle as their rule of action; and indifferent to the consequences of their verdict, either upon the individual prisoner, or upon the public mind, have simply rendered judgment in accordance with the strict letter of the Statute before them, and beyond which they had no right to travel. What that law gave that were they bound to award—its pound of flesh to Missouri, if by Statute, Missouri was entitled to its pound of flesh; to Anderson his liberty, if the law, strictly interpreted, declared him entitled to be discharged. But

whether the Statute, or law which they were called upon to administer was good or bad, cruel or humane, were questions which may, and we hope will be discussed in the Legislature, but with which our Judges had no right to interfere. The "higher law" to which the Gazette appeals is simply "mob" or "Lynch Law," from which we pray the Lord to deliver us.

We beg it to be distinctly understood that, as on all previous occasions, in the matter of our pending Municipal elections, and as betwixt the several candidates for civic honors, the TRUE WITNESS can, and will in no wise interfere. To drag the sacred name of religion into the arena of municipal strife, or to implicate our Clergy therewith—would be a sacrilege, a profanation, a prostitution of all that men should hold most holy; to introduce the test of "nationality," or to raise the question of "national origin" in connection with Mr. Jones', or Mr. Jenkin's candidature for their respective Wards, would be a piece of bad taste, of execrable fustian, of what the Yankee call "bunkum," of which the TRUE WITNESS will never, we can assure our readers, be guilty. A national interest, or a religious interest, in connection with our petty parochial elections is, to us, as inconceivable as would be a "red-haired interest," as opposed to a "black-haired interest." These Municipal elections are matters in which we take no interest, and whose merits we are not, we thank God for it, called upon to discuss. We merely deprecate rioting, and strife betwixt French and Irish Catholics.

Inced we are thankful, very thankful indeed, as well as surprised, that there should be any found willing for any consideration, to undertake the functions of a civic office; ready to undergo the responsibility, the odium, and the ridicule which, by the inscrutable decrees of Divine Providence, are the inevitable concomitants of municipal dignities. Under such circumstances, we seek not to scrutinize too keenly the merits, or to inquire too curiously into the qualifications of the volunteer; and with honest Sancho, we bid God bless the giver, and care not to look the gift horse in the mouth.

Or if as a Christian we take any interest in these elections, it is one tinged with melancholy, as well as with wonderment and gratitude. It is one of the consequences of the prevarication of Adam, of the sin of our first parents, and of our many infirmities, that we should have civic officers, and periodical municipal elections. But what a sad thing it is to the Christian moralist; that it should be so! How painful to him as he gazes on that little child, the personification of joy and health, and innocence, whose every gesticulation of purity, whose smile tells of Paradise, and whose eyes seem a fount of unutterable perennial delight—to reflect, that that little innocent child, now the playmate of angels, may in time grow to the stature of a Mayor or of a City Councillor;—that it may yet be destined to chew tobacco and to spit, to make ungrammatical motions in the Council Chamber, and to give irrelevant explanations to the gentleman on the other side of the table! Who is there who would not shrink from the prospect of being pointed at in the streets as the man who had a relation who was an Alderman!—what father of a family therefore is there who would not deprecate such a fate for the loved little ones now prattling on his knee!

Gratitude, surprise, and a certain gentle melancholy—these are the only feelings with which we contemplate from afar off all municipal elections. Our gratitude and surprise that there should be any willing to accept the situation of Mayor or of City Councillor, are tempered with sad reflections upon the corrupt nature of man, as evidenced by the necessity for such things. We cannot therefore enter into the animated feelings of those who take part in the strife, and even if we could, we should feel that we were false to our duty as Catholic journalists were we in any manner to mix ourselves up therein. Mayors and City Councillors we must have: they are the consequences "of man's first disobedience, and the fruits of that forbidden tree whose mortal taste brought death into the world, with all our woe." Mayors and City Councillors we must have—and we resign ourselves thereunto, not only without a murmur, but, as we said before, with extreme thankfulness that we have amongst our community, gentlemen public spirited enough to accept the burdensome and painful duties of an office, of which the emoluments are too paltry to be an object of desire to any one, but of which the responsibilities are great and numerous. Certainly no honest man can improve his material condition by the occupation of a seat in our City Council Chamber; and so high, unfortunately, does party spirit run amongst us, that it is almost impossible for any one—no matter how upright and well intentioned he may be—to escape unscathed from the poisoned arrows which detraction is sure to launch at every public man in Canada.

THE GOVERNOR-GENERAL.—Amongst the passengers by the steamer Africa were Sir Edmond Head with wife and family.

"LE CANADIEN" AND CONFEDERATION.—We receive with gratitude the promise of our Quebec cotemporary to republish in his columns his definition of "Confederation and Federal Government." For ourselves, we promise to read his remarks upon the subject carefully, and with the sole design of obtaining some insight into the great mystery of a "Colonial Federation."

We call it a "great mystery," because the very name by which it is announced to the world, seems to us to involve an absurdity, because implying a contradiction in terms. The chief, we may say, the sole legitimate functions of a Federal Government are, to regulate and exercise supreme control over the relations of the several States of which it is the head, with Foreign Powers; to receive and accredit Ambassadors from, and to Foreign Courts; to declare war, and to conclude peace; to levy troops, and to equip fleets for the defence of the Confederated States; and, to sun up all in a word, to manage the diplomacy, and external as distinguished from the internal affairs of the several Sovereign and Independent States of which it is composed. A Federal Government unable to do all these things—and no one of them could be accomplished by a "Colonial Federation," seeing that they all belong, exclusively, to an Imperial Government—would be utterly useless, and in all probability, positively and actively mischievous.

What then must be the functions of a Federal Government, itself dependent upon, or subject to, the British Imperial authorities, and consequently unable of itself to regulate the "Foreign Affairs" of the communities subject to it? The answer seems simple enough, indeed inevitable.—That its functions, if it exercised any, would be over the "Home Affairs," or internal arrangements of the several States of which it was composed; and it is for this reason that the project of Confederation of the British North American Provinces—of which the majority are essentially anti-Catholic—is in our eyes so fraught with menace to the autonomy and domestic institutions of Catholic Lower Canada. To give to a Congress of such Provinces, any, the slightest control, direct or indirect, over the internal affairs of Lower Canada, would be to expose the latter to great danger—nay, to consign Lower Canada to the certainty of being swallowed up, or absorbed by the more numerous, and therefore politically more powerful members of the Confederation of which it would be a mere fraction—and to all of which it would be "alien in laws, in language and in religion."

We are, however, open to conviction, and shall be ready to reconsider our position, so soon as *Le Canadien* shall have accomplished its promise of showing how—a "Confederation" of Colonies is possible, and—in view of the security and permanence of Lower Canadian institutions, is desirable. Such a "Confederation" necessarily implies a Federal Governor or Vice-Roy with his salary; a Federal Government with its salaried officers; a Federal Parliament or Congress, with its salaried employes, and innumerable inevitable expences. The machinery of such a Government would therefore be enormously costly; and the necessity for such an awfully expensive apparatus must be shown to be very urgent indeed, before the people of Lower Canada should consent to burden themselves with its support. Besides its imperative necessity, *Le Canadien* is bound to define the functions of this very costly machinery, and what its prospective advantages to Catholic Lower Canada in particular. Those functions must comprise:—

1st. Functions which it is not in the power of the Imperial Government to discharge.

2nd. Which cannot in any manner be performed or fulfilled, either by the Government of any single Colony separately, or by the conjoint action of several adjacent Colonies, acting in concert with the Imperial Government.

3rd. And which shall in no manner, directly or indirectly, interfere with, or circumscribe the limits to which the authority of a separate Colonial Government now extends.

If the first condition is not fulfilled, then a "Confederation" and a "Federal Government" would be but a useless extravagance; for it would be the height of extravagance to create new and expensive machinery for doing that which can be performed by the machinery actually at our command.

If the second condition be not involved in the very idea of "Colonial Federation," such a union, and its attendant Federal Government, would again, and for the same reason, be a ridiculous extravagance and waste of money. By mutual agreement amongst themselves, acting in concert with the Imperial authorities, the Colonies are competent, if they so please, to establish amongst themselves a uniform Tariff, and to make all needful arrangements respecting Canals, Railroads, &c., for the development of their industrial resources. We need not therefore go to the expence of creating a new Government merely to do that, which the Colonies, under the actually existing system, can do at any moment they so please. If they, or any of them, do not please to come to any such terms, no other

Colony has the right to employ coercion upon a matter of purely domestic arrangement, for every Colony is the best judge of, and bound to provide for, its own financial and commercial interests; but if in so doing it trespasses upon the rights of any of its sister Colonies, the Imperial Government has the power and the right to disallow its acts.

And if the third condition be not fulfilled—if the proposed Federal Government should exercise any of the functions now exercised by a separate Colonial Government—then, to that extent, would the autonomy of the latter be diminished, and its control over its own internal affairs be destroyed.

Here then is the task imposed, as a logical necessity, upon the advocates of Federation.—They must show that there is actually wanting some essential indispensable function of Government, which cannot be fulfilled—by the Imperial Government—or by any one of the separate governments of our British Colonies—or even by the joint action of the Colonies, acting amongst themselves, in concert with, and subject to the supervision of, the Imperial Government; and above all, if professing allegiance to Lower Canada, they must show that the independence or autonomy of this Province, and its control over all its own affairs, over all that now constitutes the subject of Provincial authority, will be more ample and more secure than they would be, if Lower Canada were a distinct or separate Province of the British Empire—acknowledging no authority except that of its own Provincial Government, subject of course to the authority of the British Empire of which it would be a dependency or subject Province. If *Le Canadien* can do all these things, we will consent to waive our objection to an additional Federal governmental machinery, based upon its great expence, and its inevitable increase of jobbery and corruption.

We must do *Le Canadien* the justice to add that he contemplates the separation of Upper and Lower Canada, and advocates "Confederation" as the means—"un moyen facile"—of obtaining that separation. In this we admire our cotemporary's patriotism, but we marvel at his logic. The separation of Upper and Lower Canada must—if they are to enter the proposed Confederation as two distinct States—logically and chronologically precede Confederation.—Thus separation, or Repeal of the Legislative Union, *pur et simple*, may be a means towards Confederation; but Confederation can never be a means towards separation, or Repeal of the Union—unless *Le Canadien* can show how a consequence can be logically and chronologically anterior to its cause, and to its chronological antecedents. We can understand in what sense a separation betwixt Upper and Lower Canada may be said to be a means, or preliminary step, towards Confederation, and one indeed indispensable, if Upper and Lower Canada are to enter into that Confederacy as two distinct States, and not as one single State; but we cannot understand how "Confederation" can be a means towards procuring the accomplishment of a separation, which separation must itself be *un fait accompli* before a Confederation as proposed by *Le Canadien* is possible, or conceivable. "Repeal of the Union" *pur et simple*, must precede Confederation, before a Confederation, into which Upper and Lower Canada are to enter as two separate States, can be conceived; and that Repeal of the Union having been obtained, we can see no reason why Lower Canada should desire to enter into closer or more intimate relations with her bitterly hostile and anti-Catholic neighbors, than those which obtained previous to the Legislative Union, and which must necessarily obtain amongst all the dependencies of the British Empire. We do not advocate Repeal of the Union—though we should prefer it to a Legislative Union based upon Representation by Population; but if we must have Repeal, why not stop there? why having got rid of one Union, seek to contract another and Federal Union?

For if *Le Canadien* will but consider it, since Confederation means essentially a league entered into by mutually independent parties, a contract betwixt equals, it would be necessary upon his own hypothesis that Upper and Lower Canada are to constitute each a separate State of the Confederacy—that the terms of the proposed Confederation should first be discussed in, and adopted by, the mutually independent Legislatures of Upper and Lower Canada, respectively; and thus again we are reduced to the necessity of accepting Repeal of the Union, before we can even obtain a political organism competent to discuss the terms of the Federation advocated by *Le Canadien*. A political system imposed upon Lower Canada by a force *ab extra*, whether by the Imperial Parliament, or by the existing Legislature of the United Canadas, and not voluntarily accepted and ratified by Lower Canada separately, would not be a Confederacy at all; for Confederacy implies, as a condition *sine qua non*, a compact or league entered into by independent States, or at all events independent with respect to one another. If therefore there be meaning in words, if therefore an effect