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# THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 29th MAY, 1823 [No. 32.

*Rara temporum felicitate, ubi sentire quæ velis, et quæ sentias dicere licet.* TACITUS.

Happy are those times and countries, where your thoughts are free, and you may speak what you think.

The constitutional, and patriotic, community of Lower Canada, whether catholics or protestants, Canadians or Englishmen, will learn with pleasure, that in Nova Scotia, the same principles of freedom and liberality which they entertain, with respect to the admissibility of all persons, no matter of what religious persuasion they may be, to seats in the legislature, are not only fostered and acted upon by the legislature, but are countenanced, acknowledged, and enforced by Royal authority. On the 2d. of April a message was received by the House of Assembly, from Sir James Kempt, the lieutenant governor, communicating a dispatch from Lord Bathurst, his Majesty's secretary of state for the colonies, stating that His Majesty had given his consent to allow L. Kavanaugh, Esq. who had been elected one of the representatives for the county of Cape Breton, to take his seat in the assembly, upon his taking the state oaths, without requiring him to subscribe the declaration against popery and transubstantiation. An animated and long debate on the subject, took place in the house the next day, which, as it bears upon many points that are analogous to the circumstances, and interesting to the feelings, of the Canadians and their country, I will give a short abstract of. In conclusion the following resolution was carried by a majority of 21 to 16. "Resolved, That, His Majesty having graciously been pleased to give his consent that Lawrence Kavanaugh, Esq. elected to represent the county of Cape Breton, being a gentleman professing the Roman Catholic religion, should be permitted to take his seat in this house, without making the declaration against popery and transubstantiation; this House, grateful to His Majesty for relieving his Roman Catholic subjects from the disabilities they were heretofore under from sitting in this house, do admit the said Lawrence Kavanaugh to take his seat; and will in future permit Roman Catholics, who may be duly elected, and shall be qualified to hold a seat in this house, to take such seat without making the declaration

"against popery and transubstantiation; and that a committee be appointed to wait upon his excellency the lieutenant governor, and communicate to him that determination of the house."

This resolution was preceded by a debate in the early part of which Mr. Ritchie, said that 'it was a case of much importance, he thought at all events, if the King authorised an alteration in the constitution under which the legislature was assembled, *that the house should first assent to such an alteration.* They were all agreed as respected the principle, and, for his part, he would cheerfully agree to a bill such as had passed unanimously during the last session,\* but he would not give his assent to a measure partial in its object, and partial in its operation. Such a measure as was now proposed "(the resolution then before the house, referring only to the case of Mr Kavanagh,)" would not be treating persons of the same persuasion residing in other parts of the province with equal justice. He represented a large body of Roman Catholics, who possessed the same rights and privileges, and it was his duty to take care that they enjoyed them. He then referred to a case which had been argued before Lord Mansfield, who was a high prerogative man, but who had decided that *after the King had given to a colony a constitution, he had given up his right to make laws for that particular colony.* In that case Grenada was a conquered island, and the king possessed a right to give to its inhabitants such laws as he thought proper. He accordingly issued a proclamation promising to them a constitution, and a commission passed under the great seal, directing the governor of that island to call an assembly, and to agree to such laws and regulations as should be passed agreeably to his

*\*In the preceding session, and upon the annexation of Cape Breton to the province of Nova Scotia, and the return of Mr. Kavanagh, as a member for that island, a bill was unanimously passed by the house of assembly there to dispense with certain parts of the state oaths in favour of such catholic representatives as should be elected by any of the counties of the province, but which was not agreed to by the legislative council, who, in their message on the subject, stated that "although they concurred in opinion with the house of assembly, that the admission of persons professing the Roman Catholic religion in the legislature would not be attended with any evil consequences, but would, on the contrary, tend to preserve the harmony which now so happily prevailed among His Majesty's subjects of all religious denominations," yet they were apprehensive that His Majesty might not think it decorous in the legislature to pass a general act, in violation of His Majesty's instructions, without any previous communication with His Majesty's government.*

instructions. The king had, however, subsequently levied a duty, which he was precluded from doing by the very constitution which he had given. The duty was paid in the first instance, but was afterwards recovered, owing to the decision of lord Mansfield." In order to ascertain therefore how the charter, under which they sat as a house, was affected by this measure, he moved a resolution the principal object of which was to obtain from the lieutenant governor, such extracts from His Majesty's commission and instructions to the governor-general, as regard the calling of the general assemblies, and the oath and declaration members are required to take.

In the course of Mr. Archibald's reply to Mr. Ritchie, he advanced that, "in whatever manner a colony is acquired by the mother-country; whether by peopling or conquest, the constitution which it subsequently obtains, must be from the crown; and whenever subjects come to reside in such colonies, they bring with them the rights that are common to Englishmen; but the penal statutes of the mother-country, do not extend, unless they are amendments of the common law. Then, where is the mighty story of the constitution? The King directs his representative to call an assembly of merchants and planters, for such are the words of the commission, and when an assembly is once called, he can not interfere in taxing the colony. The case that had been cited, therefore, had no bearing upon that under consideration. The instructions which His Majesty had from time to time issued, had declared what oaths should be taken, and what description of persons might be permitted to hold seats in that house; and the power which made those regulations might relax them, and from time to time they had been so relaxed." And upon the whole this gentleman seemed to conceive that the right was solely in the crown, and the house had no business to interfere.

Mr. Marshall observed that "much had been said relative to the constitution, as if the province did not possess one. It is true that it was not framed by an act of parliament, in which their powers were limited and defined, but they had what was equal—the governor's commission and the instructions that accompany it, under the authority of which the assembly has been convened ever since it first met; and those instructions had for a long time been so fully executed that any deviation could only be considered as an infringement. If such was the fact, the proposed measure must have that effect; and if the King could dispense with any part of the constitution he could dispense with the whole, and might refuse to call an assembly. The object in giving a commission was to shew persons, who came to settle in the province what they were to expect; but if every thing is left uncertain, then no security is afforded. Therefore the constitution or charter of the country ought not to be altered.

*but by the consent of the legislature of the colony.* If such was not the case, then the constitution, as had been aptly remarked, is a mere plaything, and may be broken to pieces at any time." He was willing to agree to a bill which would embrace Roman Catholics in every part of the province, but not a measure calculated only to provide for this particular case.

Mr. Uniacke said that "the resolution then before the house went to enquire whether George IV. had a right to dispense with the declaration against transubstantiation, and whether, in doing so, he did not violate the constitution which secured the crown upon his head. The arguments, which had been made use of, embraced three results; gentlemen had viewed the measure first as impolitic and partial, secondly as an infringement of the rights of the people of this province, by invading the constitution; and in the third place, they wished to be satisfied that the message of his excellency was agreeable to the tenor of the dispatches he had received." "As to the first proposition, the people of this country knew very well that when an act of parliament should be passed removing those disabilities under which Roman Catholics labour, its consequences will be extended to them; and in the mean time they would not object that a country so situated as Cape Breton, should enjoy the benefit which is designed." "As to the message, stating that His Majesty has been pleased to allow Mr. Kavanagh to take his seat upon taking the state-oaths, and dispensing with the declaration to which he was averse; can any man imagine that in doing so, the privileges of the people are invaded? No act of parliament is broken down, and no common right that the subject possesses is infringed on; the king is merely dispensing with a declaration, which the commission to his representative directs being administered; as that authority emanates from him, he has free power to rescind it. At a former period, it might have been deemed necessary to his safety and prerogative; but those days are passed, and in his Catholic subjects will be found as warm supporters of his crown, as in any other class of his people. The constitution of this province, he said, is not founded upon any act of parliament, but is derived from instructions from the king to his representative; and would it be contended that a monarch who could make regulations, had not a right to alter them?\*" "As to asking for the documents on which the

*\*It will be perceived that in Nova Scotia, as well as in Canada, there are persons who contend for a dispensing power in the grantors of charters and immunities to alter or recall them at their option, and without the consent of the grantees, a doctrine that can not be too forcibly combated, or too often reprobated. A fallacious distinction has been made between grants made by act of parliament, and such as emanate solely from*

message was founded, he could never agree to it, because they were bound, when they looked to the high authority who sent it, to be perfectly satisfied." He concluded by moving an amendment, which reduced the resolution to the simple request that commissioners might be sent to administer to Mr Kavanaugh, the oaths agreeably to the message of the lieutenant governor.

The house then divided, when, there appearing an equal number for and against the amendment, the speaker was called upon to give the casting vote. He decided against Mr. Unacke's amendment, upon the understanding that a resolution, similar to one, which he himself proposed, (being that, which was finally adopted as stated in the commencement,) would pass. Previous to putting the question, upon which there was no debate, the speaker delivered his sentiments on the subject in a speech, which, comprehending a general review of the case as argued, shall be given in the next number.

From the same motives which induced me to republish the two former letters under the signature of ANTI-COMMERCIAL. (Vide Nos. 18 & 24) I now copy a third from the Canadian Spectator, of the 7th instant.

MR. EDITOR,

In my former communications, I have endeavoured to de-

*the Royal authority ; the principle upon which their irrevocability and the incompetency of either party even to alter them, without the consent of the other, is, in both cases the same. A grant, privilege, immunity, charter, or concession, whatever it may be called, is, in reality, a pact between two parties, and both must consent to it to make it valid. now whatever is granted by a sovereign power to its subjects, must be as much accepted by the grantees, as a deed of transfer and sale by one individual to another must be, to render it perfect ; but, when once so accepted, it is as perfect and valid as any other deed, or contract whatever, and perhaps more so from the important, and remote interests that are affected by it. This consent may be either antecedent to the grant, as in the case of a body of subjects petitioning for certain immunities, or subsequent, by their acting upon the grant. in the case in question the king having directed a representative assembly to be called by votes from the people upon certain conditions specified in his commission and instructions, the people when they met and chose an assembly first did thereby give their consent to the grant of privileges so made, upon the conditions so specified and no other ; and those conditions therefore form part of the original grant, and can not be rescinded or altered, without the mutual consent of both grantor and grantees.*

monstrate to the mercantile Unionists, the loss they and the provinces have sustained, by the underhanded work of the movers of the Union. I will now make an attempt to shew them also the value of the Canada trade-bill, hurried through the Imperial Parliament, without the least reflection on its operation, by their great and good friends. This law was no doubt considered by these good men to be an equivalent for our fur-trade; but, Sir, we were much better off without this free trade—we may now certainly trade with France, but what have we to send to that country that would pay the shipper even a moderate commission? is it our grain or timber? there is always a superabundance of those articles in that country. Admitting that the importation of timber should be required there, can our merchants come in competition with those inhabiting the ports of the Baltic, subject as we are to pay the same duties as other foreigners? France wants our ashes, but England can consume every pound that we can manufacture of that article, in her own manufactures; there we obtain the highest prices, having, in consequence of the protecting duties, but few competitors. The produce of France which we are allowed to import, can be brought from any part of the United Kingdom at nearly the same prices that can be bought on the soil; therefore no benefit can be derived from that trade. I may say the same with regard to Portugal and Spain generally; though at times, these countries are in want of grain; but we can not come in competition with the countries bordering on the Mediterranean which are much nearer to them. It may so happen that both Spain and Portugal may require more bread-stuff than those countries can supply, perhaps once in seven years.

We might have a lucrative trade with the North of Germany had we yet the fur-trade in our hands: care was taken that this branch of our exports, should not be in our power before these mighty advantages of a free trade were granted.

The trade with the United States has been so shackled, that it is now hardly worth mentioning. Instead of improving it, and encouraging the Americans on our frontiers to turn their attention to this market, every thing has been done to send them to another quarter. Had this country been allowed a voice respecting the trade-bill which so vitally affects it, both constitutionally and commercially, that law would never have been framed. our geographical position will not allow any other legislature than our own to make laws regulating the trade with our neighbours, as we have too great a line to guard, for the protection of the honest trader. The duties laid upon articles from the States, are tantamount to a prohibition, and nothing could have pleased the Americans more than the enactment of that law, (notwithstanding the meetings they have held, and the resolves against that act,) by the Imperial Parliament. By that

very act, they have been spurred with fresh vigour to complete the grand canal, and to project others, in order to turn the trade of their Western territory from its natural channel, the St. Lawrence. Had our legislature enacted permanent laws regulating the commercial intercourse between the two countries, these gigantic undertakings of canals had never been thought of.

The trade bill should have been so framed as to allow us a free intercourse with the States, laying a moderate duty on all articles imported to protect British manufactures and our farmers; a drawback equivalent to the duties paid at Quebec should have been allowed on all articles exported from hence to the States, and we would (should) have seen our imports of dutiable articles nearly double in two years. these drawbacks would not hurt the revenue a penny, (except as to salt,) and our merchants would acquire a great accession of benefit, and we should not see our hard specie go out of the provinces.— Our extent of frontier is so great, that I consider it an utter impossibility to prevent smuggling; notwithstanding the prohibition of all articles not enumerated in the schedules annexed to the trade-bill, our stores are filled with them, and they are hawked daily through our streets, to the injury of the revenues; and in defiance to all the laws, and even the resolves, of an honourable gentleman against smugglers and smuggling. Of teas alone, upwards of ten thousand chests are yearly brought in: the consumption of the two provinces is estimated at 12,000 chests, and only 1846 were imported last season. The amount of East India and French goods brought in clandestinely from Boston and New-York, exceeds any idea we can form; these are facts which are too well known and can not be denied. Why the provinces should not derive some benefit from the trade, which, as I have said, it is impossible to check or prevent, is to me astonishing, and leaves an impression on my mind that these Unionists have a wish to reduce the revenues so as to force the legislature to have recourse to direct taxation, for the supply of the wants of the province, and thereby create discontents to verify their assertions.

I consider the trade-act of more serious injury to the provinces and the merchants, than of real benefit; and the unionists themselves admit of it; still you will not find any one bold enough to come forward and complain publicly of its injustice, for fear, I suppose, of displeasing some one whom they consider a great man.

I fear that I have encroached too much on your valuable paper and time I shall continue the subject when time will admit.

ANTI-COMMERCIAL.

28th April, 1823.

The general views of this writer are correct, and the principles he inculcates sound, but in some of his details he is I conceive, mistaken. When I can take up the subject with more expectation of doing justice to it, than time will now permit, I may controvert a few of his minor propositions. At present I will confine myself to the observations that it is not what is called the Canada trade-bill, that is, the act of 3 Geo. IV cap. 119, that gives the privilege of trading with France, Spain, &c. but a previous one, viz and that I conceive it wrong to depreciate the privileges thereby given, for, altho' in the present state of commerce, and deficiency of capital and enterprise, there may not be much opening or encouragement for speculation to those quarters, yet ingenuity, industry and penetration, if encouraged and exercised, may and will discover objects of commerce, that may be profitable both in the export and import line; for instance, were the fisheries in the gulph prosecuted, there can be no reason why the salt cod cured at Gaspé, or at the mouth of the Saguenay, as well as the mackerel, and herrings, which are abundant in the proper season, all the way our coasts extend, should not be equally in demand, and purchase return cargoes, as well as those from Newfoundland and other quarters, which form so considerable a portion of the articles of consumption, which the southern Roman Catholic parts of Europe draw from abroad. Tobacco, the successful cultivation of which, in Upper Canada has before been stated, may become an article of great importance in such a trade; and why not also maple-sugar? which, in the markets of the continent, so long, during the late wars, used to the "sucre de beterrave," would rival the muscovado sugar from the West Indies, if imported at a price below it, which I am persuaded might be the case. If but a small portion of our inexhaustible supply of sturgeon, was properly pickled for the French and Italian markets, it would soon gain a reputation that would render it a profitable and permanent article of trade — These are a few objects that present themselves at first sight: many more must occur to the inquisitive mind, when well informed of all the hitherto little explored and understood capabilities of this extensive country. This subject is well worthy the attention of all parties; but opportunity does not now allow of my enlarging upon it.

L. L. M.

One or two articles have been left out for want of room; they will appear in next number, when PHINEAS'S second letter on the subject of the medical board, will, when shortened a little, also find a place.