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THE FREE PRESS.

VOL. I.] MONTREAL, THURSDAY, 21st NOV. 1822. [No. 7.]

Huc legi nec obrogari fas est; nec derogari ex hac aliquid licet; neque tota abrogari potest. Nec vero aut per senatum, aut per populum, solvi hac lege possumus; neque est querendus explanator, aut interpres ejus alius. CICERO.

No part of this law can be annulled; nor is it allowable to curtail any of its provisions; still less can it be wholly abrogated. It is not competent either for the senate, or the people, to make it void; neither does it require an interpreter or commentator.

The proceedings of the meeting, which took place at Kingston, in Upper Canada, on the 30th ultimo, for the purpose of passing some resolutions in favour of the union, having been much cried up by the partizans of that measure, I have been induced to pay a little more attention to them, than upon the first perusal of them; I considered their inanity and windy wordiness required, for Pope justly observes,

“Words are like leaves, and where they most abound,
Much fruit of sense beneath is rarely found.”

I had, however, even at that first glance, marked some passages in them for reprobation, and now call the attention of my readers to one of them, for the purpose of exposing the political ignorance, fallacious assertions, and presumptuous imbecility, that are puffed up (by those indeed who know no better) as a display of talent and cogent argumentation.

In the speech of C. A. Hagerman, Esq. he presumptuously, and almost treasonably, imputes to the Imperial Parliament a disposition to repeal the constitutional act of Canada, entirely, in case they should find the provincial legislature of Lower Canada, obstinate or refractory in submitting to the views of the executive government; adding “let us not deceive ourselves, the power that gave us a constitution has the power of taking it away.” This I hesitate not to say, is utterly false. Nothing can be more grossly repugnant to every principle of public law, to every feeling of common honesty between contracting parties, (which Grotius, and Puffendorf, and every writer on the fundamental principles of social law and morality, will tell Mr. H. is the invariable relation between granters and

grantees,) nothing can be more contrary to justice and honour, or more subversive of the mutual confidence that ought to exist between the mother country and its colonies, more debasing to the honour and dignity of the one, more destructive of the affection and loyalty of the other. It is a libel upon the British nation to suppose it. No, the power that gives any constitution, charter, or privilege, by that very act, divests itself of all further controul and dominion, in those points and particulars, that it does so grant or give; and can not retract, relake, or annul a grant or gift, farther than reservation may have been made for such retraction or resumption, under particular circumstances. It is wholly beyond the competency of the Imperial Parliament to repeal the constitutional act of Canada. I question very much, whether the Imperial Parliament has any right, even to modify it. I know that it can not constitutionally interfere in any points, excepting such as are specified in the 42d section of the act of the 31st Geo. III, and I could lay my finger on several of the clauses in the proposed union bill; which, had they passed into a law, I should not hesitate in saying, had been unconstitutionally, illegally, and oppressively enacted by the Imperial Parliament, whose right, I utterly deny, to take away, or even to alter, the constitution of these provinces, without the consent of their legislative assemblies. I do not say with Mr. Hagerman, 'let us not deceive ourselves,' but I say, let us not be deceived by those who dare maintain so baseless and so base a proposition, as that it is, or can be, in the power or competency of parliament, to take away that constitution, that has once been granted, without our own consent. I should not have wondered, had this false and scandalous libel upon the good faith and unstained character of the British nation, been uttered by one of that crouching and reptile race, the vagrant Scotch adventurers, to whom we may ascribe all this commotion; but that Mr. H. who is neither a North Briton, nor a transitory sojourner in the country, and whose professional legal abilities are, I believe, far above mediocrity, should have been so blinded by party feeling, is really surprising. There are many other points in his speech, I could advert to, as conveying such unconstitutional and servile sentiments, as I should not have expected from him, but I will confine myself to the gross and absurd fallacy I have here pointed out, and conclude with the remark, that the only argumentative part of his speech, is that relative to the disputes between the two provinces, about the duties; the rest is nothing but froth and declamation.

L. L. M.

MR. MACCULLOH,

In part reply to the 29th query of Socraticus, I can aver, from my own knowledge, that the Hon. John Richardson is not

capable of writing a coherent English letter on any subject that requires the least system of arrangement, or lucid explanation. He can not write an intelligible paragraph, without the assistance of those who are better acquainted with the English tongue and the rules of composition than he is. I have frequently been employed in arranging and modelling his crude and involved sentences into readable English, and patching up something of a whole out of his disjointed scraps; which, indeed, was not always a very easy task. I state what I personally know on the subject, let others do the same, and the jay will soon be deprived of his borrowed plumes. S. H. WILCOCKE.

P. S. Can Mr. Gale, or the learned Mr. Chisholm, say nothing of recent occurrence on this subject? I am told the celebrated production, signed Britannicus, which, according to the laudable custom of the party, after being issued from their shop, was sent simultaneously to all the papers in their interest, is a banding that owes its existence to two or three fathers, begotten by the honourable gentleman, & licked into some kind of shape, like the cub of a bear, by the learned ones.

The Editor of the Quebec Gazette, having called for a full, fair, and impartial discussion of the Union-bill, would much oblige the public, by pledging his honour, that the paragraph containing this invitation, was not written by, or at least in consequence of the orders of, Mr. Cochran, the governor's civil secretary, and whether the editor would have dared to have inserted it otherwise.

The following postscript to the letter from Quebec, signed CONSISTENCY, in last number, was omitted for want of room.

P. S. Mr. Richardson's protégé, our almost beardless solicitor-general, is lately arrived here, and, it is said, brings with him an appointment as attorney-general, in room of Mr. Uniacke, who, being never liked by the North-West clan, has thus been supplanted; no doubt at their instigation, by his junior colleague. Some say Mr. Uniacke is to be made chief justice of Montreal; but who is to be our solicitor-general? that question will not be difficult to solve; no doubt government will pitch upon the greatest idiot, (for such make the best tools) provided he be neither a Canadian nor a Catholic. Another account, however, which appears to come from a pretty authentic source, says that the appointment of Mr. Marshal, as attorney-general,

being only a matter of instruction to the governor, his lordship, not knowing of any reason why Mr. Uniacke should be displaced, has, very independently; declined to follow that instruction, and left Mr. M. to seek for better fortune elsewhere.

MR. FREE PRESS,

Permit me to transmit to you some conjectural errata, in the *Montreal Gazette*, of the 9th instant, page 3, column 1, line 56, for *Assianic phrase*, read *Astinnic phrase*, indicative of the qualities of the editor; vel *Occanic phrase*; as appertaining to waves & rocks; vel *Essomo phrase*, meaning one imitative of the pompous inanity of Mr. Esson; vel *Asiatic phrase*, to denote its oriental hyperbolical inflation. PHILOLOGUS.

P. S. A sly printer's devil, from the office of the *Gazette*, has just hinted to me the true reading, viz. *Ossianic*, i. e. one congenial to a blind Scotch dreamer.

To resume now my reply to Z. Whilst I contend, that the French Canadians, or rather the inhabitants of those parts of Canada, which were granted and settled upon the old tenure, are entitled, as long as they please, to be governed solely by their own laws, I fully coincide with him in opinion, that, whether in sound policy ought, nor in legal fact are, the inhabitants of the townships bound by French laws, and that distinct courts, ought, long ere this, to have been there established, for the administration of civil justice, according to the laws of England.—The fact is, that, although that must necessarily have been felt to be the case on the very first question, involving the civil rights of any man, holding in free and common soccage, coming before any court, yet the want of any precedent, the ignorance that naturally prevailed as to what was or was not English civil law, and above all, the then insignificant state, and trifling number of the settlers upon land, in free and common soccage, caused the opinion to prevail, that those cases ought, provisionally, at least, to be included under the operation of the same code, by which all the rest of the colony was governed, in civil cases. Perhaps, in that situation, provisionally, nothing better could have been done, but since the importance and population of those settlements, have so greatly augmented, the system ought to be wholly changed; and it is even necessary, in my opinion, that, looking at the letter of, and the soundest interpretation that can be given to, the constitutional acts on that subject, even a kind of act of indemnity, or confirmation, is necessary to render those legal decisions that have been hitherto given, on cases relative to the civil rights of the inhabitants of the townships valid, as I do conceive that every one of them is now void

de jure, as having been given, contrary both to the spirit and the letter of the constitution. There can exist no difficulty in the establishment of such a permanent court, for the townships south of the St. Lawrence, in the central situation of Ascott, For those to the north of the river, and those bordering on the Ottawa, it may be more puzzling to propose a convenient spot; but that I do not conceive to be an insuperable difficulty; and the whole of such an arrangement could be made, without any immediate necessity of breaking in upon the present representative system of Lower-Canada. As, however, the settlements in free and common socage, become more extended and populous, which would be the natural consequence of such a system, they would either feel themselves not sufficiently represented, or would, divided as the counties now are, in time, so far outnumber the old inhabitants of the seigniorial part of the counties, that they would return a majority of the assembly, by which the rights and privileges of the French Canadians, would be put in jeopardy. A legislative provision ought, therefore, to be made, that whenever the townships, south of the St. Lawrence, acquire a fixed aggregate of population, adequate to form a province, suppose 100,000, a separate assembly and council shall be given to them, and a third province erected; so likewise, with those north of the St. Lawrence, for in course of time, so far from one legislature being adequate for the whole of Upper and Lower Canada, I am confident that it will be found necessary to split both provinces, into lesser ones; and to establish a kind of Congress, at some central place, Montreal, or perhaps Kingston, as a general council for the superintendance of the whole of the British North American provinces, including Nova-Scôtia, New-Brunswick, and Newfoundland, leaving to each separate legislature, to regulate their own local concerns, and to the grand council, the care of whatever regards the general interest of all, and the connection with, dependence upon, and furtherance of the views of, the metropolitan and imperial government, to which the whole would, in that way, become one of the noblest appendages the world ever saw.

By such a system, I conceive that the rights of the French Canadians would be indefeasibly secured to them, within themselves; the constitutional act remain uninfriuged, for it is part of the prerogative reserved to the crown to parcel out the province into such districts and counties, as it may think proper; and the permanent interests, both of all the colonies, and of the empire at large, consulted in a way neither degrading to the one, nor prejudicial to the other. These are, however, speculations of rather a wider scope than I had proposed to myself in this essay, and I therefore proceed to the third Because of Z. why the Canadians object to the union-bill, as it was proposed; namely, the abolition of their language.

He says indeed but little on the subject, but in that little, the good sense that appears to have accompanied him in the former part of his letter, wholly abandons him. He considers the compulsion to speak nothing but English in the Assembly, as a trivial objection; for it does not deprive a member totally unacquainted with the English language of the right of voting, which is the main privilege of a legislator. The right of voting is only one of his main privileges, another, no less indisputable, is that of expressing his sentiments; but the main duty of a legislator, is not the mere giving of a vote, but the hearing, understanding, and weighing the reasons for his giving that vote. Else a mere automaton, a puppet, (such probably as are wished for in the assembly, by the unionists,) would make as good a legislator as any, nay, he might sit at home, and just as well send a card with yes or no, written upon it, as his vote. I should not have thought this worthy of the slightest reply, had it fallen from one of the common herd of declaimers, but Z. is of a different stamp, and will, I think, not be displeased with me, for pointing out the untenableness of his position, in that respect.

But say the other unionists, for Z. is but a lukewarm advocate for the change of languages; it is necessary for the glory of the empire, that the Canadian name, and nation should be melted down and amalgamated with the British, so as entirely to lose their distinction. So far from that, it is more conducive to the honour and glory of the king of England, and of the Imperial Parliament, that numerous nations and tongues seek the shelter of their protection, live under the egis of their impartial government, and prefer the blessings derived to them from the liberality and good faith of England, to any they possessed under the rule of their original sovereigns. The more different languages are spoken in those countries over which Great Britain bears sway, the greater her renown; and the greater praise will the future historian bestow upon that nation and government, who, with equal justice, and equal liberality, defended, protected, and maintained in their rights, French, Spanish, Maltese, Greek, Hindoo, Cingalese, subjects, without childishly interfering with their language or their habits. But where the shoe pinches, amongst the unionists, is, that they themselves generally are raw, uneducated, Scotch ignorants, who cannot spare sufficient time from their darling pursuit of amassing riches, even to study a language that their interest alone, if no other motive existed, ought to induce them to cultivate. It would be throwing pearls before swine, to speak to them, of French literature, and French writers, to talk of Montesquieu, and Bourdillon, of Helvetius and Feneloa, of Corneille, Racine, Moliere, and Boileau, of Voltaire, Rousseau, and Marmontel, or any other of the galaxy of luminaries, th

adorn the French records of science, learning, and belles lettres. These are barbarous names they never heard of, or saw, excepting perhaps, in some bald translation, and which they can not even pronounce.

"The North by myriads pours her mighty sons,
Great nurse of Goths, of Vandals, and of Huns.

And we have unfortunately in Canada, more than our full share of the barbarous deluge. I must, however, now quit the subject of the compulsory change of language, which is so much the favourite object of the Scotch party; intending to resume it some other time, for although it has already called forth much eloquent declamation, and sound argumentation, it is sufficiently fertile, to employ many more pens, and occupy much more space, than have yet been devoted to it.

I am told that my correspondent, CONSISTENCY, has led me into an error, with regard to Mr. Gerrard, and that, although the charge was made against him, no bill was found by the grand jury. If so, I have certainly been, unintentionally, the vehicle of spreading and confirming a malicious and false report; and have contributed to aid the popular delusion and undeserved stigma which the mere circumstance of accusation, too generally fixes upon a man's character. If a bill was laid before a grand jury, and not found, I consider that as a circumstance that must redound more to the honour than the disgrace of any person who was the object of it. It at once proves both that he has malicious enemies, and that he is innocent. He comes forth from that trial like gold tried in the fire; and not a shadow of doubt ought thereat to remain, or any suspicion thereafter hinted against him. If such be the case with Mr. Gerrard, I do most sincerely beg his pardon for the offence, and that of the public for misleading them; and I do not hesitate to declare that, under such a circumstance, I should consider Mr. G. as a virtuous and an injured man; one, whom the breath of calumny has passed over, but has not, in that respect, been able to taint. If it be not so, and the original statement be correct; *c'est une autre affaire*; the truth is no libel, however unpalatable, and offensive* it may be. The circumstances attending the case in question, must have been public and notorious at the time, and in the recollection of many persons. I did not then reside in Montréal, and I can therefore say nothing, of my own knowledge. Those who did, will be able to decide, and with those I leave it.

L. L. M.

* By the decree of the Star Chamber, made in 1637, by which licensers of the press were appointed, it was forbidden to print or

publish any heretical, schismatical, or OFFENSIVE books; and the act of 13 Car. II. c. 33, "for preventing abuses in printing, &c." copies that decree without any material variation, except, that by the decree, offenders are to be punished, as by the honorable Court of Star-chamber, or the High Commission Court shall be thought fit, and by the act, by disability to exercise their profession, and such further punishment, not extending to life or limb, as the Courts of King's Bench, or of Oyer and Terminer, shall think fit. This act of Charles II. was last continued by 1 Jac. II. c. 17; for seven years from 1685, but "being incompatible" (says the learned and constitutional editor of the Statutes at large) "with the noble principles of the revolution, it has never since been, and it is hoped never will be, renewed."

It is remarkable that the preamble to this decree of the Star-chamber (which by the bye is so scarce, tho' it is supposed there is only one copy extant,) takes notice of divers decrees and ordinances made for regulating printers and printing, in the reign of Queen Elizabeth, which are said to have been defective in some particulars, but which I do not know where they can be referred to, and rather believe they have not come down to us at all. Hence we may see what early attempts were made to restrain this invaluable liberty. So intolerable is the nature of power, wherever lodged, that they who have loudest exclaimed against such restriction, as a badge of slavery, were no sooner invested with full sway, than they began to work on the same principles of oppression. About the year 1644; the Parliament made ordinances for restraining the press, which were framed on the plan of the above Star-chamber decree, and against which Milton published a treatise called Areopagita. Thus Charles the I, the Parliament that dethroned him, Charles the II. and James the II. all acting on different and contradictory principles, adopted the same arbitrary and tyrannical means of putting down offensive writings.

I shall feel obliged to any professional gentlemen who will give me (in a private letter) the titles of whatever acts either of the British parliament, or provincial legislature, are considered to be in force in Canada, as relates to libels. L. L. M.

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