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THE FREE PRESS..

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Nemo enim leges legum causa salvas esse vult, sed republicæ, quod ex legibus omnes rempublicam optime putant administrari.
CICERO.

No one desires that the law shall prevail merely for the sake of the law, but for the sake of public good; since all are convinced that government can be best administered by adhering strictly to the law.

The following article of intelligence may not be uninteresting at the present juncture, to the Canadians.

Burlington, 11th Feb. 1823.

By advices from Boston, it appears that it was reported upon the authority of letters said to have been received from England, by merchants there, that orders have been given for 30,000 troops to hold themselves in readiness for embarkation early in the spring for Quebec; another account says 13,000; but that strong reinforcements are intended to be sent to the British regiments at present in Canada, appears to be certain.

It has been a source of gratified feeling to the anti unionists in Canada, to learn that the highly respectable gentlemen, whom they deputed to convey their petitions to his Majesty and the Imperial Parliament of Great Britain, were every where, in their passage through the States, treated with particular distinction, and with great respect by the constituted authorities. At Swanton, the officers of the customs, declined to examine a single package of their baggage, which was altogether rather bulky. How it is to be accounted for, may be difficult to guess, but it is certain that Mr. Stuart, and his lady,* the bearers of the petition of the unionists, experienced very different treatment, for, the searching officers, did open, and examine, all their luggage, not excepting the rolls of parchment, with their ten thousand signatures. Difficult, however, at it may be to account for this; perhaps the contrasted demeanour of the two deputations may offer a solution: the one consisting of the most urbane, and polished gentlemen, who behaved with their

**For it is said the gentleman was of too jealous a disposition to leave her behind.*

natural politeness to the Americans through whose country they passed; the other, with haughty, sour, and overbearing conduct, seeming to think he was passing through a race of inferior mortals: and the Americans have a good deal of the Jolus Bull in their tempers; they can not bear the arrogance of aristocracy, but are won by the affability of genuine gentlemen.

L. L. M.

MR. MACCULLOH,

Permit me, through the medium of the Free Press, to transmit the following letter of remonstrance to

HIS EXCELLENCY, *the Right Honourable the EARL OF DALHOUSIE.*

MY LORD,

Fortune having placed your lordship in a station too highly exalted for so humble an individual as myself to have any easy mode of communication with you, except through the public prints, I have no other opportunity of conveying to your knowledge, the real sentiments that prevail in the public mind, respecting some instances of neglect of duty, and slovenliness in the direction of weighty matters, that have occurred, in the circle immediately around you, and which the public voice can not fail to attribute to an injudicious choice of your confidential servants, or even a culpable negligence in your lordship in not seeing to the due performance of their duties

Permit me to observe, before I proceed farther, that my motive for introducing myself before your lordship and the public, is the common good; it is not on account of any individual grievance, nor does what I am going to reprehend come home to one or two alone, but to many, and to all, to the whole community; and as I am fully convinced your lordship's intentions and disposition are most virtuously and truly inclined towards the good of all, I anticipate a ready pardon for the liberty I take in addressing you.

Due attention to the spirit and letter of the law, and the impartial administration of justice, tempered with mercy, I need not say, are the surest means of giving stability to the authority of a governor, and ensuring the affection and respect of the people. You are constitutionally invested, as the representative of Majesty, with that authority, and according as the laws are justly and impartially executed, or partially and negligently enforced, will the love and esteem of the people, or their hatred and discontent, naturally and eventually prevail towards your person and government; for the laws being founded, not upon the arbitrary will of one part, but framed by the united wishes of the whole community, the administration and execution of them, although necessarily entrusted to one, ought equally to

be considered as the act of the whole, and must therefore, be in strict unison with their interests and feelings, to conciliate the regard, and secure the confidence, of the whole. It is a highly valuable political maxim in England, that "the king can do no wrong," but all measures of government, being considered to be pursued in consequence of the advice of the king's servants, his servants alone are personally responsible to the nation. But that maxim, my lord, so far from extending to the representative of Majesty in his remote provinces, is actually reversed; and the faults, negligences, and wrongs of a governor's servants, are, from the obvious situation of the case, imputed to him, and it is he, as well as they, that must be answerable for them to the people.

An instance of the same unpardonable negligence and levity as the one which has now called forth much public reprobation, occurred in July last; some slight notice of it was taken in the public papers of the day, but I need not tell your lordship that, at that time, there was no paper printed in this province, that would, or durst, make any remarks whatsoever, that might be considered as casting blame upon any one person in power, place, or even general repute. I considered too that, as it might have been a single instance of inattention, the awful consequences that might have ensued, would have served as a warning to your confidential servants, and prevented the recurrence of any thing similar.

I allude to the circumstances that the 21st of that month, being a Sunday, had been fixed on as the day until which the execution of eight condemned criminals, in the gaol of Montreal, had been respited, and that, although, it was well known that, although one or more of them might have been considered as proper objects to be made examples of, it was your lordship's gracious intention to extend the Royal clemency to some if not to all of them, yet the warrants for the execution being actually previously in the hands of the sheriff, no counter-order, no respite, was sent, no notice whatsoever was taken of them. In this instance the fortuitous inattention of those who respited the men, until a day which happened to be a Sunday, was the only chance that saved their lives; and the sheriff, most humanely, took upon himself the responsibility of not executing them, solely because Sunday was a *dies non* in law. Whether the pardons, or respites, which it was intended to grant to some of these men, had been signed by your lordship in due time, and committed to the charge of some officer of government to forward, without being forwarded; or whether, the person whose duty it was to have called your lordship's attention to the approaching execution-day of those poor wretches, had omitted to do so; is neither known, nor material; the effects were the same; the solemn march of the law was impeded; neither jus-

lice was administered nor mercy extended, and the two prime attributes of Royalty were trampled under foot

But, my lord, to the present subject. Your lordship can not but be aware, that two men, (Schuyler and Lambert,) were a short time since at Montreal, justly found guilty by an impartial jury, and condemned to suffer death for their crimes; and, if I mistake not, both these men have often violated the laws of the country, and are old offenders. When the awful sentence of death was passing upon them, the judge seriously and impressively warned them to make good use of their time, for that he could give them no expectation but that they would most certainly suffer the sentence of the law. As it is usually, and I believe, generally, the case for condemned criminals to petition His Excellency the governor, for an extension of the Royal mercy, each alledging whatever circumstances he can in extenuation of his guilt, or for the awakening of commiseration, so it was done in this case, but no answers being received, all hopes of pardon were of course extinguished; and it became high time for the unfortunate men to consider their end as fast approaching; even their coffins were prepared and sent into the gaol; even the gallows was erected; and every thing indicated that your lordship had signed their fate. The crowd had assembled to witness their execution; and thinking men, perhaps justly anticipated, that by some proper examples of severity, the frequency of crime would be diminished, and our lives and properties rendered more secure than the experience of this winter has proved they are. It was at this juncture that, most unexpectedly, the sheriff came to the criminals ward, and gave them to understand, that he could not execute them that day, as he had not received a warrant signed by your lordship's hand but merely one signed by your lordship's secretary! which he could not consider as a document sufficient to act upon.* Could any transaction be marked with more levity,

**The judgement, as well as the humanity, of the sheriff of Montreal, in this instance can not be too highly applauded.— Well and truly did he consider that, as nothing less than the king's sign manual in England; (or, where distance requires it, that of his judges, specially commissioned) can authorise the execution of any criminal, and that even a secretary of state can not give any such order; so most certainly the secretary of a provincial governor could not legally sign any warrant of execution; and there is no doubt that the secretary who did so, is in law, guilty of a high misdemeanour, nearly verging upon treason. But, my lord Dalhousie, permit me, in my own person, to add, that, with the utmost benevolence towards mankind in your soul, the good of the people you govern at your heart, and with all the best feelings and qualities of the noble-*

or carelessness, than this, on the part of those around your lordship, if not on your part also? My lord, condemned criminals have not only feelings as well as other men, and probably more acute ones too, but have also certain rights, and privileges, which, even in their degraded state, as human beings still breathing their Creator's air of life, they can not be divested of. But I know full well, that your feelings as a man, and sentiments as a christian, noble and exemplary qualities, which no one will deny appertain to your lordship, revolt at the idea of having been the cause, through official inattention, (for as beforesaid, the faults of your servants must be attributed to you,) of having tampered, and played, with the feelings of men in the dreadful situation in which these men were.

The blame of these transactions tho' in the first instance personally cast from your lordship, rebounds again to you from the reflection of your allowing such officers to be near your person, and invested with confidential situations, who are ignorant of, or inattentive to, their duties. But, my lord, the evil does not rest with the temporary disrepute into which such carelessness must bring the administration of your government; it is likewise extended to the tangible detriment of the public. You ought to be aware that these men can not now suffer legally. The law did not take its course at the time specified; and any subsequent execution would be an arbitrary exertion of power, not justified by the law.* Your lordship, it is under-

*man, the soldier, and the gentleman, you are neither a lawyer, nor a statesman; and that you appear, in this instance, to have been swayed by a military disregard of forensic, or political minutæ, which, tho' apparently trifling, lead to the worst consequences if not strictly observed; and to have set a warrant of the awful and responsible nature of the one in question, upon a par, with a field-order, or the regulation of a march, to be signed by an adjutant-general, or an *ad-de-camp*, by order of the commander in chief.*

L. L. M.

* It can not be denied that, under the circumstances both of the former case, and of the present one, execution would be absolutely *murder* in the eye of the law. It is not the execution-warrant alone, that is a justification for the sheriff, in performing his unpleasant duty, but it must be officially known to him that the criminals were found guilty, legally sentenced to death, and, if respited, respited by the proper authority, and in due form. If all these circumstances do not concur, if the chain is broken in the slightest link, or if any informality or neglect intervenes, he can not execute the supposed sentence; (for the law will never consider it as a real sentence, unless accompanied by all those essentials.) But neither the sheriff nor the governor,

stood, has respited these men now, for twelve months; and it is reasonable to suppose that you will restore them to liberty,

nor even the judges of the court, can ever reunite the links of that chain, if once broken, and make a formal, out of an informal, proceeding. Now, if no execution can legally take place under such circumstances, without its being *murder*; neither can any further imprisonment be inflicted upon the culprits, without its being *false imprisonment*, nor even a whipping, without its being *assault and battery*, in law. What therefore remains, but that the men are absolutely entitled to be unconditionally and immediately set at liberty? See here now, the consequences of the culpable negligence of government. Justice is defeated, mercy cheated of her privilege, and hardened offenders let loose upon society. It is true that in the case of the eight criminals of last year, some were kept a longer or a shorter time in confinement, some pardoned upon condition of leaving the province, and two I believe were respited for a year, and still remain, under what is essentially and truly an illegal sentence of death, in prison; and that the two criminals now in question, are respited for twelve months; yet all this, however consistent it may be with equity, is, in point of law, nothing but an arbitrary and illegal stretch of power. A case, in which the opinion of the twelve judges was given, occurred in the early part of the reign of his late Majesty, which may serve in illustration hereof. Two men, who had been convicted as ring-leaders of a riot in the eastern part of London, somewhere, I believe, about Bethnal green, or Stepney, were sentenced in the usual way, to be taken to the usual place of execution, which was then Tyburn; but the warrant for that execution, that was sent down from the secretary of state's office, specified that they were to be taken to the scene of the riot, and there to suffer their sentences. The sheriffs of London refused to obey this warrant and sent it back; the secretary of state sent it back again with peremptory orders to follow it; the sheriffs consulted the law-authorities of the city, and all were unanimous that it was illegal; during this contention, the time elapsed which had been fixed for the execution; and, although all the authority of government was exerted that the men should suffer (the case being indeed an atrocious one,) altho' it was afterwards conceded that Tyburn should be the place; and altho', a commutation of the punishment for transportation was even talked of; the opinion of the twelve judges being taken, they decided, that after the specified time, nothing whatsoever could be done to the men; and they were set at liberty. It is from recollection I relate this, and I can not even state the year when it occurred; I may be, therefore, mistaken in some of the circumstances, but the main facts are as above. L. L. M.

at the expiration of that time ; but, whether sooner or later, the consequences are, that such men being again let loose to prey on society, as they must ultimately be, not only they will, in all probability, perpetrate still greater crimes than those from the consequences of which they have thus, by chance, escaped; but other felons will be encouraged to hope for the same good luck ; and no one can be safe ; burglaries, robberies, and every species of depredation upon our property will encrease, (and in fact have most deplorably of late encreased,) so that no one can duly appreciate what may be the consequences of these lamentable and unwarrantable instances of neglect, ignorance, and mistake

I hope, my lord, you will feel convinced, that although I have been warm and strong in my language of remonstrance, my personal esteem for your lordship's excellent qualities, is not diminished by the indignation I feel for the evil that arises from having evil counsellors about you.

I have the honour to be, Mr LORD,

Your lordship's most obedient
humble servant,

Montreal, 6th Feb. 1822.

SCRUTATOR.

It is to be regretted that the speech of the Hon. John Caldwell in the Legislative Council, on the debate on the subject of the projected union, has not been made public. It is stated to have been one of the most argumentative and emphatic, that has been pronounced on that important question. It was distinguished by the faithful and gratifying picture he presented of the Canadians ; a simple but virtuous, a loyal but free, a religious but liberal, people, worthy of the confidence and protection of that empire, of which they form an important part. From the mouth of Mr. Caldwell, these sentiments come with peculiar force, being those of an enlightened and disinterested man. An union, amongst other objections, would, he conceives, give us too much connection with our southern neighbours ; a connection which would entail upon us the loss of all our moral and political virtue ; make of us, first *Bostonnois*, (and the Canadians know well the reproach that is conveyed in that term,) then rebels, and finally republicans and enemies of England.

Mr. Caldwell, along with many others, who think with him, especially his virtuous and independent coadjutors in the Council, the Hon James Cuthbert, and the Hon. Tho. Coffin, (and I mention these three gentlemen in particular, because it is remarkable that they are, as it were, representatives in the Council of the English interest, coming from the three districts of Lower Canada, Quebec, Three Rivers, and Montreal, in which their respective residencies, and properties are,) are neverthe-

less of British origin; and why do they hold so different a language from the others who have presumptuously, and insolently, because arrogantly, laid claim to the exclusive designation of *British-born subjects*, subjects of *British origin and descent*? It is because, as is well observed by the *Quebec Canadian*, "they are really British subjects, real Englishmen, as we are, Englishmen in heart and in spirit, and not like those who usurp the name of British, AN HONOURABLE NAME WHICH THEY DISHONOUR!"

Of a like stamp with those *usurpers of an honourable name which they dishonour*, appears to be one Col. Robert Nichol, of the House of Assembly in Upper Canada, who breathes sentiments worthy of the most slavish and abject reptile that ever licked the foot of tyranny. It is, such men that the government at home ought to mistrust. It is not His Majesty King George the IV, nor the Imperial Parliament of Britain, nor the English constitution, these men love and venerate; but it is only "the powers that be" Equal to them a king, a president, an emperor, or a proconsul; equal to them, a parliament, a congress, or a secret tribunal; equal Britain, or France, or America: provided they have place and power, provided they can domineer, and monopolize, provided they, the men of property, no matter how acquired, may be allowed the right of governing, "the worthless mob of vagrants," who happen not to be possessed of £500 sterling. On the debate in the provincial Assembly of Upper Canada, Mr. Nichol displayed, along with a despotic disposition to carry a question *per fas aut nefas*, and a total disregard of common decency, the utmost ignorance of common sense, parliamentary usage, and constitutional principles. A committee on the subject of increasing the representation, being appointed, it was moved to make an addition to the number, because those who had been named were known to be favourable to the union; which Mr. N. opposed because, *if an equal number of gentlemen of opposite feelings, were on the committee, no report could be expressed.* To be sure, what can he be expected to know of the usage of the House of Commons in England? but I will tell him, that not only that invariable usage, but also common sense, dictates that committees upon questions that are expected to breed divided opinions must have men of opposite feelings and sentiment in them, or else their report is not the report of a committee, but the report of a party.

(To be continued.)