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# THE FREE PRESS.

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*Non omnis fert omnia tellus.*

*India mittit ebur, molles sua thura Sabae.* VIRGIL

All sorts of goods their several countries know;  
Black ebony only will in India grow,  
And odorous frankincense on the Sabaean bough.

DRYDEN.

*Nihil tam interest quam jus atque vis. Horum utro uti nolimus, altero est utendum. Vm volumus extinguili? Jus valeat necesse est, ut est iudicia, quibus omne jus continetur.*

CICERO.

Nothing concerns mankind more than to draw the line between right and might. One must not be resorted to, when the other can be obtained. If we desire to destroy violence, then law, or rather judicial authority, which comprehends all law, must be our only recourse.

The concluding article of last number, in which I took occasion, in announcing the intended undertaking of a canal between Lakes Erie and Ontario, to express my decided hostility to, every species of restraint upon the commercial communication between the Canadas and the United States, was scarcely worked off, before I had the pleasure of seeing in the Albion, the report of Mr. Huskisson's speech in the British House of commons, on the new line of commercial policy in contemplation to be adopted by Great Britain. It coincides almost fully with my own views, and with my prediction that the time was at hand when the shortsighted policy of shackling the trade of foreign countries with the vain hope improving their own, would appear in its real colours to all sound statesmen. A war of retaliation, and an emulation which should injure the others most, have long prevailed among the soi-disant civilized nations of the earth who have any thing to do with trade. Instancing, in the first place, the jealous and squabbling system acted upon in our commercial relations with America, Mr. Huskisson said, its inevitable consequences had opened the eyes of both nations, and made them eventually agree to a mutual abatement of this war of prohibitions, and of exclusively protecting duties, Portugal succeeded, and the new arrangement was extended to that king-

dom, and its dependencies. Other powers had the same object in view, and both the Netherlands, and Prussia had adopted measures, avowedly intended as retaliatory of the British restrictive and exclusive system. It was quite clear, from these occurrences, that the time had arrived for reconsidering the British commercial principle; they must adopt one of two courses—either to persevere in the present system through the instrumentality of protecting duties and prohibitions, or else to admit other powers to a perfect equality and reciprocity of shipping duties. The latter was the course they were bound to adopt. *Its effects would lead to an increase of the commercial advantages of the country; while, at the same time, it had a tendency to promote and establish a better political feeling and confidence among the maritime powers; and would abate the sources of commercial jealousy, idly-wasting the forces of each in a race of mutual annoyance. It was time, in the improved state of the civilization of the world, to establish more liberal principles; and to show that COMMERCE WAS NOT THE END, BUT THE MEANS, of diffusing comfort and enjoyment among the nations embarked in its pursuit.\**

Towards the close of the debate, on this important subject, Mr. Ricardo emphatically observed that, Merchants had, at length, begun to find out that restraints upon commerce were restraints upon themselves. *They had foolishly imagined that they were imposing restraints upon other countries, whilst they were only adopting measures prejudicial to themselves.*

In the course of Mr. Huskisson's observations it appeared that, in an official note which the minister of Prussia had delivered in on this matter, the following admirable and liberal principles were stated to be those of his court, namely; "that reciprocal commercial restrictions were reciprocal nuisances, prejudicial to all nations having reciprocal interests, and particularly to those engaged in extensive commerce; and that the policy of Prussia was to substitute in the place of reciprocal prohibitions, reciprocal facilities?"

The resolutions proposed and carried went to confer upon the king in council the power of relaxing the old law, where other powers departed from the retaliatory principle, and to continue it where they did not.

The following letter, which has just come to hand, bearing relation to the subject I treated of in No 41, and to another recent instance of that lawless spirit with which the meanest officers of justice in Canada take upon themselves to fly in the face

\* When will mankind in general, in like manner, find out that wealth and property, of every kind, are *not the end, but the means*, of securing comfort and enjoyment?

of the laws of nature and of nations, I hasten to insert it, that in case the circumstances be correctly stated, it may draw due attention from the public, and cause full enquiry to be made, for the redress of this personal outrage, if justice so requires it, and the prevention of similar disgraceful proceedings in future.

Montreal, 31st July, 1823.  
 Mr. L. MACCULLOH;

If the laws of this province are so diametrically opposed to those of Great Britain as to suffer a British subject, and an Englishman, to be cruelly assaulted and beaten; to be overpowered by a desperate gang of hired ruffians, tied with cords like a murderer, and finally by force carried over the lines, beyond the limits of British protection; if the liberty of the subject is thus set at naught; if this is the manner in which our laws are enforced; if such a set of lawless wretches as those concerned in this disgraceful transaction are employed as officers of a court of justice; what can we do but prepare for the worst, where our safety depends upon the caprice of men of the most abandoned principles?

On the night of the 29th instant, one Ogilby, lately raised to the dignity of high constable of this place, accompanied by some other supposed officers of justice, and a posse of informers and smugglers, entered the Neptune inn, with a warrant said to have been issued by Calvin May, a justice of the peace, of Philipburgh, against a person named Johnson, an Englishman, who was charged with stealing a horse and chaise in Fairfax county, New Hampshire. Proceeding to his room, they arrested him; and, having their own objects, instead of the pursuit of justice, in view, insisted upon binding him; this he resisted, but after a manly, but vain, resistance against such fearful odds, they succeeded in tying him fast. Having thus grossly and illegally abused this unfortunate stranger, instead of taking the proper and legal means of detaining him; carrying him before a magistrate, and lodging him in prison, where he might either be further dealt with according to law, or, if he could make his innocence appear, be liberated; instead of this course, which, as pretending to be executing the laws of their country, was the one they were bound to follow, they forcibly carried him off across the river: at La Prairie they ordered a carriage and horses as quickly as possible to go to Champlain in the State of New York, a stage was procured, and Johnson placed in it guarded by four men, when they drove off, and—may the devil speed those man-robbers.

This infamous piece of business will, no doubt, excite in your bosom, an indignant recollection of the similar manner in which you were used three years ago; and I sincerely hope you will

make a few more remarks on the subject. Behold the liberty we enjoy in this British colony. A high constable, and three or four petty tipstaves, who are employed as subordinate ministers of the laws, are the first to break them. Men who, it is presumed, have taken an oath to maintain the laws of the government they serve, act as if they were salaried thieftakers of another. But, to be sure, it will be said both of them, and their unofficial abettors, "What conscientious characters! how eager they are to bring offenders to justice; no doubt they are actuated by the most praiseworthy motives, altho' they may have broke their oaths, violated the laws of their country, undermined its liberties, and defied the laws of nations." Conscience indeed! and desire of bringing offenders to justice! Their conscience is measured by the gold they receive, and their love of justice, by the depth of their employers' purses.

#### PHILO-JUSTICE.

The guilt or innocence of the man who is the subject of the above, has nothing to do with the question. If guilty, it might be proper, under certain conventional circumstances, as before shewn, for him to be delivered up for trial in the country, where the offence is stated to have been committed, but this could not, consistently with international law, and the natural rights and liberties of mankind, be otherwise done than, upon a formal requisition from the State of New Hampshire; whilst in the mean time, the British authorities had undoubtedly a right, and in fact would be bound, to keep him in safe custody for a reasonable time, sufficient to allow of that requisition to be made; and he, on the other hand, would, in the mean time, as a British subject, enjoy the advantages of the habeas corpus act, and be bailed; if the circumstances of his case permitted it. If innocent, and he ought to have had an opportunity of endeavouring to shew that he was so, before a bench of magistrates; (tho' God knows the bad chance he would run before such a set of arbitrary and ignorant police-magistrates as disgrace this place;) cau there, under that supposition, be any thing more dreadfully unjust and atrocious, as well as insulting to the dignity of the crown and nation, than that a free-born British subject should be carried off, a prisoner in bonds, by a set of hired scoundrels, because an accusation is brought against him from abroad, not even, as I believe was the case in this instance, substantiated by oath before the magistrate who granted the warrant, but merely upon written depositions produced to him, by a person calling himself a sheriff of a county in a foreign state? \* It is time such acts,

\* If I am wrong in this statement, Mr. May, I hope, will set me right, and shew that he has not acted in the illegal and unjustifiable manner above stated.

which have been repeatedly committed on the borders, on both sides, should be repressed. Mr. Johnson's only way is to present a *strong memorial to the British Government*, to claim their protection, and require them to demand his being again delivered up to the civil authorities in Canada, in order to be by them dealt with according to law, and as to justice may appertain.

L. L. M.

On the 30th ultimo, I received, for the first time these six months, a *Canadien* from Quebec, being No. 25, of 9th July. It contains the article which appeared in the *Gazette Canadienne*, noticed in No. 40 of the Free Press, along with a remark on the circumstance of my having omitted to name the *Canadien*, as one of the constitutional and anti-unionist papers of Canada. Referring again to No. 45, on that subject, I beg further to say that the editor of the *Canadien* does me no more than justice in supposing that that omission was nothing more than one of those which *aut incuria fudit, aut humana parum cavit natura*. In looking to those original unlucky remarks in No. 38, that have grated the feelings of my brother-labourers in the same sacred patriotic cause, it may be perceived that I had in view the Montreal papers alone, particularly as the subject treated of, the *Charrvarri*, was one of local and temporary occurrence in this city. It was inadvertently and undesignedly that I said *Canada* instead of *Montreal*; and I beg that that construction may be put upon it by Mr. Vallérand. He will perceive that in another matter, we mutually accuse each other. He attributes to me, that, after having requested to exchange papers with him, I kept mine back for several months: whilst I, on my part, trusting that my agent at Quebec had fulfilled my instructions to send a copy always to each of the Quebec papers, viz. the *Gazette*, the *Mercury*, and the *Canadien*, accused him of the like incivility. I have hence to conclude, that amongst other negligencies and mismanagements, that part of my instructions has not been regarded, and I entreat that this apparent neglect on my part may be excused and attributed to the right cause. Latterly, suspecting irregularity, I have adopted the plan of addressing and sending by post, myself, all the copies of the Free Press I distribute in Quebec, and I hope every thing now is, and will continue to be, satisfactory to my subscribers and friends there. I have regularly and constantly received the *Mercury* in exchange; but the *Gazette*, being probably a too highminded, torified, governmental, and aristocratical, paper, to condescend to submit its immaculate columns to the audacious remarks of such a reprobate as the great folks at Quebec consider me to be, the conductors of that paper have never deigned to send me one in return. Nevertheless I shall continue to send mine to

them, merely in the way of charity, to quicken the circulation of the muddy current of their blood now and then.

L. L. M.

**SUBJECT OF THE PRETENDED BANK AT KINGSTON, continued.**

It appears however, that bad as matters were, many persons conceived them to be worse than they were, and that there were from £70 to £80,000—of the notes in circulation, without a shilling to redeem them. In consequence, Jonas Jones, Esq. a member of the assembly, considered it his duty to bring the matter forward, and have it investigated by the legislature. He was appointed chairman of the committee to examine and report; but when it appeared nothing like so bad, as had been believed, and that, upon the face of the statements presented, there was only about £19,000—in circulation, and notwithstanding the robbery of funds, (alleged to be £5884,) there would still remain more assets, provided all the debts due to the bank, were good, than would pay the public, Mr. Jones proceeded no farther in the business than giving, in the report of the committee, which very justly confined all suspicion of guilt as to the robbery, or “abstraction,” as they termed it, to the president, teller, and cashier, although very culpable remissness was attributable to the directors. Mr. Hagerman now found a favourable opportunity, in taking up the matter, to perfect the plan that seems to have been before laid for making a good job of the concern for a few already overgrown and avaricious individuals. The appointment of particular persons seems to have been the great object of intrigue, instead of the benefit of the public; and hence perhaps the carelessness and insufficiency, as well as inconsistency with existing laws, which is observable in the bill itself, none of the clauses of which seem to have been much cared for but that appointing the commissioners. But it is time to look at the bill itself, of which the following is an abstract. It is entitled

“An act vesting in the hands of certain commissioners therein named, all the stock, debts, bonds, and property of the pretended bank of Upper Canada, lately established at Kingston, for the benefit of the creditors of that institution.”

The preamble recites that “Benjamin Whitney, Smith Bartlet and others,” did in 1819, set on foot and establish a certain association under the style and title of “the president, directors, and company, of the bank of Upper Canada,” and procured subscriptions thereto “for raising a joint and transferrable stock, upon the credit whereof to issue bank bills and carry on the business of banking” at Kingston; and that the said association had stopped payment, and declared itself insolvent, “whereby a great portion of the inhabitants of this province, holding their said bills or notes, and who have taken stock in the said bank.

as well as others, have been defrauded of the same." Therefore to provide a legislative remedy for their relief, it is enacted

"That from and after the passing of this act, the Hon. G. H. Markland, John Kerby, Esq. and John Macaulay, Esq. shall be, and they are hereby appointed commissioners and trustees, to be styled the board for settling the affairs of the pretended bank of Upper Canada lately established at Kingston;" that in then, "shall be vested all the estate, both real and personal, bonds, bills, notes, and other securities, stock, rights, credits, and effects of the said institution;" that they "shall have full power and authority to ask, demand, sue for, recover, and receive, and notwithstanding a further day may be given for the payment thereof, of and from all persons whatsoever, who are indebted to the said association, or to any person or persons to its use; all the demands due or growing due thereto, and to sell or dispose of, either at private sale or public auction, all such lands, tenements, and hereditaments, goods, chattels, and effects, as may come into their hands by virtue of this act, and to apply the same, after the expenses of carrying this act into effect, in discharge of such certificates as shall be granted to persons having claims or demands," to which is added, a power of filling vacancies in the board.

Sec. 2. Enacts that, the commissioners "shall have full power and authority to hear and determine all claims and demands against the said bank, as well by the stockholders for the amount of the stock originally subscribed for, or purchased by them, whether declared forfeited by the rules of the said bank or not, and holders of the notes of the said bank," as by other creditors, and to grant "certificates of the amount so found due" bearing interest "from the date thereof," to be paid by the said board out of any monies that shall come into their hands; with a proviso that neither B. Whitney, S. Bartlet, nor any other director, officer, or stockholder shall be paid until after the certificates granted to other persons shall have been paid.

Sec. 3. Empowers the board to bring before them, by warrant or otherwise, as may be deemed most expedient, all or any of the directors and officers of the said company, and to require them to produce all the books, papers, and other documents of the said bank, to examine them, to reduce their examination to writing, and to commit them or bind them in recognizances, either alone or with sureties, for further examination; and in case of refusal to give evidence, he or they so refusing, shall stand committed to gaol, until he or they shall comply with the requisition of the board.

Sec. 4. Authorises the appointment of a clerk to the board.

Sec. 5. Board to appoint days and places of meeting.

Sec. 6. Enacts "that the said board, their clerk, and all



commissioners for taking affidavits in the court of King's Bench shall have power to administer oaths to all persons required to be examined by virtue of this act; and the pains and penalties of perjury, shall be inflicted upon persons forswearing themselves.

Sec. 7. The board are to keep an account of all notes presented to them for payment, for which they are to give certificates, cancelling the notes and keeping them until the affairs of the bank shall be fully adjusted.

Sec. 8. Is in the following words "And be it further enacted by the authority aforesaid, That, if the said board shall find it necessary to appropriate the whole, or any part of the share or shares of the profit or stock found by them to belong to the said Benjamin Whitney, Smith Bartlet, or any other officer or director, or stockholder of the said pretended bank, they, the said Benjamin Whitney, Smith Bartlet, or other officer or director, or stockholder, or their respective executors or administrators, shall and may, severally and respectively have and maintain an action or actions at law, as for money had and received, the one against the other, his executors or administrators, for any loss sustained by the party bringing such action against the other, by whose fraud, defalcation, abstraction, or misapplication of the funds of the said bank, the board aforesaid may so find it necessary to make such appropriation.

Sec. 9. Provides that "the commissioners and all such commissioners as may be appointed under and by virtue of this act" shall furnish 'annual' accounts to the legislature on the first day of every session, till the final settlement and closure of the said affairs.

Sec. 10. Declares to be *fraudulent, void and of none effect*, "all sale, conveyance or transfer whatsoever, of the private property or estates of the said Benjamin Whitney, Smith Bartlet, John William Ferguson, Christopher Alexander Hagerman, Henry Murney, John McLean, Thomas Dalton, Archibald Richmond, John Cumming, Neil McLeod, or any or either of them, heretofore made in contemplation of the insolvency or failure of the said bank, or in contemplation of evading any remedies to be provided by law for the security of the public against losses by the said institution," and that, "no sale, conveyance, or transfer, hereafter to be made by the said" above named persons, "or any or either of them, of their respective property or estates, shall be good or valid in law, till the final adjustment of the said affairs of the said bank, except with the consent of the said commissioners" by instrument under their hands and seals.

*To be continued* )

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