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THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 24th JULY, 1823. [No. 41.

' You've offer'd, sir, a base unworthy thing,
Unworthy of yourself, your ancestors and Thebes :
You're in a state where laws and justice reign,
And yet you think to do whate'er you please,
And carry all before you, without regard
To piety or manners."

BARNES'S fragm. *Euripides.*

— *Mensuraque juris*

Vis erat —

LUGAN.

The law was meted out by brutal force.

TO THE EDITOR OF THE FREE PRESS.

Montreal, 12th July, 1823.

SIR,

There is a report currently circulating, and generally believed, that my lord Dalhousie, has, through the medium of our magistrates, caused it to be intimated to the persons who have lately fled from Montreal, in consequence of the verdict of *murder* brought against them by a coroner's jury, that it is advisable they should return to Montreal, and take their trials; with the understanding, and in fact with a positive promise, that when taken up on their return they shall be *immediately admitted to bail*; and, if they should happen to be found guilty by a jury of their country, his lordship will use his influence in their favour. These are stated to be the very words, and if true, it amounts to a Royal pardon without a trial! for since it is only at a Court of Oyer and Terminer they can be tried, (the Court of King's Bench for criminal cases, as you know, having remained, most inexcusably and unconstitutionally, suspended, for the last three years.) the governor must sanction every decision, of the Court and Jury, before any judgement can be carried into execution. But, although this is not a whispered report, but one broadly and roundly asserted to be the fact by those who are supposed to know all that goes forward in the state-machine, I can not persuade myself to believe it. I have too high an opinion of the noble earl, to think he would so far deviate from the line of his duty, so far abuse the sacred prerogative of the Royal mercy, which is entrusted to him, as to promise indemnity beforehand, for a crime, which, in the first instance, is

one of the blackest dye, however it may, on a fair and impartial trial be palliated, or reduced to manslaughter; to pledge himself to pardon a deed, before he can possibly know, either the circumstances of deep criminality that may, perhaps, attach to it, or those which may be adduced in its extenuation or justification.

We should sooner think of his lordship's making a demand for the fugitives to be delivered up by the country, whither they have fled for refuge. This would seem to be more consonant with
JUS FICE.

I give the above letter publication, although I can not believe the report, in order that the very existence of such a rumour may cause his excellency to reflect that it could not be in circulation were not some of his former acts, as well as the general tenor of his public language, such as to make men think him inclined to consider his authority as *above the law*. It is the worst error a governor can fall into.

The admission of persons, accused of murder, to *bail*, is certainly within the competency of the judiciary, but it must be only in such cases, where very slight grounds of suspicion exist; and I do not think that, after a verdict of wilful murder has been brought in, by a coroner's jury, any bail whatsoever, can be taken. As to the taking bail at all in Canada, in criminal cases, I have before shewn it is a childish farce, for which the judges the courts, and the magistrates, ought to be ashamed; and in the case alluded to, would be trusting solely to the word of the parties, to appear to take their trials.

The suggestion in the last part of this letter, as to the governor's making a demand from the government of the country to which the parties have fled, leads me to observe that the relative rights and situations of the two countries, with reference to the taking of offenders in each other's territory, and the requisitions that may be made for the purpose of their being delivered up, seem to be little understood, either in Canada, or the neighbouring States. It is a subject which comes home to the feelings and experience of the writer of this work, and induces him, in illustration of it, to give the following extract from a memorial presented to the American government, in January 1822, in virtue of which, and of his anterior representations, he was liberated, in May following, from the unjust and rigorous imprisonment he had endured, as all the Canadian world knows, in that "living grave," the gaol of Montreal.

Alluding to some occurrences with regard to frauds committed in New-York, the parties to which, who had taken refuge in Canada, had been required by the government of that State to be given up, and had been given up in consequence, a case which had been supposed to bear upon the one in question; it is added:

"But the broad, main, and wide difference between these cases and mine is, that those men were not given up, except upon a requisition from the State whose laws they were alleged to have offended, application was made in a decorous manner, in such a manner as, in acknowledging the jurisdiction of the State in whose territory the offenders were found, *requested that as a favour, which could not be claimed as a right*; whilst, in my case, I was fraudulently, and by force, taken in the heart, as it were, of the American territory, and carried off, in the darkness of night, by a party of marauders from Canada, without any application to any government any acknowledgement of any jurisdiction, or any consideration of what was due from one nation to the other.

"In what has been published on this subject, reference has been made to the twenty seventh article of the treaty of 1795, between America and Great Britain, but without reflecting that, by that treaty, that article, amongst others, was, by the 28th article, limited in its duration to twelve years, and consequently that, by that treaty, the stipulation of delivering up to each other, persons supposed to be fugitives from justice, was considered, by both governments, as a mutual, temporary, contract and provision, and, by no means, as has been contended, an article declaratory of an established maxim of international law.

"The delivery up, upon requisition, of the subjects of one state, accused of crimes, by another, in whose territories they may have taken refuge, is considered by *Grotius*, (*Book II, ch. 21, sect 4, 5, 6,*) *Puffendorf*, (*Book VIII, ch. 6, sect 12,*) and *Vattel*, (*Book 1, ch. 14, sect 232 233,*) the three luminaries by whom the present acknowledged law of nations is guided, as a matter of duty, on the part of the State to which they may have fled, but that duty they also confine to the delivering up alone of criminals, who, by their atrocious acts, have made themselves enemies of human kind; and, poisoners, murderers, incendiaries, and pirates, are alone specified as coming within the scope of that obligation. But, as, in the words of *Ward on the law of Nations*, (*Vol. II. p 319.*) "The right of protecting all who may come within the bounds of an independent community, has been always held one of the most valuable prerogatives of sovereignty, and any invasion of it has been strenuously contested," so, minor offences have never been held to prevent those who are accused of them, from taking refuge, and receiving protection, in a foreign state, nor have such ever been, *de jure*, deliverable, but only in case there be an express convention between the states for that purpose. For it is obvious, that, as different communities look upon similar acts in various lights, and what is a heavy crime in one country, is perhaps none in another, or considered as a light offence, and subject to a proportionate light punishment, so it would be the height of injustice and cru-

elty, to deliver up to a severe, perhaps to a fatal, punishment, such as, in the estimation of the citizens of that state, with whom they seek to identify themselves, are but venial offenders — This argument might be carried to a great length, and illustrated by a variety of supposed cases; I will only adduce one.— A man who has stolen a single sheep, the punishment of which, I believe, in no state of the Union, exceeds six months imprisonment, is necessarily subjected, in this country, to the sentence of death. Could it, by possibility, be consistent with humanity, with Christianity, nay, with national policy, deliver up a man as a victim to the sanguinary laws of a neighbouring barbarous country, who, according to the principles of that in which he has found refuge, has only committed such an offence as may be expiated by a short incarceration, after which he may become an useful, perhaps a valuable, member of the society to which he is restored. Forgery stands in a similar predicament. That offence, although, from the modern introduction of a paper currency, as a circulating medium, it has become a high political crime, can not, in any sense, be said to be a greater moral crime than fraud. Both in the States, and under the British law, it is, however, severely visited, but, nevertheless, very dissimilarly; death being the invariable and unavoidable sentence here, and imprisonment for a protracted period, there. Now, supposing that I had been guilty of forgery, than which no infamously false charge was ever made, and even had I been formally required to have been given up by this government, instead of having been kidnapped, as I was, I contend that it would not have become the government of the United States to have complied with the requisition. Moreover, it is held and, in my opinion, most justly, by *Barbeyrac*, the learned commentator on *Grotius*, (*Book II, ch. 21, sect. 4, note 1.*) that no one, not even such atrocious malefactors as all writers on the subject agree ought to be given up upon requisition, should be delivered over, *unless their crime be proven* — it is not mere accusation that is required, but proof of crime. I am ready to allow that this proof need not be such as is required upon a trial, but such *prima facie* proof, in the nature of that which is laid before a grand jury, as will warrant so sufficient a presumption of the guilt of the party that he ought to be put upon his defence.”

I will only add, that in a recent case, an attempt to take by force three British deserters, who were at *Champlain Landing*, in the state of New-York, and who were stated to have been also guilty of theft, and the stolen property found upon them; was resisted and resented by the inhabitants of that place, who appear to have had a more just sense of the inviolability of a sovereign territory, and the respect due to the jurisdiction of a foreign state, than the British officer who sanctioned the pursuit,

of the fugitives, by a serjeant, and three soldiers. The serjeant and his men were very roughly handled; the former made his escape, but the three soldiers were sent to prison at Plattsburgh, upon a charge of riot: no bill of indictment, however, was found against them, and they have been sent back to the Isles-aux-Noix. Had a proper and peaceable requisition been made to the magistrates, it is probable the men would have been given up, but the attempt to take them by force, was as impolitic, as it smacks of a propensity towards military despotism, that ought to be jealously looked to by the people in Canada.

L. L. M.

Montreal, July 7th, 1823.

MR. MACCULLOH,

As you have, with your accustomed liberality, admitted a *rejoinder* from A FRIEND TO TRUTH, into the Free Press, addressed to me, relative to the Montreal General Hospital, which I consider demands my re-appearance, I therefore move for leave to file a *sur-rejoinder*, on or before the 24th instant.

PHINEAS.

TO A FRIEND TO TRUTH:

You accuse me of want of forethought in attempting the justification of the Medical Boards of this province, in the first *count* of your *rejoinder*. You will find it distinctly stated in my *replication* to your *plea*, that I did not intend espousing their cause farther than might be consistent so to do, upon *general principles*; and, my dear sir, have I deviated from that rule? examine my *exhibits* candidly, and you will find that I have not. In the next place, you tell me that I have "thoughtlessly divulged my intentions." Was it so, think you? or, did I not rather do it deliberately? In default of more substantial reasoning, and as a last subterfuge, you now come tilting along, screened, as you doubtless suppose, under the very specious garb of a *Friend to Truth*, and with all the subtlety and hardihood of a man determined against conviction. tell me, I have asserted a falsehood. As my worthy friend, Mr. Macculloh, has satisfied you upon that point,* I shall only, by way of retort courteous, beg leave to assure you that I am completely confirmed in my opinion, that you are one of those discarded candidates for the profession, who forget to get their lesson *even*

* PHINEAS is mistaken here. My explanation only went to my belief that he did not belong to the hospital, and that therefore A FRIEND TO TRUTH was wrong in identifying him with those he called his coadjutors. But the falsehood which A FRIEND TO TRUTH, attributed to Phineas, was, where he called that *slander*, which his adversary contends is *nothing but the truth*.

L. L. M.

parrot like, and received the Irishman's hint to make yourself scarce; or, to use a word, you played upon so dexterously, was honoured with the gentle "kick" of disapprobation from the board of examiners.

In the next bolt you are pleased to make, you refer me to a preceding communication, under another signature, (for in fact it seems that you do not want for names, any more than a hydræ does for heads,) relative to the same subject; to discuss the merits of which, would necessarily prolong the present to an unpardonable length, and which, as it is pointed at particular individuals with whom I neither have, nor desire, any intercourse, I shall only take the liberty of asking you, where you discovered the idea contained in the concluding-paragraph? (See the communication here alluded to, in No 37, p 293, and one on the same subject in No. 23, p. 102.)

As to the "much injured Quebeckers," if what you have stated respecting them be correct, I would be the very last man who would attempt their justification, nay, I would readily join in a petition to have a free and speedy passport granted them to Botany-Bay. Still you have, most unintentionally paid a high compliment to our Montrealers. You have, very obligingly proposed a series of interrogations for me to put to my "coadjutors," as you style them. In return I would be obliged to you for the address of your last year's agent; for I can assure you that it was not *me*. You say that to call things or persons by their right names, "would be to expose and injure the persons to whom you alluded." This passes my comprehension; and I should conceive it an insult to the understanding of any one, to endeavour to convince him that nicknaming a person, and insinuating that he has been guilty of this or that offence, is not "injuring" him.*

Towards the conclusion of your most logical epistle, I find

* Here Phineas is again wrong, and has not understood his antagonist at all. The exposure of the names of the persons alluded to, has relation to the names of those candidates, who A FRIEND TO TRUTH maintains were improperly admitted to the profession; and has no bearing whatever upon the persons composing the board of examiners, whose cause Phineas espouses, and with respect to whom A FRIEND TO TRUTH does not seem to feel any delicacy; as, though they are not named, they are easily recognizable, besides being known as such by the official announcement of their appointment. Nor is there any "nicknaming" in the whole of these communications, excepting the honourable Mr. *Busybody* whose picture was so-like, that I did not think it necessary to add, as I do now, that it was meant for "the honourable John Richardson." L. L. M.

you inclined to sympathise with those poor unfortunate creatures vulgarly styled "mumskulls."

"For kindred souls a kindred passion feels."

I admire your magnanimity, but heartily do I despise the principles of it. A "quack" is indeed an object of pity; but much more compassionate is the situation of a man, languishing upon a bed of sickness and disease, who is tormented by a despicable charlatan; and all because, according to your spurious reasoning, forsooth, he is a miserable, ignorant, wight, and must have a living!

You assert that I am anxious of "interesting the public in behalf of myself and associates," by insinuating that you desire to injure the reputation of the founders and promoters of the hospital. Seriously now, sir, have you not endeavoured to bring obloquy and disgrace upon them, by censuring their judgments in electing the overseers and officers? As well might you meet a man in the street, and, after knocking him down with your cane, say to him, "why, sir, I beg your pardon, I had no intention of injuring you; I only did it for the good of the public!"*

I shall now have done with you for the present, and subscribe myself,
Your most obedient

PHINEAS.

The metaphor here used of a man knocking another down in the street with his cane, and afterwards telling him he did it for the good of the public, is the precise case of a libel, prosecuted by indictment; the defendant has only in that case to prove that it actually was "for the good of the public," and he must be acquitted, without reference to the injury sustained by the other. Prosecution for a libel by a civil suit for recovery of damages is a very different thing. I have endeavoured to set this question, in a new, and I trust a clear and convincing, light in another place. (See Scribbler, Nos. 82, 97, 99, 103, 105 and 106.)

L. L. M.

* I trust the learned counsellor from whom I have borrowed this metaphor, and who very ingeniously introduced it in a late case, (T vs B. et. al.) to the no small amusement of a crowded court, will excuse me for so doing.

PHINEAS.

PUFF GOVERNMENTAL AND JURIDICAL!!!

Quebec, July 7.

A correspondent in Sherbrooke writes the following under date of July 2nd:

"It is with great pleasure I announce the arrival in this place of Mr. Justice Fletcher to organize the Court lately constituted."

by the legislature in the district of St Francis. From the well known talents, knowledge of law, and the scientific and useful acquirements of this gentleman, we entertain a confident expectation that the developement of the great natural advantages of the townships will receive stimulus,* and that the public at large, and the people of this country in particular, will derive as much benefit from that gentleman's influence in the diffusion of useful information as from his upright, effectual and advantageous administration of justice.—*Quebec Gazette.*

No one ever cries "stinking fish."

An Enquiry into the right of the crown to a monopoly of coals and minerals in Nova Scotia is announced to be published by John Lawson, Esq. barrister at law. In like manner the reservations that are made in the grants given in this province of lands, in free and common soccage, of mines, and minerals, and in some instances of timber fit for naval purposes ought to be made a matter of serious enquiry. I do not think the crown has such a right; considering the lands the king grants in these colonies, to be held by him not as his property, but in trust for the nation; and, by having the power to reserve to himself all mines and minerals, the crown might become possessed of a revenue, and accumulate a treasure, actually belonging to the nation, over which the nation would have no controul; a contingency that is always endeavored to be jealously guarded against by the principles of our constitution. Upon similar grounds I am inclined also to contend that the crown has no right to lease the King's domain, so called, on the north shore of the St. Lawrence, under the denomination of the King's posts; the injurious nature of which leases, and the monopolies that are encouraged and authorized by them, incalculably retard the settlement, commerce, and prosperity of a most extended line of coast, and an almost boundless extent of interior country. This is one of the questions I have long been wishful to enter upon; but, from the abundance of other arrears of matter, I must defer it, *sine die.*

* The learned justice, being himself a good judge of a stimulus, and there being plenty of potatoe-whiskey distilled in the townships, no doubt will find himself quite at home in his Inferior District.

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