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# THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 14th AUG. 1823. [No. 44.

"I have often wished that a law were enacted to hang up half a dozen bankers every year; and thereby interpose at least some short delay to the further ruin of Ireland." SWIFT.

*Sic consulta patrum subsistere conscriptorum,*
*Non aliter licitum prisco sub tempore, quam si*
*Trecentum sensisse senes legerentur in unum.*

PRUDENTIUS.

Of old, when Rome's imperial senate sate,
The conscript fathers ne'er allow'd debate,
Nor valid was a law, that had not past
A quorum of three hundred, at the least.

### KINGSTON BANK BILL, *continued.*

The act, of which an abstract appeared in last number, concludes with a proviso, that nothing therein contained shall extend, or be construed to extend, to *repeal any provision or remedies** made and provided in the act of 14 Geo. II. cap. 37, entitled "An act for restraining and preventing several unwarrantable schemes and undertakings in His Majesty's colonies and plantations in America"

In the original draft of this bill the preamble specially recognized the above statute as in force in Canada, which, as some doubts have been entertained on the subject, (though I can not see how, the words of the act being as distinct and comprehensive as language could make them) it would have been proper to have retained. Mr. Hagerman, however, procured them to be expunged, as was also a clause prohibiting the establishment of similar institutions. If the recognition had remained, the latter clause was unnecessary, as the Statute in question is as prohibitive as possible: but there seems to be a latent desire to

* I have before contended, see Free Press No. 22, *et al.* that the provincial legislatures have, by their constitutional charter, a right to *repeal* any of the acts, or clauses of acts, of the British parliament, bearing upon the colonies, those only excepted that relate to the regulation of external commerce or navigation. The insertion of clauses similar to the above in provincial acts, may be considered as asserting that right, but declining the exercise of it in the instance in question.

smoothe over, and veil, the utter illegality, and the gross impudence and ignorance, of those who attempted the establishment of any banking or other joint stock association, in either province, without an act of incorporation, as well as the supineness and connivance of the persons in authority, with respect to such unlawful and deceptive schemes for preying upon the public. Nay in the act itself we are discussing, although in the preamble, and in two other places, the association is called a *pretended* bank, it is generally designated as the *said bank*, and its transactions are virtually actually legalized by this very act, although by the British statute declared to be illegal and void.

It is worthy of remark too that, in the preamble, the stockholders, who are every one of them delinquents under the British act, and prosecutable for the erection of a *common and public nuisance*, are considered as parties aggrieved, and defrauded, and as part of the *creditors of the institution*, for whose *benefit* the act was passed; yet by sec. 2 no stockholder is to be reimbursed his deposits till all other creditors are paid. This is the more inconsistent, since the British act declares that all persons who *have been* or *shall be* "engaged or interested in any such unlawful undertaking," are "personally liable" for the whole amount of all the notes or bills issued, which is recoverable, by each holder, from any one or more of the stockholders, at his own option, in any court of record, with interest from the day of the date of the notes or bills, and full costs of suit. The stockholders therefore are public *debtors* and not public *creditors*; and here too the injustice of the provincial act in only giving, as it does by sec. 2. interest to the holders of the notes, from the date of the certificates to be granted by the commissioners, at their own will and pleasure, and in their own good time, perhaps a year or two hence, is apparent. It is true it might not be strict *equity* to give interest from the dates of the notes; for first, they are invariably antedated long before they are originally issued, and may have been afterwards repeatedly redeemed and reissued. but it would nevertheless be strict *justice*, inasmuch as the giving of such interest would, as intended by the British act, operate as a penalty upon the stockholders for their illegal and unwarrantable conduct in engaging in a concern that, in the words of the act of parliament, "tends to the *common grievance*, prejudice and *inconvenience* of His Majesty's subjects, or great numbers of them, in their trade, commerce, and other lawful affairs."

On this part of the subject, I will add that, upon the whole, it would have better become the dignity of the legislature to have openly stigmatised the undertaking and all similar ones, as those "*extravagant and unwarrantable practices* which the act of 14 Geo. II declares to be *common and public nuisances*," than to have glossed over and virtually sanctioned, it, in order

to screen and qualify the other similar unlawful associations that have been entered into in other places.

The next object that presents itself is the appointment of the commissioners. It is notorious that, for a considerable time after the Kingston bank had stopped payment, its notes were an object of great speculation. It was a *professed* object that no persons should be named as commissioners who had any concern, directly or indirectly, with the bank. But, I believe it is well known that two at least of the commissioners if not all had speculated largely in purchasing the notes of the bank. The Marklands held a large amount of them, bought in the States, at great discounts, by persons sent on purpose. It is besides a family-concern, Mr. Kerby is Mr. Markland's uncle, and Mr. Macaulay his cousin. The Marklands have likewise been agents for the banks of Montreal, as Mr. Macaulay is for the York-bank. So that altogether it does seem as if they were very far from being disinterested persons. It is true, it would have been difficult to have found any person of respectability in Kingston, that could be considered as perfectly disinterested; but at all events, their powers ought to have been much more limited and defined, as well as placed under greater checks than they are. In the words of a writer on the subject in the U. C. Herald, under the signature of *a disinterested spectator*. "I do not find that the commissioners, in whom the property of the association is vested, are to give any security for the faithful administration of it. Although they are clothed with extraordinary powers, both judicial and executive, and among others, the inquisitorial power of bringing their neighbours before them by warrants, to be examined on oath, and committed unless they give satisfactory answers; yet they are themselves not required to act under the usual solemnity of an official oath." And it should be added, that even their *clerk* has the extraordinary and unexampled power given to him to examine all persons upon oath, whilst he too is not bound to qualify himself for the due performance of this magisterial, or any other duty, by a similar solemn obligation! To this it has, most absurdly and *unconstitutionally*, been replied, that "the known probity and independence of principle and of circumstances of the gentlemen appointed," form a sufficient guarantee to the public, and "their honour and reputation" a sufficient tie upon themselves, for the due performance of their duty. I say *unconstitutionally*, because, according to the wise principles of the constitution of England, no man is, or ought to be, trusted in a public capacity only because he has the reputation of being trustworthy, without those safeguards and checks which the circumstances of the case will admit of. Suppose the commissioners to be men of that high standing in society which they are represented to be; I need only refer to the very institution in which they are now

called upon to discover and remedy the frauds, and deceptions that have been practiced. Were not the persons who planned, set on foot, and managed it, men who enjoyed at that time the public confidence, whose probity, independence, and principles were undoubted? But, in the first place, with respect to property and responsibility, what is there more proverbially and essentially fluctuating and evanescent than both wealth itself and reputed wealth? and then being now affluent and independent, is neither any guarantee that they will be so tomorrow or next year, nor any sufficient reason why they should not, like other men, entrusted with property to a large amount, give security for the faithful execution of their trust. They have been assimilated both to the commissioners of bankrupts in England, and the assignees of a bankrupt-estate, and in fact they, very preposterously, unite the powers and duties of both those situations, without being liable to the responsibilities or checks of either. Had they been appointed as commissioners to investigate and decide upon claims (which parties interested ought not to do) and the creditors whose claims were admitted been allowed to choose two or more of *themselves* to become their assignees and trustees, in whom the property was to be vested, and by whom the dividends were to be made; it would, in my opinion, have been (provided a limited time had been fixed for the final winding up of the concern,) both a far more equitable, as well as more secure and satisfactory, arrangement. It has been held up too, as a merit in those gentlemen, that they have accepted a troublesome office without *fee or reward* Indeed! But we have seen that these individuals were long ago engaged in intriguing to obtain this appointment; and it may be supposed they are men of business enough to know that the uncontrouled, and in point of time, unlimited, possession of a large sum of money, with the power of cutting and carving up the property committed to them as they may think proper, and at their leisure, are in themselves ample rewards for all the labours they are likely to have to perform. But, says the *disinterested spectator*, before quoted 'there is still a more unaccountable defect in the act It does not even render them personally responsible. If they should, in the new dialect of the day, *abstract*, *defalcate*, *misapply*, or *appropriate* to themselves, any, or all, of the funds committed to their charge, no stockholder or creditor of the bankrupt association could, under this act, recover a farthing from them for his loss.* The only recourse

*For this reason, amongst others were I a holder of Kingston bank notes to any amount, I would, instead of making my claim before the commissioners, and parting with my proof of debt and valid documents against all the stockholders jointly and severally, (which the bank notes are,) and which must be

must be to the legislature, who in the exercise of their sovereign power, may, in such a case, pass another *ex post facto* law, subjecting these commissioners, in their turn, to the inquisition and administration of a new board of commissioners; and, if the wheel of fortune shall have then revolved just far enough, the judges and parties in the present commission, may change places in a future one." On the subject of the non administration of any official oath to the commissioners the same writer after observing, that

———Brutus is an honourable man;
So are they all, all honourable men,

and that peers of Parliament in England in certain cases, answer *upon honour*, while commoners are required to answer *upon oath*, adds, "so these *lords commissioners of a broken bank*, are dignified with a similar exemption from the plebeian sanction of an oath It is readily admitted that they are honourable men. But are not the judges and triers of causes in court also honourable? And yet a man whose honour is unquestioned, and perhaps established by having been shot at in a duel, is not permitted to give a verdict in court in any action for property or character, or damages, without being solemnly sworn well and truly to try the issue. These very commissioners, in their capacity of commissioners of the court of requests, could not lawfully render a judgement to the amount of forty shillings, without having taken the commissioner's oath. But in their *High Commission Court*, they are excused from the vulgarity of being sworn," (and not only them, but their clerk also, at, I believe, a salary of fifty pounds a year!) "although they are authorised to decide, without a jury, upon claims to a great amount, and are even empowered to arraign their fellow subjects at their bar, and to examine them as culprits, and that under oath, in order to extract confessions of guilt, or some information against themselves; an inquisitorial power not allowed to the judges of the court of King's bench, and hitherto unknown in this free province."

(*To be continued*)

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Referring to the narrative in my last of an outrage perpetrated, under pretence of law, upon an Englishman of the name of Johnson, by Mr. Ogilby, lately appointed high constable of Montreal, I now copy from the Montreal Gazette, the following query:

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the case under the sect. 6. of the act; I say I would select any one of the stockholders, whom I thought best able to pay, and sue him under the act of 14 Geo. II upon which action I should undoubtedly recover, *with interest from the dates of the notes*, and full costs of suit. That is the remedy I advise every one to take that has any regard for his own interest.

"The appointment of Mr. Ogilby, as high constable for the district of Montreal, has been published, as made by the court of general quarter sessions of the peace; now, supposing this to be the case, without the slightest disrespect to the authority of the court, we would wish to know by what ordinance the court is empowered to make such appointment? And how the person, at present holding this situation, can, by this act, be deprived of it?"

I shall wait to see what answer, or whether any, (for our would-be great men of the police and quarter sessions, seldom deign to pay any deference to public opinion, or to answer either public or private enquiries or publications,) will be made to the above, before I make any further observations on this probable assumption of an usurped power.

L. L. M.

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ABSTRACT and REVIEW of PARLIAMENTARY PROCEEDINGS of LOWER CANADA, *continued from No* 42.

Reverting to the proceedings of the house of assembly of the 14th January, I have been favoured with a short abstract of the animated debate which took place on the motion for reducing the quorum, the arguments used on which occasion it may be well to keep in mind in anticipation of the decision of the question which took place shortly after.

Mr. Taschereau, the proposer of the reduction to 15, said that the object was to avoid the numerous inconveniences which had been experienced by the quorum being fixed at 26, which was so difficult to form, and caused the loss of much precious time. He was not particularly attached to the number 15, but was willing to vote for any intermediate number, as far as 19. In England, where the representatives are upwards of 600, the quorum was 40, a number much more disproportioned to 600 than 15 was to 50;* and if a higher number would produce inconveniencies in the English house of commons, 26 produces still greater inconveniencies among us.

Mr. Lagueux, in offering an amendment of 19, instead of 15, observed that, during the last session, they had been, for three days together, unable to form a house from the want of a quorum. The number he proposed, he conceived, would avoid the delays occasioned by a larger one, and at the same time, guard against the abuses which might be apprehended from so small a number as 15.

Mr. Blanchet, upon whose proposition the quorum had last

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*If arithmetical proportion could be allowed as an argument in this case, three and one half ought to be a quorum in our house of assembly!

year been raised to 26, continued of the same opinion, which he grounded upon the consideration that it ought to be composed of a majority of the representation. In every session they were often obliged to have a call of the house on certain questions of the first consequence; now by continuing the quorum at 26 that inconvenience might, in a great measure, be avoided, as at all events, by means of a quorum of 26 the majority of the people would, by their representatives, concur in all questions of more or less importance. Notwithstanding the veneration he entertained for the customs of the mother-country, Mr. B. considered the precedent adduced by Mr. Taschereau, as not at all applicable here, because there, the number who possess the right of voting is by no means proportioned to the population, while here, the right of voting is extended to almost the whole; and, in this respect, we are more fortunate than they are in England. He concluded with observing, that no change had been made in the number of representatives in Lower Canada, notwithstanding the considerable augmentation of the population; and that Upper Canada had been more favoured in that respect.

Mr. Taschereau in reply said they ought rather to follow the example of those who had had so much political experience, than lose themselves and their time in theoretical arguments. He denied that any mischief had arisen from a quorum of 15, or if it had, it had been through inadvertence, and would equally have arisen in a quorum of 26. He was not however attached to 15, and should vote for a quorum of 19.

Mr. Cuvillier hoped the hon. member would allow him to consider him as the organ of the executive. What! was it a time when we were about to discuss our civil list; the important question of the union; the state of our resources; the increase of our representation; was it at such a time that a proposition was to be made to reduce the quorum? Look but at the proceedings of the British parliament that bore upon this country. We shall find that *it was in a quorum of forty only, that the fur-t. ade bill* was passed; a bill which has inflicted such an injury on this province: we shall find that the union-bill was proposed at a time when the house was obliged to adjourn for want of a quorum. It is ever towards the end of a session, when the number of members attending is very small, that every injurious measure is accomplished; when any thing is contrived against the colonies, it is always masked, in some way or other, and manœuvred so as to be brought forward towards the conclusion of a session. He hoped that the house would not, by adopting this motion, expose itself to the imputation of being without character or consistency. This attempt was only the first of many that would follow, should it not, on this occasion, exhibit firmness and constancy.

Mr Oldham was astonished that any gentleman should accuse the honourable member of being the organ of the executive, because he moved to lessen the quorum. The motion had nothing in it that indicated it had been suggested by the executive, nor did it hinder members from attending at their posts. It would not be less the duty of members to be punctual in attending, nor could any absent themselves without violating the rules of the house. Some of the honourable members, who so warmly opposed the motion, were the least assiduous during the last session.

Mr. Bourdages felt much surprised that, at the commencement of a session, in which they would have to decide on the most important questions, a motion to diminish the quorum should be brought forward. It was, he acknowledged, truly vexatious to find in so many members such an unfair neglect of the duty towards the public which they had engaged to perform, and to be exposed to so much loss of time: yet he did not consider this as a sufficient reason for reducing the quorum, for it, when last year it was fixed at 26 they had fewer questions of importance to consider, it was the more necessary it should continue at that number now.

The committee then reported progress, and the house resolved to continue the debate on the Tuesday following.

*(To be continued)*

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