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THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 6th MARCH, 1823. [No. 20.]

"The injustice done to an individual, is sometimes of service to the public." JUNIUS to Lord Mansfield.

Although the solution of the query contained in the following letter would more properly belong to a lawyer, and at all events would be more congenial to the miscellaneous nature of the Scribbler, than the purely political pages of this work, I give it insertion here, with my reply, as an early notice of it has been requested, and room could not be found for it in this week's number of the other.

MR. EDITOR,

Many of your readers, as well as myself, would feel much obliged to you, if you will have the goodness to pass your opinion upon the following question. Suppose, sir, I take in payment two or three notes purporting to be bills of the Montreal bank, has, upon my taking them to the bank to ascertain their genuineness, Mr. Benjamin Holmes, or any other of the bank-clerks, a right to stamp on the bills the word "counterfeit?" If he has, I should think it very unfair, for by that means, the person from whom I received them, would not take back the bills he gave, and his plea would be, "why, sir, the bills I gave you were not stamped,—consequently, I can not exchange them;" and so I must of course submit to the loss. Your opinion on this subject, as speedily as possible, will confer a favour on

Your obedient FIDUS ACHATES.

I conceive, that, although there may be no abstract right derived from any *lex scripta*, by which the Montreal bank (now incorporated, and therefore a legal body, and entitled to exercise all legal acts which a bank may do,) can deface a counterfeit bill, it is part of the common law that they not only may, but ought to, do whatever may be necessary to prevent such spurious paper from being again circulated; if possible without causing the innocent parties who have been imposed upon by the designing, to suffer loss; although that is a minor consideration that must give way to the higher dictates of public good, and counteraction of fraud. It is upon the same principle that shopkeepers take to themselves the right of nailing to their counters the counterfeit coin that may be offered to them; I believe

the question has been legally decided in England that they have a necessary and inherent right, as being part of the nation whose currency is counterfeited, to prevent that counterfeit coin from going again into circulation; which right it was at that trial, (one, if I recollect right, at Nottingham, between a grazier, and a publican) extended to the cutting of the coin in two, but not to the dailing of it on the counter. Upon the same ground the bank would have a right to stamp the word "counterfeit" upon spurious bills, but not, I conceive, either to destroy or detain them, although I know that the bank of England assume even that right. And the banks in Canada are perhaps more bound than any others, to do this with vigour and strict attention, upon a moral consideration; for, having been the means of introducing into the country a paper-currency, and, along with the other evils which they have been the occasion of, augmenting, to a frightful degree, the crimes that are consequent upon the introduction of so pernicious a medium of circulation as dollar-bills; so it is the more incumbent upon them, both to secure the public against imposition, and to discourage and defeat the exertions of their indefatigable and industrious imitators, the counterfeiters of the Eastern townships. But Fidus Achates is mistaken as to the stamping of the bills operating as a preventive to his being indemnified by the person from whom he took them; on the contrary, it makes him more indisputably compellable to do so; to pay in counterfeit-bills is not to pay, and the person who gave him the bills, whether he takes them back or not, is as much in his debt as before, nay more, for if the sum be of sufficient consideration, interest, loss of time, trouble, and perhaps loss of reputation, would be to be added in the shape of damages, arising from his having given that in payment, which was worth less than nothing.

This subject calls forth some reflections upon that of the complaints made in a late number of the Canadian Times, against "a most formidable gang of unprincipled vagabonds and villains, who boldly, and almost openly in broad day light, carry on the base, vile, and diabolical trade of counterfeiting bank-bills." It is added that "in the township of Dunham alone, they actually manufacture the paper, engrave the plates, make the impression, affix the signatures, and dispose of counterfeit bank-bills, to be put in circulation, to the great amount of several hundred thousand dollars in the course of one year. They sell the bills at a certain rate of good money, per centum, for the spurious, to agents from all parts of the United States, who are seen in crowds." I do not believe that this picture is exaggerated, and, although not in such extensive repute, or line of business, as the *Bank of Dunham*, there are other establishments of the same nature, with their partners, directors, clerks, out-riders, and agents, in other parts of the townships bordering on

the boundary-line; and it is notorious that the firms of these township-banks have increased in number, and flourished with greater vigour, since they have had Canada bank paper to counterfeit, as well as American. Now what are the reflections that offer themselves? The ingenuity, industry, and abilities displayed by the gangs of counterfeiters in the townships, if diverted to other objects, (either by tearing away of the impediments which have hitherto almost hermetically sealed up those fertile and extensive districts, or by removing the temptation of inordinate and easy gains laid in their way, by the existence of such a paper-currency as now poisons the whole country.) would produce permanent advantages to themselves and the province, which would be felt and visible, from St. Regis to Madawaska. But as long as such immense manufactories of not-counterfeit paper money exist in the United States, it will not be possible to prevent the manufacture of counterfeit paper-money; and, with respect to Canada, the banks being now incorporated, a measure which, under their present imperfect and unmercantile system, ought to have been deprecated by every sound politician, it can not be expected that that part of the evil will be removed on our side. The only way, therefore, to diminish it, and perhaps gradually to abolish it, will be to give all the freedom and fair play to the faculties of the human mind, which, ever busy, will be doing either good or evil, which the natural advantages possessed by these townships, entitle their inhabitants to enjoy. The House of Assembly are going on in a most praiseworthy career in this respect, and in granting not only all that justice requires, but even extra privileges to the townships, they will not only be pursuing the dictates of general policy, and benevolence, but will be advancing their own interests, and consolidating their own rights, by refuting the accusations of neglect, that have been heaped upon them in that respect, and conciliating the affection and opinions, of a population, whose prosperity, from their geographical situation, can not but be an essential object to the Canadians, into whatever situation future events may throw them. But to effect this, the co-operation of the British government is necessary: it is not only for counterfeiting, but likewise for smuggling, that the borderers on the lines are celebrated. The chief articles that are smuggled into Canada, are teas, India piece goods, silks, and tobacco; and I am perfectly convinced that, if the object was thoroughly investigated, the supposed advantages derived to the East-India Company, and to the mother-country, by the prohibitory regulations respecting teas and India goods, would, even in a pecuniary point of view, either wholly fade away, or be reduced to such insignificance, when set against the profits, and advantages of a free trade in them, and the consequent increase of population and capital, that would accrue at every convenient station for transit, that, at

least as far as Canada was concerned, no doubt would remain of the impolicy, as well as the injustice, of such restrictions as now exist with respect to them. Tobacco, however, as an article of luxury (although in Canada almost become a necessary) from which a legitimate revenue for the purposes of the state might be raised, together with the concurrent view of encouraging, fostering, and protecting, those incipient trials that are making to grow the article in Canada, and raise it to such a quality as to compete with the American,* ought probably to remain

* Tobacco has, from time immemorial, been grown in Canada for private consumption; almost every Canadian has a plot in his garden, in which it is cultivated for family-use, and the Canadian tobacco is sold in considerable quantities in the markets of Montreal and Quebec, to the inferior classes of the French inhabitants; but it has hitherto been wholly neglected as an article of commerce. In Upper Canada it has, however, at length attracted attention, and should it ever become a staple article of export, from this country, it may be worth while recording the commencement of its introduction into the market, as communicated to the public by the public papers lately in the following paragraph.

Extract of a letter from Amherstburgh, U. C. December, 1822.

"There has been some stir this winter, in consequence of the tobacco-trade. Next spring I think there will not be less than one hundred hogsheads shipped from here. The Lower Canada merchants will soon have to find us other markets than Montreal and Quebec, for the quantity will increase at least ten fold the year after."

The information contained in the above extract is very important, and comes from an authentic source. The tobacco is said to be even of a better quality than the Virginian, and will probably soon become another valuable staple in the commerce of His Majesty's North-American colonies. To lessen the expense of bringing it to market, a canal-communication between the Lakes Erie and Ontario is requisite. We are happy to observe that this subject begins now to excite the public attention, and we trust it will not be lost sight of until fully accomplished. A practicable water-communication by way of the St. Lawrence, from the Atlantic to the great lakes, would speedily develop the vast commercial resources of Upper-Canada, and augment the demand for British manufactures in remote parts of America, now rapidly increasing in population and wealth. Perhaps no country in the world is favoured with such natural facilities for a great inland navigation as the Canadas; and certainly no country offers greater inducements for the investment of stock

an object of fiscal attention in that quarter, and would remain one for the smuggler, although, if that alone were his object, it would not give sufficient employment or profit, to make his trade a very attractive one.

But, after all, good frequently arises out of evil; and, notwithstanding the morally injurious tendency towards the whole body of society, and the deception, fraud, and pecuniary loss to which a portion of the community have been subjected, by the operations of the counterfeiters in the townships, it can not be denied, that, politically and abstractedly considered, as a means of creating capital where none previously existed, they have been of incalculable benefit to that part of the country.— Much as it is to be lamented that that created capital, and the improvements that have taken place by means of it, in the cultivation of the country, the erection of houses and villages, and the introduction of comforts amongst the inhabitants, have their contaminated source in a criminal pursuit, yet that capital, and those improvements exist; there is no gainsaying it; it is from that source that the chief part of the prosperity of the Eastern townships is derived; and, although we may, and must, condemn the means by which it has been acquired, we need not be debarred from availing of all the advantages to accrue from it: provided we do not encourage the manufacture of counterfeit-bills, and do all we can to suppress and destroy it, the sin lies not at our door, although the fruits of it are evidently contributing to the augmenting resources of Lower Canada.

L. L. M.

I take for the text of my next essay, the following paragraph from the English papers lately received.

“Progress of liberal opinions. It appears from advices received from Rio de Janeiro, that the editor of the paper called the *Correio* was lately prosecuted for a libel against the government, and a *trial by jury*, being the first ever known in Brazil, was accorded him by the Prince. He was acquitted. So strongly is the popular sentiment growing in favour of the *liberty of the press*, that it is doubtful whether a jury could be found who would return a verdict of guilty, against any defendant charged with a libel.”

It is not long ago too, that I read in one of the newspapers of the day, on which I can not now lay my hand, a statement,

[capital] to be applied to the removal of such obstructions as exist. (*Quebec Gazette.*)

The agricultural societies ought not to lose sight of offering premiums for the cultivation of tobacco: and why should not the wild rice, the silkgrass, ginseng, and other natural productions of the country also become articles of exportation?

that a treatise on the liberty of the press, and the trial by jury, had been written and published in the Hindostanee language, by a native of Bengal, in Calcutta. Here we see regions where the darkest despotism, and narrowest prejudices prevailed for ages, brightening beneath the rays of freedom and liberality which the fostering protection, and inspiring example of England, and her invaluable laws and institutions, have generated. And must it be said that the same spirit is abased and humbled in Canada, that those rays struggle yet for mastery with feeble light, against the dark clouds of arbitrary and proconsular power? But that this is too true, in my own instance, I aver, and will proceed to prove.

In the observations that have lately been made, both in the Canadian Times, and the Montreal Gazette, on the occasion of the resolution of the House of Assembly, which declared a paragraph in the former paper, to contain a false and scandalous libel on the House,* a good deal has been said on the liberty of the press, which though rather supererogatory, with respect to the matter in question, has so pointed a bearing towards the grievance of which I have had to complain, and which I conceive to be one that is much more of a public than a private nature, that I will avail of them. This I rather do, as, writing on this occasion in my own cause, and deeply feeling the injury and oppression I have sustained, I prefer to make use of the sentiments and language of others, which are to be supposed less liable to prejudice and passion than my own.

In Nos. 2 and 7 of the Free Press, will be found some desultory and historical remarks, on the law of libel, and the liberty of the press, which became firmly established in England, by the expiration, in 1694, in the reign of William and Mary, of the restrictive laws before in existence, and by which a license was required for every book before its publication. For the liberty of the press, (as the writer of the article in the Gazette,

**It was for having asserted that the majorities in both houses were completely Anti-British. Now, to salve the sores on all sides, I recommend the editors of the Times, to publish an erratum, and say, for Anti-British, read, Anti-Scotch; which is in fact both the true, and the intended, meaning; for every body knows that the word British, in Canada, always means Scotch, in contradistinction to English; and as it is quite impossible for any person in his senses to attribute Anti-English principles to the House of Assembly, who in all their proceedings, even in their very faults, are essentially English, and as essentially Anti-Scotch, that must have been the meaning of the unlucky paragraph, and I am quite sure the Assembly would consider it as an eulogium, instead of a libel, to be talked of as Anti-Scotch.*

judiciously observes, and who, by the bye, can not be Mr. Chisholm, or else he is wonderfully improved in every respect,) "consists not in freedom from censure for any criminal matter that may be published; but in laying no previous restraints upon publications. Every freeman has undoubtedly a right to lay what sentiment he pleases before the public. To forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licenser, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary, and infallible (irrecusable) judge of all controverted points in learning, religion, and government. But to punish, as the law now does, any dangerous or offensive writings which, when published, shall, on a fair and impartial trial, be judged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free, abuse only of that free will, is the object of legal punishment."

In a well conceived, but rather faultily written, article on the *Freedom of the Press*, in the Canadian Times, it is said: "freedom of speech, we conceive, is an essential to (of) the liberty which our constitution affords, or ought to afford us. It is true the powerful influence of the press may be exerted to sow sedition, and to create disturbances. But that is quite another matter, and for such crimes a fit punishment is provided."* "The press has ever been considered, and with justice, a barrier against tyranny, an encroachment upon its unalienable rights in a free country, is an indication (of tyranny) which can not be mistaken, for it is a distant (distinct) attack upon the rights of the community. The press is the medium through which the communications between the rulers and the ruled are

*In the observations which the editors of that paper have made upon the proceeding of the House of Assembly, with regard to themselves, they have lost sight of this principle.— They do not appear to have felt that, if they had been guilty of improper language with respect to the house, a matter which by being called to the bar they would have been allowed the opportunity of disproving, or of justifying, the fit punishment that is provided for it, is to receive a reprimand and to pay the expenses attending a committal by order of the house. Those who have argued this matter, appear erroneously to consider that written statutes, or charter-law, alone should decide it; and forget that common-law, unwritten law, and ancient usage, are by the inestimable constitution of England, paramount and binding, unless absolutely contradicted by statute.

conveyed; and a counteraction of its legitimate functions is an implied, if not an actual, attack upon the power (right) of the people, to remonstrate to (with) their rulers under (against) grievances; to demand redress for wrongs; or, to exert a prerogative which appertains to them by right. The press must ever be, in opposition to despotism, a stronger defence than the sword, because its operation is continual, and uniform; and its very nature is inimical to oppression or slavery. It guards us against the insidious attacks which are made upon our freedom secretly and in the dark; while the sword only defends us when they are open and avowed: it arrests the danger in its birth, while the sword but cuts it off in its full grown existence.— The press, in the hands of those who look to the fulfilment of their duty as their chief merit in its guidance, stays the growth of evils, which the sword but removes by destroying their instruments. *It is to be hoped that in this country there never will exist a power by which the press shall be debarred the exercise of its proper functions—the defence of the people from the encroachments of those in (to) whom their interests are entrusted. This is vitally a part of our natural liberty; and if we neglect it in times when its necessity is not openly apparent, we shall lose, gradually, the habit of using it at all; and such is the frailty of human nature that we can not trust that those who reign over us will not take advantage of such a state of things, to entail upon us the perpetual obligation of keeping silence on subjects of the most immense importance to the community; and then, the powers that be, can lord it unquestioned and unrestrained; then will unbridled license, “pluck justice by the nose” with impunity; and then, what for ages patriots have suffered to support, will die under the fangs of despotism.*

[To be continued.]

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