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# THE FREE PRESS.

Vol. I] MONTREAL THURSDAY, 15th MAR, 1823. [No. 30

*Turpe est in patria peregrinari, et in its rebus qua ad patriam pertinent hospitem esse.* MINUTIUS FELIX.

It is shameful for a man to live like a foreigner in his own country, and to be a stranger to her affairs and interests.

The following few observations were written as a conclusion to No. 29, but, as then announced, left out for want of room.

Some of the Canada papers having been furnished with extracts from the journal of the Legislative council, relative to their proceedings on the subject of the bill of indemnity passed by the House of Assembly and rejected by the council, and of the civil list, I purpose, as soon as leisure will permit, making some observations on the inconclusive reasoning, and unconstitutional principles which appear in those proceedings; in the mean time I can not but rejoice to see that the question of the post-office revenue has found a place in them, and that even before the House of Assembly have attacked that improper and indirect internal tax levied upon the inhabitants of these provinces, (which I trust they will do next session, so as to produce a radical reform in that department,) the legislative council, have deemed it right to enter into a gratuitous defence of it. If it were not imputing too much importance to my writings, I should be inclined to attribute this to what I have said on the subject, especially as the matter appears to have been introduced in the council on the 17th March, immediately after the Free Press of 13th March, in which it was handled, had reached Quebec.

In compliance with the wishes of some of my friends at Kingston, I purpose also to take up the question of the bill that has been passed in Upper Canada, to regulate the concerns of the late Kingston Bank, as soon as I have made myself a little more master of that subject than I am at present, it being one that I did not feel much interested in before. I have also been solicited to write on the subject of the debtor and creditor law of Lower Canada, and the propriety of some general measure like a bankrupt-law, or insolvent act. This is a fertile topic, and although my knowledge of legal questions is necessarily circumscribed; yet the consideration of the principle that "law

is (or ought to be) the perfection of human reason," may probably, at no very distant period, embolden me to apply what powers of "human reason" I possess to, that important and interesting enquiry. With this intention, I shall feel gratified by the communication of the ideas of any gentleman, either professionally or otherwise, versed in the matter; especially such as can give a thorough insight into the comparative principles and practice of the debtor and creditor laws of Old France, and New France.

L. L. M.

## ABSTRACT OF DEBATES IN UPPER CANADA,

CONTINUED.

In delivering his sentiments, Mr. John Wilson took occasion to say, that, "if he were instructed by his constituents to support an union, he would do so, although his own feelings were opposed to it." As the opinion that the representatives in a general council, are bound to follow the instructions of their constituents,\* seems to have gained much ground in Upper Canada, and as a gentleman of such otherwise correct constitutional and parliamentary notions as Mr. Wilson is, has adopted it, I believe it may not be amiss to expose, in a few words, its fallacy, and evil tendency. A representative is elected as a person best adapted by his knowledge, acuteness of discernment, and strength of judgement, to watch over, and promote; first, the individual and local interests of his immediate constituents, and secondly those of the whole state or community of which his constituents form a part: they, of course, confined within their own district, and without the means of hearing what may be urged against any measure that may be a favourite one with them, by those who either view it in a different light, or suppose it to be inimical to their particular interests, commit to their representative not only the power of delivering their sentiments, but also the faculty of hearing those of others, and judging between them, if they are conflicting opinions. The representative is not only the mouthpiece of his constituents, but is likewise their ear, and their brain; and hearing, and judging of, all that occurs in the assembly to which he has been sent, he ought to act according to the conviction of his mind as to what is right, whether it be consistent with what he knew to be the opinion and wishes of his constituents at the time they elected him, or contrary to them; for, putting himself into their shoes, as their representative, he ought to reason thus; if my constituents were here, like me, to see, hear, and judge, of all things, as I do, they

*\* I believe that in some of the new Western states in America, this most erroneous political maxim, has even been inserted in their constitutions. It is, I know, to be found in that of the state of Illinois.*

would change their opinions, be convinced as I am, and decide as I do, not only with a view to their apparent and immediate good, but also to their own real and ultimate good as a part of that whole, whose prosperity, as a whole, can alone ensure the prosperity of each subordinate part of which it consists. I allow that as to local and private matters, such as turnpikes, public buildings, &c. since the inhabitants of each district or place, must necessarily be the best judges respecting them, and that their representative can never suppose that any others can be equally acquainted with, or interested in, the merits of these cases he is, in discretion, bound to obey their instructions in such matters, even against his own opinion, for, in that case, his own opinion is only the opinion of the minority in his own district, and to be bound by the majority, whereas in questions of general interest, or bearing upon the collective welfare, or even particular welfare of any other portion of the state of which his district forms a part, his opinion is in fact that of the majority of his constituents, who have entrusted to him the power of judging for them, seeing with his eyes, hearing with his ears, judging with his understanding, and deciding by his voice. A member of any representative house, who considers himself as bound to follow the instructions of his constituents, I look upon in the same light, as I should one sent in by the executive government, or by a particular faction, for the mere purpose of nodding assent, or shaking his head in the negative, upon questions previously determined upon by a set of men, judging and deciding *ex parte*, whether a board of ministers, or a meeting of mobocrats.

Of all the speeches in favour of the union, that of Mr. Randall stands prominent for the singularity of his arguments. "He was," he said, "in favour of it, not in contradiction to the sentiments of his constituents, because he thought they were favourable to it also, but because he thought an union, both of the executives and the legislatures, would be for the general welfare and prosperity of the inhabitants of Canada." "He objected as strongly as any man to the objectionable clauses of the bill before the British parliament; those clauses were of an infamous description; but, infamous as they were, they could not make the Upper province worse than it was at present. The system pursued in it was intolerable, and he verily believed that nothing could rouse the people to a sense of their duty, but an union with the French Canadians, who were the real guardians of the people's rights. He had known most just claims upon the government to be rejected; he, for one, was a sufferer under their system; and it was absolutely necessary for the salvation of the country, that an union should take place. He knew the French Canadians, he was bound to them by all the ties of friendship and gratitude: they were a learned, honour-

ble, enlightened, and virtuous body of men; they selected, for their representatives men of rank, talent, and true patriotism, and the sponer Upper Canada became blended with them, the better.

Mr. Gordon, who, in a cool and conciliating manner, endeavoured to soften down the asperities that had introduced themselves into these debates, gave his reasons for supporting the resolutions that were finally adopted, but the jet of them, and of those that actuated all those who voted with him, is comprehended in the concluding words of his speech. "He said he should not disguise, that it would have been more agreeable to him to have seen resolutions and an address directly against the union; but rather than that, those of an opposite character should be adopted, he cheerfully acceded to the resolutions last proposed." So the unionists too, fearful that on a division, their opponents might carry the day, rather voted for the *no-vote* in which the matter terminated, than that an address against the union should be relied on.

Mr. Crooks was the next speaker, but as what he said was partly personally directed against Mr. John Wilson, and was at the close of the debate ably replied to by him, I will reserve the consideration of those two speeches for the conclusion of these abstracts; and have in the interim, principally to notice what Mr. Burwell said, on the subject of the majority, that is nine-tenths of the people of Upper Canada, being opposed to the union; and that the sense of the public had been fairly taken by petitions which had been circulated through the country, and transmitted to England against that measure: he contended that many of the inhabitants had signed those petitions under false impressions and misrepresentations, and he conceived it would be very fair to remark upon the manner, in which those petitions had been got up.\* He added that "notwithstanding all that had been said, he was now in the full belief that a great majority of the inhabitants of the province, were in favour of the measure, if the identical principles of our present constitution could be preserved, and that was the only kind of union that he could advocate. All the objections that had been made with any kind of moderate temper, had been directed towards the objectionable clauses of the printed bill; and in that, he be-

\* In Mr. Gordon's speech, before alluded to, some previous remarks of this nature were replied to. "The yeomanry of this country," he said "were much too enlightened to be led into any great political error where their own interests were so deeply involved—they knew the value of the happy constitution they enjoyed, and were unwilling to part with it, or see it altered; and to say the least of the matter, similar means and equal industry had been employed on both sides of the question."

lieved, every member and the whole province were agreed.— He would sooner that the union should never take place, than that the objectionable clauses of the bill should be retained; but, considering the many sensible and correct representations which have been made against them, he did not think there need be much fear of those becoming a law.

Mr. James Wilson asked, "Where did the question of union originate? It was not at any meeting called in Upper Canada for the purpose of petitioning for it. No: it originated in Lower Canada, in consequence of the Assembly of that province refusing the supply, which occasioned some trouble in the Lower province, for some time past."

[To be continued.]

MR. MACCULLOH,

Having seen in a late number of the *Free Press*, some remarks upon the state of medical education, the mode of examining medical candidates, &c. I wish, with your permission, to throw out a few hints relative to law students.

Although I am not desirous of obtruding my sentiments unseasonably upon the public, yet the subject seems to me to be one of great importance, to every student, and to the Canadian community. The study of the law, is truly an arduous task when diligently followed up, and will require the most strict attention of the student, during a long series of time, if he desires ever to attain to a mastery in the profession. The extent of his enquiries ought not to consist in the superficial acquirement of a knowledge of the statutes, customs, and forms of procedure; but, as Aristotle himself has said, (as quoted by a learned law-writer,) speaking of the laws of his own country, that jurisprudence, or a knowledge of those laws, is the principal and most perfect branch of ethics. The present method of compassing that knowledge, and obtaining a right view of jurisprudence, is rendered extremely tiresome, and to some dispositions almost impracticable, by the many obstacles with which the student has to contend. At the commencement, he is placed in an office, (in the words of Sir William Blackstone,) "with no public direction, in what course to pursue his enquiries; no private assistance to remove the distresses and difficulties, which will always embarrass a beginner. In this situation he is expected to sequester himself from the world, and by a tedious lonely process, to extract the theory of law from a mass of undigested learning." Like a glutton in a cook's shop, he may fall to—feast his mind—and surfeit his understanding—but they soon become satiated.—He loses a taste for such studies; their novelty is spent; and he neglects them; or—lost, as in the intricate mazes of a trackless desert, he wanders from place to place, till he gets entangled in an inextricable labyrinth. His ambition then

abates, his hopes of attaining to any high degree of eminence, as a practitioner, take to themselves wings, and fly away; and he gives up the pursuit in despondency. He then, either mixes with the gay and thoughtless, seeks refuge in dissipation, spends his time in reading novels, and romances, till his clerkship is concluded, or sinks down into the mere drudge, and becomes the automaton, where he ought to have been the master-machinist.

He may have learnt something of the practice, by having been banded about in subservience to an attorney; but as says the writer above-cited, "he will find he has begun at the wrong end. If practice be the whole he is taught, practice also must be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents, will totally distract and bewilder him: *ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and never expect to comprehend, arguments drawn *a priori* from the spirit of the laws, and the natural foundation of justice."

Although I have adopted some of Blackstone's remarks, "on the study of the law," the whole of what he has advanced upon that subject is not at all applicable to students in this country. For instance, the learned commentator has laid it down, in express terms, that the rudiments of the law should constitute a part of "academical education;" which can have no application here. But there is one thing of incalculable advantage to every student which it is highly desirable to see accomplished in this place. I mean the institution of a Society, headed by some able instructor, wherein should be taught philosopheme, or the true principles of reasoning. Or, if this can not be accomplished, a society where none but law-students could be admitted, established, and governed by certain rules and regulations, to meet once a week, and discuss questions relative to their daily enquiries. At a very trifling expense they might, by thus spending a few hours together devoted to mutual instruction, improve both their knowledge and their faculties. It would inspire them with confidence, and give them a fluency of speech, so that, by habituating themselves to declaim and argue among themselves, they would by degrees acquire such a regular system of conveying their ideas, as would enable them to dispense with that disagreeable alternative, so often resorted to by our public speakers, of chewing half an hour or so, upon some poor unfortunate word, while their brains are on the rack to seek for something to conclude a sentence with.

In the story of Jack and his rib, pulling against each other over the thatched hovel, we do not find that either gained much in rope, whilst in opposition; but that when they pulled togeth-

st. they soon succeeded in gaining the whole. So likewise if the students were united in their endeavour after instruction, and were all willing to receive and communicate, their progress would be found less retarded and their studies less irksome.

But, Mr. Macculloch, as I have gone to a considerable length already upon this matter, I will say no more at present, but hoping you will give this a place in your Free Press, beg leave to subscribe myself, Your most obedient humble servant.

A STUDENT.

Montreal, 25th April, 1823.

The consequences of that nefarious and unconstitutional system, by which the public monies, belonging to the province, have been withdrawn from the controul of the people, through their representatives, have unfolded themselves afresh in the very core. At the court of Oyer and Terminer opened at Montreal the 1st instant, it appeared, from what the Attorney general stated, that the crown-prosecutions could not be carried on for want of funds to defray the expenses of witnesses &c. He threw no blame on the House of Assembly, who had appropriated the necessary sum for that purpose, nor did he undertake to say where the blame lay; but the fact was, there was no money forthcoming.

Indeed it now comes out that there is only about £ 14,000 — in the public chest, where there ought to be £ 200,000: and that even the course of justice is stopped for want of some paltry sums for defraying the charge of prosecuting offenders! Can any thing be more forcibly illustrative of the destructive system of allowing the Executive to put their hands into the public purse, take what they like therefrom to pay themselves, and those they choose to favour, in such proportions as they please, without accounting to the people; and then saying, if any one must suffer for want of funds it shall not be us, the fatted calves that range in the government pastures, but the lean kine, the public herd, that are without the pale of our private care? The abuse is monstrous, and calls so loud for redress, that I do not know whether it ought not to be recommended to the people of Lower Canada to meet in their several towns and counties, to petition His Excellency, again and forthwith, to summon the provincial parliament together, for the express purpose of enquiring into and remedying it.

The Canadian Spectator, in descanting on this matter, will not believe that there is only £ 14,000 in the chest; but I do, and that this dreadful defalcation which has been growing for uncontrolled years, and the fear of being called to account for it, form the true reason of all the unconstitutional measures and sentiments with respect to the public monies that have been pursued, or avowed, by the officers of the Executive government, and the subservient part of the legislative council. If



they could but get a grant of a round sum for the civil list for life, without specification, appropriation, or accountability, all former deficiencies could be supplied, the rat holer plugged up, and the marks of their voracious teeth obliterated; whilst if dot, things must come to light, that are wished to be buried in darkness of the night.

It has been ascertained, beyond the possibility of subterfuge, that there ought to have been the sum of £ 200,000. at the disposal of the legislature on the 1st Nov. 1822. The House of Assembly have appropriated for the expenses of the civil government for the current year, (including those of the courts of justice,) special grants, and arrears of last year, about £ 120,000.—So that there ought to be, entirely unincumbered, and after providing for all that can be lawfully expended in 1823, a sum of £ 80,000. left, independent of the revenues of the current year, which, estimated at the same rate as those of the last will be, about £ 75,000. And yet—there is only 714,000—in the public chest! the crown prosecutions in Montreal are stopped for want of money to subpoena witnesses! The police officers have told applicants they can not discharge just demands for want of money!\* And the agricultural society of Montreal, equally say they can not discharge their engagements for want of money!

Do these facts want any comment?

N. B. The last number, was by mistake, in some copies numbered 28, instead of 29.

*\*A notorious and infamous instance of oppression has been rendered still more shameful from this circumstance. A lady in Montreal had, in October 1820, a sum of money taken from her, in the most illegal, atrocious and brutal manner, upon false pretences, by an officer of the police, countenanced by, and in the presence of two of the partners of the late North West Company. She sued, for its recovery, and after dancing through all the possible delays and evasions of law, after two years, she obtained a judgement in her favour. But the police-officer can not pay, because he can not get his thieftaking-money from government! This case, including the lady's false imprisonment, the abominable manœuvres by which redress has been denied or evaded, and the countenance given by the court at Montreal to pravity, robbery and violence, in suffering papers which, from evidence before them, they knew to have been obtained by such means, to remain on their files in several suits connected with these disgraceful transactions, is one of the most lamentable instances upon the records of arbitrary oppression, and inefficient justice, which the weak and unprotected suffer at the hands of overbearing wealth and iniquity.*

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