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Quicquid excessit motum.

Pendet instabili loco.

SENECA.

Whatever goes beyond the mark
Is insecure, void, vain, and dark.

Quis custodiet ipsos custodes?

JUVENAL.

Pray who shall answer for the faith of those
In whom the commonwealth doth trust repose?

KINGSTON BANK BILL, continued.

The disinterested Spectator, says, on this subject:

The floating bank bills and certificates are, and will be for years, most convenient materials for speculation, for which the commissioners have advantages beyond others; not merely by reason of their pecuniary resources and monied connections, but principally from their knowledge of the state of the funds, their discretionary, irresponsible, and unlimited controul of the management and application of them, and their legal right to pay themselves and their confidential friends, and agents, in preference to other creditors. They have ample means and strong temptations to avail themselves of such a favourable situation. Had the act been designed, (which surely it was not,) to sanction and facilitate speculation, it would have been difficult to render it better adapted, in the present state of things, to effect the design. But, say the defenders of this act, "the commissioners will be checked by a sense of honour and reputation." I hope they will, and it will be fortunate for the creditors, for there is no other check. We have seen that the act itself contains none; and they will find none in the prevailing practice of the town. Hundreds of unfortunates know, to their sorrow, that Kingston has long been a prey to paper speculation, in all its various forms of purchase, exchange, discount, loan, and accommodation; while usury, like an incubus of horrid form, has torpidified the state of business. Adventurers of more enterprise than capital; and men disappointed of expected means, staggering under the weight of losses and embarrassments, or struggling against the pressure of hard times, have been accommodated to their ruin, and to the unconscionable emolument of

I beg the reader to observe that this barbarous reciprocal verb, upon, which I have set my seal of reprobation, as an absurd anomaly in the English language, is used by the writer from whom I quote, not by myself.

L. L. M.

usurers and speculators, whose examples of accumulation, in all their tempting persuasiveness, are before the commissioners."

These last enumerated evils amongst many others, will ever accompany all banking companies, whether incorporated or not, in countries where there is not an immense accumulation of foreign trade, or a great superabundance of specie. Boston, New-York, Philadelphia, Charleston, and Mexico, are perhaps the only places in the New World, entitled to have a bank; all others may be, more or less, assimilated to the frog in the fable, swelling herself in emulation of the size of the ox. On the other hand private banks established by individual capitalists, or regular partnerships, not exceeding six, to which number the English laws have wisely restricted the number of partners in such concerns, are generally beneficial, and promote the prosperity both of the banks and of their customers. Such ought to be encouraged.

To come now to the conclusion both of the act, and of this article; Sect. 10, for abstract of which see. No. 43, has the technical objection of enumerating all the directors names, under the distinction of "the said," whereas, in no preceding part of the act were any names but those of B. Whitney, and S. Battlett, mentioned; which, by no great subtlety, of argument might be contended, would exonerate all but those two from the effects of this *ex post facto*, and unjust, proviso; by which all sales and transfers of property, made or to be made by the person named are declared "void and of none effect."

The idea of invalidating all sales, or conveyances, made in contemplation of the insolvency or failure of the bank, seems borrowed from the bankrupt laws of England; but the wisacre who framed this imitative clause did not reflect, that the original law (Jam. cap.) enacted that, at and from a certain time after the passing of that act, all such sales should thereafter be void, having the effect therefore, not of an *ex post facto* law, but of one that warned the subject beforehand what would; after a certain time, be illegal for him to do. I do hardly maintain that all *ex post facto* laws, of whatever nature or kind, being contrary to the English constitution; as well as sound sense; and common reason; are in themselves void; and no subject of this realm is in any case bound to obey or respect them. Upon this principle, were I the *bona fide* purchaser of any property, supposed to be affected by this act, I would resist its operation, and retain possession, by all the means in my power. But this most strange and pernicious law, is so loosely and absurdly worded that it would go much farther than ever could be the intention of its foolish framers. "The nullification of such sales, conveyance or transfer, is peremptory and definitive, by force of the statute itself, without any process;" making them void and of none effect, beyond even the sovereign power of the commissioners to cure them by their consent. "Its effect

is to punish the purchaser, and reward the seller; for the property thus taken from the purchaser is not confiscated to the public use, but restored to the seller, to be holden in the same manner as if no such sale had been made. The property is therefore vested in the seller, and no relief is provided for the buyer. He is saddled with a dead loss of the price." Various actual instances of its abominable effects have been instanced. One of the parties, having long had lands in various parts of the country publicly advertised for sale, and having met with a purchaser, told him, that he apprehended the bank might fail, but being himself indebted to the bank, he would sell any of his real estate very low, and take bank bills in payment, which would be to him as good as money, in order that he might pay them in on account. The bargain was concluded, and the price paid in Kingston bank bills, which were paid into the bank. Now this sale is declared void, because it was made in contemplation of a failure of the bank. The fairness of the transfer, and the fact of the funds actually going to increase those of the bank, do not save it from the sentence of annulment. The purchaser, however, has been very properly advised to keep possession of the land, tho' not, in my opinion, so properly, to petition parliament to repeal the act, *quoad* his land, which would be admitting the right parliament have in this instance been misled to assume, to deprive him of it; a thing I contend they were utterly incompetent to do. Again: one of the officers of the bank sold a farm for £750— which was paid in Kingston bank bills, and this transfer was made with a knowledge of the failure of the bank, being after that event, and before the date of the act, consequently, altho' *bona fide* and valid at the time, it would be not only void, but is declared even to be "fraudulent" by this indiscriminating *ex post facto* law; whilst the purchaser, a stranger of good character, and respectable connections, who has gone to Scotland to fetch his family, will on his return, have the mortification to find that, by confiding in the laws of the province for the protection and security of private property, he will not only lose his farm, and the money he paid for it, but has been in the mean time condemned without a hearing, and stigmatised, by a public statute, as guilty of a fraud. Another of the officers of the bank about two years ago sold a small, but valuable, tract of land in the vicinity of Kingston. The price was paid, and the purchaser took possession, and has built a house and made improvements on the premises; but, by various circumstances, it so happened that the deed of transfer, though long before ready for execution, was not in fact executed until after the failure of the bank, and is therefore rendered void; and the owner robbed not only of the price of his land, but of the value of his erections, labour, and improvements to boot. These are amongst its actual effects: Amongst its problematical ones, is the right it would give

at any future period, putting the case of a sale of land made about the time of the failure of the bank by one of the parties named in the clause, and that that sale be not questioned or impugned by the bank commissioners, for the seller, or his heirs, or representatives, after the affairs of the bank were entirely closed (if it please the sovereign will of the commissioners that they ever are to be closed,) to bring an ejectment and recover the land from the then possessors, perhaps in the third or fourth hand, by proving under this act, that the original title to it was "fraudulent, void, and of none effect." Another effect of it, is actually to destroy the securities which some of the directors gave to the bank, in order to cover the sums for which they had become indebted; namely, various mortgages upon real estate, which were executed soon after the failure of the bank, and consequently in full view and contemplation of that well known fact. They were drawn and executed under the immediate advice and direction of the law-officer of the bank and were doubtless given and taken in good faith; but a mortgage, being a conditional sale and conveyance of property, is within the comprehensive terms of "all sale, conveyance, or transfer of property whatsoever." These mortgages therefore are also directly and unequivocally declared to be "fraudulent, void, and of none effect;" a notable instance of the foresight and providence with which this strange bill has been framed.

But if these are, or would be, its effects as to bygone sales and transfers of property, how much more arbitrary, tyrannical, and injurious are they, when we look upon the interdiction it places upon the persons named in it, not to sell, convey or transfer, thereafter, any of their private property or estates, without the consent in writing, of the commissioners. Here, indeed, I will allow the legislature have not overstepped their powers, and that it was competent for them to pass such an act; but its hardship, injustice, and tyrannous nature must be obvious. It is like the wand of a sorcerer, an excommunication from the church, or an act of outlawry, indiscriminately acting upon the innocent and the guilty. These men can not lawfully dispose of a single stick of timber, a loaf of sugar, a pound of tea, or a galloon of beer, without the written permission of the commissioners. It ties up their hands, prohibits them from following their mercantile occupations; and is not limited in point of time, but is to last "till the final adjustment of the said affairs of the said bank," and how many years that may be, God only knows.

In fine, the absurdity, inconsistency, injustice, immorality, and insufficiency of the act appear so great that I can not better conclude this extended article, than by applying to it the words of Cicero;

Ea lege quid iniquius dici aut cogitari possset, ignoro.

L. L. M.

Having, in No. 43, inserted a letter detailing some particulars relative to the seizure in Montreal of a person of the name Johnson, and his conveyance by force into the States, I take from a paper published at Portland, State of Maine, the following further particulars concerning him.

"Portland, Aug. 12.—A week or two ago we mentioned the sudden departure from this town of a fellow by the name of John Johnson, who set up here, some five or six months since, as a barber. He hired a horse and chaise from Mr. McKenny's stable for a few days, and after his departure suspicions arose that it was his intention not to return. He was immediately pursued through New Hampshire and Vermont, and finally arrested near the Canada line, and confined in jail at St. Albans. When news arrived here that Johnson was confined in St. Albans jail, Mr. McKenny started, with proper authorities, to bring him to this town for trial. On his arrival at St. Albans, however, he was not a little surprised that Johnson had been absent from there almost a week. Johnson told the people a very fair story, that he had hired the horse and chaise at so much per day, for as long as he pleased; that he was a professor and lover of religion, belonged to a Baptist church, and was cruelly persecuted. These arguments, it seems, were sufficient for the good people of St. Albans. They wanted no further law or evidence, but took him out of jail forthwith, for trial; and as no one appeared against him, he was discharged without day. On Mr. McKenny's arrival at St. Albans, however, the high sheriff at that place, and an attorney at law, offered their services to pursue Johnson, and bring him back. They accordingly departed, and found him at Montreal. He was discovered at a public house, where he spent a considerable part of the afternoon rolling ninepins. As no one dared venture to take him," (in a preceding part of this account, which I have considerably curtailed, he is described as a man of "Herculean frame, and dark visage;") "it was determined to watch him till he should retire to bed. Accordingly, after he had gone to his chamber five men went up, probably with the expectation of finding this Sampson asleep; but, as they entered his chamber, he sprang from his bed, upon which he had thrown himself without undressing, rushed upon his assailants, and knocked them down one after the other, till he was met by an Irishman of great strength, armed with a cudgel, who soon fetched Johnson to the floor, with a heavy blow over the head, and succeeded in binding his arms, and rendering him manageable. Having some distance to go by water, Johnson was taken on board a boat and rowed off, accompanied by seven men. When they reached the place where they were to take land carriage, and were getting out of the boat, Johnson, by a prodigious effort of strength, broke the cord which bound his arms, and snatching a sword cane from one of the officers, put himself in a

posture of defence, threatening death to any one who should approach him. But the Irishman, on whom the hopes of the company rested, defended himself from the thrust of Johnson, gave him several bruises, broke his sword, and finally disarmed him; whereupon he was rebound, placed in the carriage, guarded again by seven men, and driven off for St. Albans. There he was placed in a strong set of irons, and given up to Mr. McKenny, who conducted him to Portland. He arrived in this town on Tuesday last, and was examined at the Court-house, amidst a great crowd of spectators, and laid under bonds of twelve hundred dollars to appear and receive his trial at the sitting of the Supreme Court in this town in November. The prisoner, being unable to obtain bail, was committed."

This statement as far as respects "the good people of St. Albans," has been declared, most quixotically, by the editor of the Repertory there, to be "substantially and infamously false," "a base and most scandalous perversion of truth." Having, in the first instance, been brought before a justice there for examination on a complaint exhibited against him by the State's Attorney, no evidence of the crime alleged appeared, and he could not be ordered for trial; but the court being informed that Mr. McKenny was hourly expected, it was deemed expedient to detain Johnson for further evidence, and he was delivered to the sheriff, who kept him in custody four days, when, as no further evidence was brought against him, and there seemed to be no probability that any would appear, the magistrate deemed it improper to detain him for a longer period, and he was discharged.

What became of the horse and chaise does not appear. Have they been recovered by the owner, or did Johnson sell them? But guilty or not guilty of the fraud, rogue or no rogue, that has nothing to do with the misconduct of the Montreal officers. They, it seems, found him in the afternoon, playing at ninepins. If they had not been conscious that their purpose was illegal and unjustifiable, would the apprehension of his "Herculean strength" have prevented them from arresting him in open day? No, they knew they were acting the part of hired and lawless ruffians, and waited till night, to burst into his chamber, and carry him off in the dark, bruised and bound. Suppose him even fully guilty of what is laid to his charge, does it become an independent and sovereign state, would it have become the pettiest German barony, or paltriest fief of the empire, to allow a stranger to be forcibly taken upon its territory, and carried off to a foreign jurisdiction, upon an accusation, which the trifling sum of 1200 dollars was considered as ample bail to answer for? Disgraceful as the transaction is to all concerned in it, it is more so to the government or magistracy that do not discountenance, repress, enquire into, and punish, such violations of the laws of nations, and of their own municipal and judicial authority.

In another recent case, which I shall probably take occasion hereafter to make some further remarks on, a person accused of forgery, effected in the States, to a considerable extent, has been taken up in Canada and confined, in order to give time to the State where the offence is alleged to have been committed, to make a formal requisition. This is as it should be. It is true one government is not bound, unless there is a special convention to do so, which is not the case between Great Britain and America, to allow of fugitives from justice, from another or reputed such, being arrested within their limits; but they may, in courtesy, do so, without either offending against natural law, or the political protection which every country is bound, by that law, to give to strangers coming amongst them, provided, in the first instance, such proof be adduced against the party, as would be sufficient to authorise a magistrate to commit one of his fellow subjects (for such every stranger who comes into the country for protection, virtually is, at least *pro tempore*.) to prison for further examination; and provided also, that, subsequently, when he is demanded to be delivered up, such other proof be brought against him, as would be sufficient for a grand jury to send one of their fellow-subjects to trial. Unless these provisos are fully complied with, governments are sinning, not only against their own dignities, and consciences, (if governments may be supposed to have such things as consciences,) but against political expedience, the principles of true justice, and those of morality and religion, all which, I contend, are violated, whenever you either do, or suffer to be done, any act by which an innocent, or comparatively innocent, man, who claims shelter and protection from you, may be subjected to distress, misery, imprisonment, and even death, without allowing him the opportunity of convincing you, (who are strictly and solely, while he is in your territories, the proper judges of what ought to be done with him,) either that he is unjustly pursued, or really an object who of right, and for the universal benefit of mankind, (not of the particular State that prosecutes him, whose interests become merged in those of the laws of nations, in such cases;) ought to be given up to be dealt with, according to what foreigners may consider to be right or wrong. And this blame I maintain equally attaches in case of governments conniving at, or not repressing, such outrages, and particularly where their own officers are concerned in them; for I say with SENECA,

Qui non vetat peccare cum possit, jubet. L. L. M.

From the York Observer. The business transacted this season at the Little East India Company's Warehouse, Youngstown, (State of New York; opposite to Niagara;) has far exceeded that of any preceding year. It appears that no less than 5000 chests and half chests of tea, of different descrip-

tics, have been already emptied at that useful depot, into bags, bed ticks, pillowcases, boxes, and barrels, and safely conveyed to our shores. This, from the scarcity of the article at Montreal, is really a seasonable supply, and such as is absolutely necessary for the use of the colony. The shiam-yankees on the other side, deserve great praise for their humane attention to our interests; and we trust, in the present state of this colony, when only 200 chests have arrived from England, that no person will blame the venders or consumers in these patriotic provinces, for evading the infamous exactions of the London East India Company. It is, however, to be hoped, that this notice will be sufficient, to cause our enlightened parliament to address the British government upon the necessity of allowing this article to come in through the United States. A duty of 10s. on each chest would put a stop to smuggling, and raise us a revenue of at least £4000.—per annum.

I copy the above article as a text on which to dilate in future.

But an object of more immediate, more home, and more awakening importance, is the failure of the receiver-general of the province at Quebec. The Hon. John Caldwell, or rather the firm of Caldwell and Davidson have stopped payment for, it is said, between £140 and £150,000;—and there is now no money whatever forthcoming to answer any demand for the public service. That this has arisen from the illegal, and unwarranted appropriation of the public money by the executive government, and in defiance of the constitution, and the votes of the legislature, there is no doubt. No person, as far as my knowledge or information goes, could be more strictly honourable, more worthy of the high trust reposed in him, than the receiver-general, a man, I believe, of thorough integrity and virtue; had, however, his firmness been greater, in refusing to obey warrants which he knew to be illegal, and granted upon the sole responsibility of the governor; it would have been better for himself, for the province, and for the British empire; for this long smothered eruption of the volcano, will, if not stopped by an immediate supply from his majesty's exchequer in England, to pacify the irritated minds, and injured purses, of his Canadian subjects, produce a convulsion that must be disastrous, to both, and may be fatal to the power of Great Britain over this province. The warrants, which it is confidently stated, and fully believed, the honourable gentleman has, to account for this enormous deficiency in the public chest, will be sufficient vouchers for his acquittal, but will be trumpet-tongued accusers against the highland and overbearing obstinacy, with which the people's rights, and their constitutional controul over the public purse, have been sought to be trampled on, and annihilated. Space will not allow of further comment till next number.

L. L. M.