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THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 23th AUG. 1823. [No. 46

Aha tentanda via est.

VIRGIL.

Now then, let other ways be tried.

In relation to the remarks made, a few numbers ago, as to the appointment of Mr. Ogilvy as high constable for the district of Montréal, I copy the following observations from the Canadian Spectator, in answer to the query proposed in the Gazette.

"We take the liberty of observing, in answer, that it would appear the justices are authorised to appoint a high constable, nor is it necessary to cite any ordinance for their possessing that authority; it seems sufficient that there should be no ordinance to deprive them of it. We believe that the criminal law of England, in all its parts, was, as it stood at that period, established in this province, subject to be altered by the provincial legislature. It is stated by good authority, to be the common law of England; that the high constable may be chosen by justices at session; and in fact, they have been so chosen. We refer, with much deference, to the following authorities.

- Comyns' Digest: No. Leet, m. 5, *Constable*. - "The high constable shall be regularly chosen by the Justices of the peace at sessions." "So the sessions may remove, if necessary," and cites authorities.

Burns' Justice, Vol. I. *Constable*; art. 3, *how chosen and sworn*. After stating the ancient practice, "But now the usual manner is, that the high constables of hundreds be chosen either at the sessions, or by warrant from sessions; which course hath been often allowed and commended by the Justices of assize." Dalton. c. 28.

Unless therefore it can be shewn that some statute-law has expressly changed the common law in this particular, we humbly submit that the Justices of Montreal have authority to appoint a high constable."

It does not appear to me that the authorities here given are decisive on the subject. The passage in Comyns' is indeed positive, but Burns only says it is *usual*, and that such a mode has often been *allowed and commended* by the Justices of assize. Generally however in the shires in England, I believe, high constables are appointed at the quarter-sessions, but not so in cities; the high constable of Westminster is an officer, holding his ap-

pointment from his Majesty's court of Exchequer; in the city of London, there is no such office, but that of city-marshal, which answers to it, is one, in the nomination of the court of aldermen. In Liverpool the high constable is appointed by the mayor and corporation, and I believe that no instance can be found of high constables in cities or towns being nominated by Justices at sessions. But if the counterpart of English practice in these respects must be observed, how comes it that the important office of sheriff is so dissimilar in its appointment and occupancy? Sheriffs are appointed in Canada, by the executive government, under, I believe, what is called the judicature-act, and it seems to me that the office of high constable should follow the same course or at least be one which should rest with the Court of King's Bench. The nature of the office is, however, not well understood; it is not that of a kind of chief of the subordinate police, as has been the case in Montreal, but one of some parade and dignity, one that may in some cases be assimilated to that of deputy sheriff; much more a civil office than a criminal one; and by no means proper to be placed in the hands of any one who has ever been a police-officer, or indeed in any subordinate situation of the law, but should be bestowed upon some gentleman of dignified deportment, correct principles, and firm conduct, to keep in order, not the persons who are objects of legal pursuit, but those who are encharged as constables and bailiffs, and prevent them from abusing the power put into their hands. The high constable is rather a censor, and controulor over these, than an active officer of the police, which has been looked upon in Montreal as the chief part of his duty. The duties of the office, however, are not very well defined; one, however, as imposed by the miserable abortion of municipal jurisprudence, which is denominated, "police regulations," I can not help specifying; which is that of attending the funeral ceremonies of all dead dogs, cats or rats found in the streets, of whom no owners can be found; it being enjoined by those regulations to the high constable to see that they are buried! With such ideas of the duties and dignity of a high constable, who would trust a bench of police magistrates with the appointment?

The matter is, however, not of that importance to require further animadversion. The individual who has obtained the situation, is certainly not so objectionable by far as his immediate predecessor was. But it is, and always will be, an object with me to notice, and deprecate, the encroaching, arbitrary, and tyrannous disposition that has, for years, characterised the police bench of Montreal.

L. L. M.

Referring next to the article in No. 33, respecting the new line of commercial policy about being adopted in England, it

on the proposition of Mr. Huskisson; I extract, with great satisfaction, the following observations from Bell's Weekly Messenger.

"We turn, with feelings of pleasure, to a bill introduced to the parliament by Mr. Huskisson, the principle of which is to establish a reciprocity of duties in the case of foreign and British ships. In other words, to enact, that the favoured rate of charge upon goods, (which sometimes exceeded ten per cent,) imported in British ships, should no longer exist, but that all the vessels, of all countries coming into the same equitable arrangement with Great Britain, should be allowed to import goods upon equal terms. This bill is cast in the same liberal mould as is the whole commercial policy of the present board of trade. Its purport is to remove causes of commercial jealousy and irritation; to open the fair field of mercantile competition in the shipping and carrying trade; to make it a fair and free adventure upon the principle of superior commodities, and lower prices, and not to prop it up by a system of impolitic protections and prohibitions, which are sure to be retaliated upon us, and which do, in fact, at the present moment, cramp and embarrass our commerce in every foreign port. It is truly surprising to remark how our foreign trade is now increasing upon these liberal views. Our exports of domestic manufactures for the last year, exceeded the exports of the preceeding year by three millions."

From the liberal view taken of the subject at home, and the dawn which begins to break upon statesmen, that systems counteracting the bounty of nature, the mutual wants and conveniences of mankind, and the geographical and natural relations in which countries stand to each other, are as repugnant to the real interests of the nations that abide by them, as they are to sense, reason, theory, and practice; it is to be hoped that those restrictive and prohibitory regulations that shackle down the British colonies in general, and these provinces in particular, will undergo a complete revision, and a gradual, if not an immediate, abrogation. It does appear to me that it would be for the interest of the mother country, to forego, disclaim, and for ever renounce, the right she retained in the constitutional act of these provinces, to impose duties and enact regulations respecting their external commerce and navigation. It might undoubtedly be apprehended that there could not, all at once, be created a sufficiency of general commercial and political knowledge and experience, in the provincial legislatures, to trust them with the complete and sole controul of these matters; but, begin with that part with which they are locally well acquainted; of which, in fact, they must be better judges, as far at least as the immediate interests of the Canadas goes, than legislators residing across the Ocean, most of whom know nothing of Canada, than as a

distant, and supposed unimportant, and precarious, possession of the crown. Let the intercourse with the United States, along the whole line of their extended boundary, be entirely left to the provincial legislatures; they do and must know better than the British parliament; and if, for instance they consider it expedient (as upon the agitation of the question I conceive they would,) to admit articles of American manufacture, and *East India goods*, into the provinces, either freely, or upon payment of duties, then let the East India Company, or the manufacturers in England be heard at the bar of their house against such admission. I should have full confidence in their shrewdness, their liberality, and their patriotism, as members of the grand British community, to trust the absolute decision to them, and that it would be one that, while doing justice to themselves and their own immediate country, would be equally considerate as to the claims which their fellow subjects on the other side of the Atlantic, might have upon them, on the score of ancient connections, and equitable preference. Thus, after some years experience how this power was exercised, they would probably be considered worthy of being entrusted with the entire controul over all the external commercial relations of the country; which would, in the end, afford them the means of being a far more efficient and valuable, because more prosperous, dependency of the British empire, than they ever can be, under the restrictive colonial system that has hitherto prevailed.

Before I close this article I will again advert to the proposed canal for uniting the waters of Lakes Erie and Ontario, mentioned in No. 42.

The projectors of this undertaking have, no doubt, fully ascertained the practicability of it through its whole extent; although the report of their engineer, which has been published, only embraces that part from the Chippewa to Lake Ontario, a distance of about 27 miles. It is of course to be presumed that the navigation, both of the Grand River and the Chippewa to the points where the intermediate canal will join them is free of obstruction. The route to be cut through between those two rivers is from 3 to 5 miles: making in all 30 miles of canal. Now, if the Grand River be navigable, which I believe it is, or easily to be made so, to that part of it which is nearest the head of Lake Ontario, it seems that a cut from there to Burlington Bay, a distance of altogether about 22 miles, would be the most eligible course, not only from its shorter distance, but from the fewer locks to be constructed, the waters in the upper part of the Grand River and the head of the lake, being of course much nearer on a level than where proposed. It must be allowed that this is only theoretical closet-reasoning, and may be wholly destroyed by local circumstances of which I am not aware;

whilst, at the same time, if a canal in that direction be practicable, the hut may not be unprofitable.

The advantages of a water communication between these two great lakes that have been expatiated on, on the occasion, have as yet been principally, if not solely, considered as concentrated in the opening of a cheap and expeditious route to Quebec, by the St. Lawrence, for the produce of Upper Canada, and the preventing the inhabitants of that province from seeking a market through the American canals. But I do not hesitate to say that this, although an object of considerable importance, I should yet contemplate as one of very inferior magnitude, and minor value, to that of attracting the transit-trade through these provinces of the immense territories that are now so rapidly populating and improving to the westward. Ohio, Indiana, Illinois, Michigan, would, if our statesmen were sufficiently enlightened to perceive the incalculable benefits that a transit-trade affords, and sufficiently firm to repel the interested suggestions and remonstrances of commercial and agricultural monopolists, pour the greatest part, if not the whole, of their produce, thro' the lakes and the St. Lawrence, to the ocean. Let the importation of every production of the American soil into the Canadas be perfectly free; or, though to that it must come at last, if that be too shocking to the feelings of the present race of blind politicians who still cling to the system of prohibitions and restrictions: let it be permitted for exportation only in the commencement, and make Quebec a free port with permission for not only British, but for American vessels also, to load there, for any part of the world; and you would soon see the ports of Montreal, and Quebec, rivalling the ancient commerce, activity and splendour of Alexandria, of Antwerp, of Hamburgh, and of all those numerous places that owed their rise and prosperity to their favourable geographical situations, as the outlets for the carrying trade of back-countries, and the resort of foreign merchants of all descriptions. This may seem to some to be very much like political castle building, and to others, that my ideas involve ruinous or injurious consequences, both to the agricultural improvement of the Canadas, and the commercial prosperity of the mother country. At a future period I hope to find an opportunity of arguing that the latter apprehensions are perfectly visionary, and that such a system would operate the direct contrary way in both respects; and as to castle-building, I will only ask who ever thought that, in the British parliament, it would ever be maintained, by the government side of the house, that the abolition of prohibitions and restrictions would lead to an increase of the commercial advantages of the country, and that commerce was not to be considered as the end, but the means of diffusing comfort and enjoyment amongst the nations embarked in its pursuit?

L. L. M.

PRETENDED BANK OF KINGSTON.

(Continued from last No.)

The commissioners, or their clerk, however, have not yet, I believe, exercised this arbitrary power given them; and the "falcon" (which the advocates of the bill most unluckily and injudiciously termed it,) put into the hands of the commissioners, has hitherto been prudently little used, excepting in instituting actions for recovery of stockholders notes. But it is an insult to the spirit of Englishmen, and to the people of Kingston in particular, to tell them, as has been done, that the personal reputation of the commissioners "for lenity and kind conduct towards all men, will secure the stockholders generally from any undue exercise of their power, and the independence of their circumstances, and their well known liberal and honourable characters will secure the public against the partialities and favouritisms that have been predicted."—What is this but the arrogant assumptions of the aristocracy of wealth? Ought men, because they may have the reputation of being lenient, and kind, and honourable, be therefore allowed to have an unlimited power, an unchecked, and unconstitutional controul, over the persons and property of their fellow citizens? Who shall guarantee that their successors, putting the case that they are themselves immaculate, shall be equally transcendent characters. And if I am rightly informed, the actions they have actually brought assume more the shape of personal pique, and anxious persecution of private opponents, than that of a proper discharge of their duty towards the public. In fact, to begin with such who, by agreement with the former board of directors, were entitled to have time to pay by instalments, and to endeavour to compel immediate payment, is a pregnant instance how little the board care for the real advantage of the creditors of the bank, whose interest must suffer whether they gain such a cause or not—for if they gain it, they ruin the individuals proceeded against and render them unable to pay at all; and if they lose it, there are the heavy law costs to come in addition to the other expenses and losses for which the remaining funds are liable.

The next thing that attracts my attention in this act is Sect. 6. by which the commissioners are required (though not in direct terms) to take up the notes of the bank, and give certificates in lieu thereof, to be paid *quand bon leur semble*. Here I most confidently affirm that every holder of banknotes when he gives up the only valid security; the notes, for a commissioner's certificate, is parting with a substantial security, for one that is problematical and distant.—As those notes stand, they are mere waste paper as against the

bank as a copartnership or association, but form a substantial and unimpeachably legal demand against any one person who is or ever was, a stockholder of this pretended bank, and if that one can not pay 20 s. in the pound, than any one or more, must pay the deficiency. There is no possible legal subterfuge or hole out of which they can creep, as to the broad merits, and clear law on the subject; for even this unrighteous bill has preserved, under Sect. 10, every legal remedy provided in the act of 14 Geo. III for the sufferers by such "unwarrantable schemes and undertakings."

Sect. 7 is one of the most unintelligible that can be conceived, and would have disgraced the lowest pettifogger's apprentice to have framed it. The meaning of the word "appropriate," can alone be "confiscate," and as to the *profit* upon the stock, it is so ridiculous to talk of it, where it is known that there must be a loss, that if not intended as a jeer upon the stockholders, there is no sense that can be attributed to it. The object of this section appears to be to give power to the commissioners to confiscate the stock of any stockholder, they may choose; probably with a view, though it is not so expressed, to make good any "defalcation" which may appear to have arisen from the malpractices of such individual Stockholder. But, not only is this an arbitrary, and inequitable mode, but quite needless to have been resorted to—the account current of that stockholder would of course be debited with any sums of money embezzled, made away with, or not accounted for, by him, and his deposits for stock, would be swallowed up by it—but, suppose the credit side is not large enough, the commissioners may go to his next door innocent neighbour, and confiscate his stock to make good the deficiency, leaving him to the remedy of his action at law, as for money received, against a man already ruined. Besides, the gracious permission which this section gives to a man to seek redress at law for a wrong done him, is no more than what he was before entitled to. In short it is so absurd a clause altogether, that it can never be acted on, or cited, unless the object be to perplex, confound, and destroy every idea of right and wrong.

The consideration of the last section of the act, which invalidates, all sales made by the directors or officers of the bank, both past and to come, must be reserved for an ensuing number; which will conclude this article, (already too far extended,) on this crude abortion of an act, with the exception of the following sensible remarks, extracted from one of the letters of the "disinterested spectator," before quoted.

(To be continued.)

In consequence of the arrangements it will be necessary to make for the removal of the establishment of the proprietor and writer of this work to Rouse's Point, Champlain, in the state of New York, where he purposed printing and publishing a newspaper, as under it is probable the publication of the Free Press may be interrupted or a week, or so, but it is uncertain whether that suspension will take place next week or the following. In the event of the temporary suspension, either of this paper, or of the Scribbler, from the above cause, subscribers to both, may rest assured that the publication will be resumed as soon as the printing office is in operation at Rouse's Point; which will be a much more convenient station, in all respects, than Burlington.

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