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THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 17th APRIL, 1823. [No. 26.

Tu quod cavere possis, stultum admittere est. TERENCE.

It is folly to admit improper charges, when they are detected and can be prevented.

"Good night to Marmion!"

STR. W. SCOTT.

REPORT OF THE SPECIAL COMMITTEE ON PUBLIC ACCOUNTS
continued.

If, upon due consideration of the peculiar circumstances under which the declaratory statute of the 18th of His late Majesty, cap 12, was passed, and the construction which, coupled therewith, may be given to the constitutional act of this province, the duties levied under the said act of 14 Geo. III. cap. 88, should, notwithstanding, have been considered by the Executive, as at the exclusive disposal of the colonial government, which your committee are by no means disposed to admit, then the balance of £ 140,685 19. 0 as stated in the accounts to have been at the disposal of the legislature at the close of the year 1816, would be correct; save such claim as the province may have for such application of the monies levied under the said act of 14 Geo. III. cap. 88, as have not been applied exclusively for the objects for which it was originally intended, the precise amount of which, for the reasons already mentioned, your committee have not been able to ascertain.

The documents referred to your committee contain a statement of the *nett amount* of duties collected at the port of Quebec, from the year 1792 inclusive, to the 10th Oct. 1820, under the British acts of 25 Charles II cap. 7, 6. Geo. II. cap. 13, 4. Geo. II. cap. 15, 6. Geo. II. cap. 13, 4. Geo. III. cap. 15, 6. Geo. III. cap. 13, 6 Geo. III. cap. 52, and 51. Geo. III. cap 97, amounting to £ 33,603. sterling, which sum has been remitted to the receiver-general of His Majesty's customs in London, and paid into His Majesty's exchequer in Great Britain, "to be there entered separate and apart from all monies, to be reserved, to be from time to time, disposed of by parliament towards defraying the necessary expenses of defending, protecting, and securing the British colonies and plantations in America."

Your committee most earnestly call the attention of the house to this subject.

The act of the British Parliament of the 18th of His late Majesty's reign, cap 12, already referred to, declares that, "to remove uneasiness, and quiet the minds of His Majesty's subjects, it is expedient to declare that the King and parliament of Great Britain will not impose any duty, tax, or assessment, for the purpose of raising a revenue in any of the colonies, provinces or plantations, except such duties as it may be expedient to impose for the regulation of commerce, the net produce of such duties to be always paid and applied to and for the use of the colony, province, or plantation, in which the same shall be respectively paid, in such manner as other duties collected by the authority of the respective general courts, or general Assemblies."

The spirit, if not the letter, of the above in part recited statute is, that no money whatsoever shall be raised on the inhabitants of this province, but such as shall be applied to their use and advantage.

In this opinion your committee is (are) confirmed by the 46th & 47th sections of the act of 31 Geo. III. cap. 31, and moreover from the circumstance that the commissioners appointed on the part of the province of Upper Canada, claim from this province, a share or proportion of such duties.

Your committee find that the money raised in virtue of the Imperial act of 51 Geo. III. cap. 97, hath been remitted to England, by the collector of His Majesty's customs in this province.

This act making no appropriation of the money so raised, your committee are justified in concluding that the declaratory act of the 18th and our constitutional act of the 31st of His late Majesty, place these monies at the disposal of the colonial legislature—wherefore your committee respectfully submit to the house, the propriety of addressing his Excellency the Governor in chief, praying that his Excellency may be pleased to take the necessary measures to procure the reimbursement of the monies so withdrawn from the province, from the period of their being first raised, until the repeal of the said act, the amount of which appears, by the document laid before your committee, to be £ 8' 0. 5 11 sterling.

The next document to which the attention of your committee was directed, is the statement of the expenses of the collection of the provincial revenue contained in the appendix B to the papers submitted to the committee. To this important branch of the reference, your committee have devoted considerable attention.

The subject necessarily led your committee to enquire into the authority under which such charges were made, and the

result of their researches has been, that the act of the 33d Geo. III. cap. 2, is the only statute expressly allowing a charge of three per cent to the collector and comptroller, for their trouble of "levying, collecting, recovering, and paying, answering and accounting," for the duties levied under that act.

The act of the 35th Geo. III. cap. 8, requires the collector and comptroller to pay into the hands of the receiver-general, the whole of the duties levied under that act, *without any deduction*, except such drawbacks as they may have paid on the several articles therein mentioned, and that a warrant shall issue, directed to the said receiver-general for the incidents incurred in the collection of those duties. Your committee find, that, since the passing of the said act, warrants have issued in favour of the collector and comptroller, not only for the incidents, but for a commission of three per cent on the gross amount thereof. However high the authority under which these payments have been made, your committee can not but express an opinion that they are illegal, and to recommend their being refunded to the province, and effectual measures taken by this house to prevent their recurrence.

Similar payments appear to your committee to have been made under the same authority, for duties collected under the acts of the 55th and 59th Geo. III. These acts do not allow any commission to the collector and comptroller for the levying of these duties, and your committee are not aware that the silence of these acts on this subject can be construed to imply any claim to the charge.

Another charge equally objectionable, and which is not sanctioned by any precedent in Great Britain, is the deduction made by the collector and comptroller of His Majesty's customs of five per cent from the duties collected under the act of 14 Geo. III cap. 88.

The only authority which your committee have been able to find for this charge, is an order of the lords commissioners of the treasury of the 21st March, 1777. This order, your committee humbly conceive, is in direct violation of the statute under which the duties are raised; for it is therein expressly enacted, that, "all the monies that shall arise by the said duties, (except the necessary charges of raising, collecting, levying, recovering, answering, paying and accounting for the same,) shall be paid by the collector of His Majesty's customs into the hands of His Majesty's receiver-general in the said province, and shall be applied to defray the expenses of the administration of justice, and the support of the civil government therein;" therefore any charge on that revenue, beyond the necessary incidents of collecting the same, is contrary to law.

The pretension that the existence of a charge, in an account

laid before the legislature is an actual allowance of such charge, is utterly unwarrantable. If this were allowed any weight at all, it could only apply to oblivion for the past but could never furnish an authority for future payments, a positive enactment being the only mode of expressing the will of the legislature—the only mode which is public and binding on all His Majesty's subjects within the province—and without which, or some pre-existing law, none of them can rightfully be deprived of even the smallest portion of his property which such unauthorised expenditure might entail.

Your committee can not dismiss this subject, without expressing its (their) disapprobation of the authority assumed by the committee of the executive council for the audit of public accounts, of finally pronouncing upon all the charges comprised in the contingent expenses of this province, thereby essentially encroaching upon the privilege of the assembly, the only constitutional authority by which such contingencies ought to be regulated and controlled.

The public provincial accounts from the year 1817 to the year 1820, inclusively, next occupied the attention of your committee.

The total amount expended during the period aforesaid, as appears by the list of warrants issued by the administration of the government, annually submitted to the legislature is £ 517. 577. 14. 10 1-4, and the total amount raised on the people, in virtue of imperial and provincial acts, amounts to £ 430,280 5. 15 1-4; shewing an excess of expenditure, beyond the money raised during that period, of £ 87,297. 9. 0; which, added to the excess of expenditure, up to the year 1816, inclusively, will form a total excess of expenditure beyond the revenue, from the commencement of the constitution in 1792, until the 1st of November 1820, of £ 285,326 12. 5 3-4

Your committee refer the house to the observations already made on this subject, from which they feel warranted in concluding that, deducting from this excess, the pay and clothing of the militia, during the last American war, and other unauthorised payments, unconnected with the administration of justice and the support of the civil government, a sum has been raised in this province, up to this period, more than sufficient to cover the whole of the expenses of its civil government, including the special and general appropriations of the legislature.

The supplementary public provincial accounts for the year ending the 1st of November, 1818, contain a list of warrants for services of that year, issued subsequent thereto, shewing an apparent excess of expenditure, beyond the appropriations, of £ 898. 16. 10 1-2. sterling

Your committee abstain from making any observations on

this head, further than that, as the house intended to cover the whole of the expenses of that year by its (their) vote of the 24th March 1813, they recommend a bill being introduced to cover this excess.

(To be continued.)

The hope I expressed in No. 21, that I might soon be able to give an account of the *last dying speech, confession and execution* of the union-project, has been sooner accomplished than I had expected. Its *LAST DYING SPEECH* will be found in the various unionist papers in Canada; its *CONFESSION*, if Mr. Sutherland will take the trouble of intercepting and opening a few more letters, may be discovered from the correspondence of the junto with their friends across the Atlantic, some sketches of which may likewise *by possibility*, fall into my hands; and the warrant for its *EXECUTION* has been issued in the following

QUEBEC MERCURY EXTRAORDINARY, of the 5th instant.

"We have authority to announce, for the information of the public, that His Majesty's secretary of state for the colonies, has intimated to his excellency the governor in chief, the determination of His Majesty's government to relinquish for the present, the re-introduction of the proposed measure for the legislative union of these provinces in the approaching session of parliament, of the policy and propriety of which measure, in the abstract, His Majesty's government still retain their original opinion."

Since this determination of ministers has taken place before the arrival of the deputies from Canada, carrying the petitions both for and against the union, any faint hopes which the chop-fallen unionists may entertain on account of the words "for the present," and of the supplementary, and superogatory assertion of the opinion of government as to its "policy and propriety" remaining the same can not fail of being blasted, when they reflect upon the indubitable and inevitable effect those petitions must have, in opening the eyes of government as to the real sense of the people, and the true state of the case; and when these come again to be still further strengthened by the addresses of both our houses, who can for a moment doubt that the union will be consigned to the "tomb of all the Capulets."

It is not, however, to be expected that the restless ambition, and cupidity, of the Scotch faction of traders, will rest satisfied under this signal defeat of all their idle hopes, and vain predictions. The venom that has been working through the province ever since the proconsulate of the detested Craig, though now its course is stayed, and its virulence blunted, will, unless it be continually watched, and checked, and medicated, still continue to trickle from the rotten core, the polypus of the heart, the serpent that lies coiled up in the ventricle,—from Montreal, the heart, and from the Scotch trading faction, the serpent—Let us

therefore not yet retire from the combat,—let us be on the alert, and keep awake, and vigilant, and firm, that spirit of freedom, energy, and *English feeling*, which the late eventful period has aroused and invigorated amongst the inhabitants of both the Canadas.

Under this view, although the subject may have lost some of its interest, I will continue my “Extracts from the debates in Upper-Canada upon the union.”

Mr. Charles Jones endeavoured to combat the assertion that “the French Canadians were secured, *by the capitulation at the conquest*, in the right of being governed by French laws, and the use of their language.” I have not got the capitulation at hand, but I take it for granted he quotes it correctly. The 37th article, he says, secures to them the free exercise of their religion, the possession of their property, noble and ignoble, moveable, and immoveable, and by the 42d article they desired to secure the right of being governed by the French laws; to which the answer was given “they become subjects to his Britannic Majesty;” Hence, Mr. Jones attempts to argue that, because in the capitulation, the word “granted,” does not follow the 42d article, the English and not the French laws were of right to be the code to be followed after they became “subjects to His Britannic Majesty;” a consequence that by no means follows: whilst on the other hand, since it is an undeniable maxim that *whoever has a right to the end, has equally a right to the means*, the free possession of their “property, noble and ignoble, moveable, and immoveable,” being secured to them, it follows that the laws, necessary to that possession, which are alone to be found in French jurisprudence, and not in English, were equally secured to them by that article. This view is the same taken by that sound lawyer, Baron Maseres, whose opinions on the subject I had occasion to quote in No 4. and I think demonstrates that the French Canadians are entitled to the enjoyment of their own laws, not only by their constitutional act, but also by the original compact by which they became “subjects to his Britannic Majesty. It is evident that general Amherst being a soldier, and not a lawyer, chose to leave that question to the decision of civilians. As to the language, no one at that time entertained the childish and preposterous idea of changing it, and consequently no mention could be expected to have been made of the subject. That ridiculous notion owes its birth to the Scotch ignorants, who are too lazy, too proud, and perhaps too stupid, to acquire any other language than their own barbarous dialect of English, or their antiquated and guttural Gaelic. It is laughable too to hear Mr. Jones maintain so absurd a proposition as that the Imperial parliament have an undoubted right to “change the language;” he might as well say they had a right to pass an act for regulating the tides and currents of the ocean: but the subject is too

superlatively ridiculous to waste more words upon it. As to their right of altering the constitution of either province; if it be meant that they had a right to give the provinces a constitution, I allow it; but after a constitution is once given, it can never be taken away or altered, without the consent, and perhaps, strictly speaking, without a spontaneous application from those to whom such a charter (for constitution and charter, are with respect to the British possessions, synonyms,) has been granted.

Although an advocate for the union, Mr. Jones was one of those who declared he wished for no union but one, in its detail, in strict conformity with our present constitution. "The clauses of the projected bill, were not such as it would be reasonable to suppose that British subjects, who understood and appreciated their rights, could be patient under. They were not such as could have emanated from any mind admiring the constitution of the mother-country, and having a due regard for the rights of his Majesty's loyal subjects in this portion of his dominions. *They were worthy of the grovelling advocates of despotism.*" He urged the house to make themselves heard on the present momentous occasion; "if they neglected to do so, they abused the trust reposed in them, by an abandonment of the dearest interests of their constituents. Their silence would be taken for consent, and they would be burthened with a most unacceptable union. Let not this fair fabric of a constitution, founded upon principles of rational freedom, be inconsiderately razed to the ground! better by far that the heart that could conceive so foul a deed, and the hand that could willingly lend itself to guide the pen to record the foul conception, should have withered at the instant!"

Mr. Baldwin having risen a second time, said "he had before denied the *right* of the Imperial parliament to alter our constitution, without our consent; he was still of the same opinion—not but that they had the *power* to do so, but he insisted it would be derogatory to the justice and beneficence of the British parliament to do it." He illustrated his position by a quotation from Vattel, a part of which, most particularly in point, as to the distinction between *power* and *right*, is as follows.

"By the fundamental laws of England, the two houses of parliament, in concert with the king, exercise the legislative *power*. but if the two houses should resolve to suppress themselves, and to invest the king, with the full and absolute government, certainly the nation would not suffer it. *And who can presume to say that they would not have A RIGHT TO OPPOSE IT.*"

In the course of his speech he gave the following lucid representation of the consequences that would be let in by not opposing the principle that parliament had such a right as was

contended for "It was said that Lower Canada was a conquered country, and therefore that they should submit to any change which was thought necessary in their constitution,* as they were formerly only governed by a governor and council; but he insisted that when the mother-country had once given them their present constitution, they could not take it from them; such a measure would be an inexcusable breach of faith. It was said that, after enactment, the Imperial parliament would, upon a proper remonstrance, alter the objectionable clauses of the union-bill; but if the provincial parliament once admit such a power in the Imperial parliament, there would be no constitution to defend. Although, upon such remonstrances, they may, if they please, expunge the objectionable parts of such a new constitution, they are yet at liberty to add others, perhaps as grievous. If the Imperial parliament are to have the power of meddling with our constitution, and of expunging the clause which provides for the admission of four executive councillors into the house of Assembly, the same power would enable them to introduce ten, whenever they might deem it expedient. We can not admit this principle; we have only therefore to maintain this ground, and the parliament of England will never alter our constitution, without our consent."

(*To be continued.*)

A letter from CARDO, on the advantages of encouraging the collection of Ginseng in Canada, as an article of traffic, will appear in next number.

N. B. *On the first of May next, the FREE PRESS OFFICE in Montreal, will be removed to No. 4, St. Jean Baptiste Street.*

PROPOSALS, for publishing by subscription, a succinct report of the speeches made; the resolutions entered into; and the petitions signed, by the inhabitants of Lower and Upper Canada who were favourable to the Union of the two provinces - to which will be added, a selection of the communications which appeared in the public prints advocating that measure. By the editor of the Montreal Herald. In one volume octavo, price, stitched, five shillings.

Subscriptions received at the office of the Herald; at the Gazette and Mercury offices Quebec; at the Chronicle office, Kingston; and at the Gazette Weekly Register office, York.

Montreal, Feb. 15, 1823.

* A principle which, if admitted would legalize the murder in cold blood of prisoners of war, who had surrendered by capitulation, or any other similar atrocious breach of stipulated conventions.