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THE FREE PRESS.

VOL. I.] MONTREAL, THURSDAY, 13th MARCH, 1823. [No. 21.]

—*Libertas ultima mundi*
Quo steterit ferienda loco.

LUCAN.

'Twas there at freedom's self the blow was aim'd,
When by the power of arbitrary will,
The press was curb'd, and none stood forth to save it.

LIBERTY OF THE PRESS.

(*Subject continued from last No.*)

Speaking of the duties of an editor, it is added in the *Times* ; "But, if, after all the fastidiousness of the public in respect to the abilities of the person whom they honour with their approbation, he is too much a coward to speak the truth when it comes within the scope of his duty, of what avail is it that he has natural powers and acquirements, which he suffers, through slavish fear, to lay (lie) dormant, when they might be exerted for the benefit of those who encourage him, and who, in return, expect that their interests will meet his attention, and call forth his talents in their behalf. If an editor deserts the stand he has taken in defence of any known right, because there is danger attached to the maintaining of it, he deserves to be deserted. As for ourselves, our determination is to speak *the truth*, and the whole truth : it may not be relished by those who would rather have falsehood prosper, but the majority, we flatter ourselves, will still remain on our side."

These are sentiments becoming every English editor, and it is sincerely to be hoped that, even when the ardour of youth abates, in the gentleman who is understood to take upon himself the literary department of that paper, he will not offer sacrifice to the idols of expediency, private interest, lucre, and worldly prudence : false gods to whom, before this eventful period, all the editors of papers in Canada were accustomed to bow down their time serving heads. If these sentiments are real, I am convinced that, had the *Canadian Times* been in existence at the period of the flagrant attack upon the liberty of the press, which I experienced last summer, in my quality as editor of the *Scribbler*, its editor would have taken up my cause, as the cause of every editor of every paper in every British North American colony. None, however, at that time, ventured into the arena, excepting the distant editors of

the York Observer, and Niagara Gleaner, who each threw down a glove in my favour, as recorded in No. 74 of the Scribbler.

All the others seemed insensible to the danger they themselves ran, (should they ever be taken with a fit of independence,) of being liable to the same arbitrary controul which was exercised towards my book by the deputy-post-master-general, at Quebec. Mindless that

Proximus a tectis ignis defenditur ægre,

they thought perhaps that the partywalls of their own servility and timidity, would secure them from the conflagration, without reflecting that when despotism and tyranny get ahead, they are like the devouring element, and will level the bold and the fearful, the honest patriot, and the cringing flatterer, in one black and indiscriminate ruin.

It is necessary that I should now briefly state the circumstances of the grievance of which I had to complain; then expatiate upon the shameful and unconstitutional nature of the conduct pursued in order to stop the publication of my work, and the consequences to be apprehended from it by the public; and conclude with the recommendation of such measures as I conceive would be most efficacious in preventing in future such outrages upon the LIBERTY OF THE PRESS, and the rights and privileges of individuals.

As usual with the editors of papers in Canada, upon setting up the Scribbler, understanding that the regulations of the post-office in British North-America, did not admit of printed papers going free of postage as they do at home, under the act of 4 Geo III. c. 24,* I addressed the deputy-post-master-general at Quebec, enquiring at what rate per annum I should be

* According to the strict letter of that act they could not be conveyed free of postage in Canada, unless directed to some member of the British Parliament at any place whereof he shall have given notice in writing to the post-master-general; but such notice is always dispensed with at home, and papers directed to any M. P. to any place where he never was, go free under this form,

Wm. Smith, Esq.
M. P.

Mr. J. Thompson,
Carlisle.

which is an evident subterfuge, which the general post-office have authorised, in order to give facility to the circulation of papers; and the strict attention to the letter of the act in Can-

charged for the Scribbler in lieu of postage. His reply fixed it at 2s. Halifax per annum, for each subscriber that received it through the post-office, payable quarterly at the post-office in Montreal, and a copy to himself gratis, as a perquisite of his office. So it continued for a year, and I paid the postage quarterly. When I increased the size of the work, the postmaster at Montreal intimated to me, on behalf of Mr. Sutherland, that the postage must be doubled; I wrote him in reply, that I should agree to it, and they continued to go through the post as usual, until the 19th of September last, in the middle of a quarter, (the preceding quarter having been paid for) when Mr. Sutherland, without giving any notice, or assigning any reason beyond writing to Mr. Williams, that it was a diabolical work, ordered him to stop it from going through the post-office at Montreal, and sent simultaneous and similar orders to all the postmasters, throughout British North-America. He has moreover threatened to dismiss from their situations any person concerned with the post-office, who should correspond with me, or do any thing towards distributing the work; and has caused it to be intimated to all stage-drivers, and proprietors, and contractors for carrying the mails, that he will not suffer them to be employed in the public service, if they even take charge of a packet, in which they have reason to suspect there are any Scribblers; such Scribblers as were found in the post offices throughout Canada, were directed to be sent to him

ada, to the prejudice of the freedom of the press, is strongly contrasted with the liberal mode in which the general post-office in London conduct this and every branch of their immediate department. But that act, in its first section, allows all letters to go free that are directed to the deputies of the post-master-general, and under that it is, that the postmasters in Canada are free of postage; now, if there had been any wish to accommodate the public, or act up to the spirit of the regulation for papers to go free, by adopting the plan of causing all papers to be addressed to the post-masters of the different places, for such and such persons, the object might have been attained, without any infringement even of the letter of the law, and under the sanction of the example at home, as above specified, of the mode in which papers are addressed to members of parliament. Some have thought that the words "any member of our provincial parliament, but that is not my opinion; however, I conceive that it would be competent for our legislature to resolve, that it is expedient such should be the interpretation of the act in Canada, and to petition government to direct the general post-office in London to give instructions accordingly.

at Quebec, where no doubt he has a large hoard of *my property*; and under his directions, parcels have been opened that were not in the mail, and because they contained Scribblers, refused to be delivered to the persons to whom they were directed.— Such as have been sent in from the States, where it is known the work is printed, in the same way and form as all other papers come in, have shared the same fate. Latterly, in order to put the matter in the most glaring point of view, and since the legislature has been in session at Quebec, I have sent in by post, the six copies which the House of Assembly themselves take of the Scribbler, and copies also to such individual members of the Legislative and Executive Councils, and of the House of Assembly, as are subscribers to the work, in order that, if Mr. Sutherland refused to deliver them, and detained them at the post-office, the matter might be the more notorious, and taken up both as an infraction of public right, and a breach of the privileges, both of those honourable bodies, and of the individuals as members of them: whilst if he offers to deliver them upon payment of the full letter-postage upon them, I should conceive he would subject himself to an action for extortion.

Thus far as to the facts of the case: and now I would ask whether, if such power can, by construction, be supposed to be vested in the deputy-post-master-general, it is not a power of an arbitrary, unconstitutional, and oppressive nature, such as in no country ought to exist? If the statutes under which he acts do not either provide for the free conveyance of papers, or stipulate what precise charge shall be made for them, yet they can not, with any degree of consistency or propriety, be supposed to admit of his using his own individual will, in either franking them entirely, or prohibiting them entirely. If they are to be considered in the same light as letters, he is equally departing from the line of his duty, as prescribed by act of parliament, whether he lets them go at an under rate, or overcharges them. Setting aside the actual agreement he was under with me, he would have as much right to say, I will not forward letters through the post-office, for A. or B., against whom I have a pique; as to say I will not let such a paper go through the post-office on the same terms as others, or on any terms at all, because I do not approve of it. Nay it is worse with regard to papers; the injury in the instance of the letters, would be merely an injury done to the individuals; but the stoppage of a paper is an injury done to all the readers of it, and to the public; so might he stop the Free Press, or the Canadian Spectator, or the Upper Canada Herald, because he did not approve of the line of politics they have adopted; so might he stop the Albion, or the Spectator, from New-York, the Commercial Gazette from Boston, or any other paper from the

States, because a paragraph might have appeared in them reflecting upon the colour of his cat's tail. Setting aside the injury done to me individually, nay the injury he does to the post-office revenue, by refusing to take my money, he has thereby also presumed to dictate to a numerous body of the most respectable and intelligent inhabitants of Canada, what they shall, and what they shall not, read; to debar them from expending their money in the way they think proper; to abridge them of their rights and privileges of free subjects under a free government. And who is he? He is not a member of that government, not invested with either any judicial or ministerial power, in his quality as deputy post-master-general, he is merely the servant of the king's servants, in one of his Majesty's financial departments, And he it is, one individual alone, who thus has presumed to curb the freedom of the press, and destroy the liberty of individual opinion, and of individual discussion. He has taken upon himself what the king in council would not have dared to do; he has attempted to set himself up as a Licensor of the press, and to declare that, without his imprimatur, His Majesty's Canadian subjects shall not read, either a domestic or foreign essay. He has constituted himself an Inquisitor into what books shall be committed to the flames, or what suffered to go forth to the public; a Legislator to make laws for what passes through the press; a Star-chamber Minion to stamp with his permit, or stigmatise with his censure, the writings of all men; he has encroached upon the office of the Attorney-General, and has tyed, as it were, an *ex-officio* information against my work; he has set himself up as an Examiner and Dictator, without appeal, not only of what has issued, but of what is still to issue from the press, a Detector of unborn libels, an Infant murderer of embryo lampoons; nay he has assumed the Critic's chair, and pretends to be a Judge and Reviewer, by anticipation, of literary productions, that he has probably neither the brains to understand, nor the judgement to appreciate. I do not hesitate saying all this, though the consequence may be that he will equally stop the Free Press from going through the post office, (for which I have paid a composition in lieu of postage, for the first quarter,) because if he does so, he will be flying the more in the face of the public, acting more notoriously as an oppressor of the liberty of the press; and he will the sooner compel an alteration of the system; for if he does so with regard to this *political* paper, where is the honourable subscriber to it, amongst the truly English-hearted Canadians, who will not, with English indignation, loudly exclaim against the insolent abridgement of his rights which such a measure would be? and where is the honest editor, of any paper in any of these provinces, nay where is the *interested* editor, that will not see and feel how near he himself is to the verge of the precipice? and that should some

unlucky line offend the bashaw at the head of the post-office
then, like Shakespeare's Death in Richard the II,

— within the *paper crown*

That rounds the mortal temples of an editor,
Keeps *Ho his court*; and there the antic sits,
Allowing him a breath, a little scene—

— and, humour'd thus,

Comes at the last, and with a little *pen*
Bores thro' his *paper wall*, and—farewell editor.

As was properly observed in the extract from the Montreal Gazette in my last number, the liberty of the press does not consist in freedom from censure for any criminal matter that may be published, but in no *previous restraint* being laid upon *publication*. But to stop papers from being sent through the post-office is a *previous restraint*, for the time of their *publication*, in those places where they are not printed and distributed by hand, is the time when they are delivered from the post office, and to stop that delivery, is to lay a *previous restraint upon their publication*. That such a power in the hands of a post-master is virtually the power of a licenser of public papers, can not be denied; and it was farther most judiciously added in the same paper that "to subject the press to the restrictive power of a licenser, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and irrevocable judge of all controverted points in learning, religion, and government." Why, the holy fathers of the inquisition constitute a more equitable and proper tribunal there there are many heads, many voices, all supposed to be upright men, however bigoted in matters of religion; but here is only one head, one voice, and that the head and the voice of a servant of servants, whose office, though he must be "a man of letters," does not require him to be "a literary man." I would next ask, whether, in the words before quoted from the Canadian Times, the grievance of which I complain is not "an encroachment upon the unalienable rights of the press, in a free country, and an indication of tyranny which can not be mistaken, being a distinct attack upon the rights of the community." Alas, when the editor of the last mentioned paper, alluding to his own individual case, said, "it is to be hoped that in this country, there never will exist a power by which the press shall be debarred from the exercise of its proper functions," he saw Scylla before him, but did not see the Charybdis behind; he did not recollect that

Dextrum Sylla latus laevum implacata Charybdis

Obsidit—

and that though the sergeant at arms, might be avoided by dexterous management, not ing can stop the whirlpool of the implacable veto of the deputy-post-master-general, should he be

inclined to exercise again the authority he has assumed in my case. He did not perceive that, if such a power as Mr. Sutherland has arrogated to himself be allowed, that *then there does now exist in this country a power by which the press may be, and has been, debarred from the exercise of its proper functions; a power by which a restraint is laid upon the press previous to publication, and by which every printed paper that comes into the country from a foreign country, is liable to be intercepted, embezzled, and proscribed.*

But, although the shackles that it is in the power of government, by placing a puppet or tool of their own at the head of the post-office department in Canada, to throw upon the liberty of the press here, form the heaviest objection against such a system; and call, particularly at this juncture, most loudly for the reformation of the abuses which that system has produced; there is another part, of the post-office system that is highly deserving of public attention, requires thorough investigation, and calls for remedy. I mean the consideration of it as the means of levying an internal tax upon the inhabitants of Canada, contrary to the spirit of the declaratory act of 31 Geo III. c. 31, which is a tax, that can not be assimilated to the "duties expedient for the regulation of commerce;" and of which even, if it were, the net produce would be applicable alone to the use of the provinces in which it is levied, instead of being remitted annually to England, and there disposed of, along with the remainder of the post-office revenue, in payments, and for purposes wholly foreign to the colonies. This part of the question, as well as some remedial suggestions, I must defer till my next number.

L. L. M.

(To be continued.)

Resuming, from No. 19, the subject of the mode in which the famous projected Union-bill got into parliament, at length came to be said to be a measure originating with ministers, and now one that they were, on the 23d Dec. (before they could know the universal voice against it of the people here,) resolved to bring forward at an early period of the session of parliament, and to support it in full force; I must, in order to combat the inferences that have been drawn from Mr. Robinson's dispatches, that it was, even before his arrival in England, a favourite measure with government, narrate some further part of its backstairs progress to the table of the House of Commons.—When the London mercantile houses formerly mentioned, found the facility with which they could manœuvre parliament into the adoption of the fur-trade bill, one calculated solely for their individual benefit, and most hurtful and oppressive as relates to the interests of the Canadas, they were encouraged to

proceed upon the suggestions of their correspondents here, the Hon. John Richardson, and others of the Scotch faction, to sound Lord Bathurst and his colleagues, (already nonplussed by the persevering patriotism of the House of Assembly of Lower Canada, in not granting the civil list in a lump and for life,) in the manner mentioned; but it was not, I believe, till April, some time after the arrival of Mr. Robinson, that either the heads of their plan were communicated to, or acquiesced in by ministers. It is evident from the interview Mr. R. relates he had on the 4th of April, at the colonial office, and where Mr. Caldwell, the receiver-general, and Mr. Marshall, the solicitor-general, were present, that, at that time, no union was contemplated, but only an act for the adjustment of the differences between the two provinces. The presence of Mr. Robinson in London, made the Machiavels of Mark and Suffolk-lanes more anxious, vigilant, and pushing; and it was, if my information is right, between the 10th and 15th of April, that a paper, was copied out from a rough draft in several hand-writings, by a clerk in the counting house of Inglis Ellice & Co. and transmitted to Lord Bathurst, or his secretary, as the proposed heads of a plan for an union that would be highly desirable to the whole of the inhabitants of Lower and Upper Canada.

It was only after this that, the conferences were held at the colonial office, of which Mr. Robinson speaks, at which the legislative union of the two provinces was proposed and discussed; and that he gave his argumentative, and unambiguous opinion to ministers of the inexpediency of it; and, Mr. R. not having that personal knowledge that could authorise him to contradict the artful and false representations that were made to ministers of the favourable dispositions and desires of the entire population of Lower Canada for the union; ministry, finding it recommended by the London merchants who were supposed to know most of the matter, not having an opportunity of hearing the opinion of any agent for the province on the subject, and prepossessed in its favour, on account of the prospect it gave of increased patronage, and funds, at the disposal of the crown, determined upon allowing the measure to be introduced, and to support and sanction it as their own. If any one can give a more authentic account of the *Birth, Parentage and Education* of the Union, I hope he will; and that I shall soon be able to tack to it, a narrative of its *last dying speech, confession and Execution.*

L. L. M.