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THE FREE PRESS.

VOL. I] MONTREAL, THURSDAY, 21st. AUG. 1823. [No. 45:

Tell the bleak fury what new projects rain
Among the homicides of Warwick-lane!*
And what th' event, unless she strait inclines,
To blast their hopes, and baffle their designs."

GARTH.

Multa nascuntur in populis quæ non magis legis nomen attingunt, quam si latrones aliquo concessu suo sanxerint.

CICERO.

Public assemblies have often done those things, which no more deserve the name of laws, than if they had been enacted by a set of outlaws,

FOR THE FREE PRESS.

1st August 1823.

"A writer who builds his arguments upon facts is not easily to be confuted. He is not to be answered by general assertion, or general reproach. He may want eloquence to amuse and persuade, but, speaking truth, he must always convince."

PHILO-JUNIUS.

MR. EDITOR,

If Phineas is not a young man, his conduct, however, savours greatly of all the petulance and flippancy of youth. That he is not of the Montreal Hospital, I now readily believe: but, in the name of common sense, what could have induced him to enter into the defence of a cause, of whose merits he is totally ignorant.

The cause, he would have befriended, and those interested in it, may thank him if I have come to the determination of prosecuting this discussion much farther than I had, at first, intended. By which he will find, and the Esculapians have, no doubt, already experienced, that his indulging this wayward disposition of his, has done them more injury than any malevolence of mine could have done.

Having no answer to make to my interrogations, Phineas should, as the hospital gentlemen, have kept silence. The latter, consoling themselves, as they, no doubt, do, that the world

* It may be necessary to explain to mere Canadian readers, that the college of physicians in London, where candidates are examined, and licenses issued, is in Warwick-lane.

will think this apparent meekness of theirs, proceeds from contrition, and that they are thus rendering themselves, in some degree, deserving my indulgence and forbearance. But no, some reply, one way or another, must be made; and this valiant volunteer has done it most cleverly. Jumping and skipping about like a cat upon hot bricks, touching but lightly here and there, lest he should burn his paws! Since this is the case, Mr. Editor, with your permission, the consideration of this subject shall not stop here; and, in truth, since I have broached this important topic, I do not know if the public has not a right to demand from me all the information I possess concerning it. In Canada we do not want for dangerous precedents, which are but too often followed up; and this hospital-business will be added to the list, if it does not, in time, meet with that censure and reprobation which its evil tendency certainly deserves.

I again repeat that I attacked the hospital gentry, as public characters alone; with their private conduct I have nothing to do, so far as it does not interfere with their official capacity; for, God knows, we have all sins enough already revealed to the world, without exercising our ingenuity in bringing to light those foibles which should, as much as possible, be hidden from the glare of day, if from their exposure no good can be derived to society. In the conclusion of my last paper I thought I had distinctly said, how averse I was to injure any "worthy man;" but Phineas, apparently well aware of the nature of his own disposition, as well as that of certain other persons, with whom he tells us, doubtless with equal plausibility and truth, that he has no more communication than with the man in the moon, is excessively sensitive under the scourge of censure.

His insinuations with regard to myself can only excite a smile of pity from me: add I would wish this learned champion of learned men to learn, that I am as distant from the person he would wish to make me appear, as I am far from being injured by the talents, or even by the machinations of the whole hospital host combined; if they were, peradventure, disposed to wreak upon my devoted head the entire weight of their vengeance. And I would also wish him to know, that this is not the first time I have advocated the cause of truth and justice, when either has been threatened by encroachment. I further assure him, I should not have troubled myself about those persons, if their nomination, and proceedings, had not menaced the total extinction of some of the dearest privileges of my Canadian fellow-subjects. I once more challenge those gentlemen, and their abettors, in the face of day, in the face of a judicious, an impartial, and a much injured public, to rebut the charges I have so repeatedly made against them, if they can.

I maintain that their nomination as the only examiners for the district, is an injury and an insult, alike upon the country.

and upon the gentlemen of the former medical board. . . What are the prospects, in life of many of the rising generation to be given over to the care of some three or four individuals—of men, who are yet to give us the first fruits of their ability in the discharge of the important duties of a situation they were so restless to obtain? Are three or four men, of questionable acquirements, and common abilities, to guide the destinies of our Canadian youth in one of the most honourable and useful professions?—of youths who are endowed with as large a share of natural ability and talent, as are any of these *medicæ pedagogues*, and probably superior to most of them? Is a Canadian gentleman to have, no alternative between the bringing up of his son in one of the common walks of life, and the subjecting him to the arbitrary controul, and doubtful capacity, of these men? Is there such a dearth of intellect amongst the Canadian practitioners, that they are incapable of instructing their youthful friends in the duties of an arduous and respectable profession? To this question, I unhesitatingly answer, No! And I once more throw the gauntlet to this *privileged Company of Doctor-makers*. Come forward, gentlemen, and tell the world, where and when you proved your superiority over the practitioners of this country. Let pride and partiality be set aside; let truth assume its wonted influence, and if you will not, let her pronouncement; and, if her verdict is against me, never will I again venture to breathe a breath of reproach against you, however I might desire to render my young countrymen equal, at least on this score, to you, more favoured beings. Surely, in their oppression, in their determination to crush the rising energies of this country, and especially since they are so well convinced of the native imbecility of the Canadian character, the Scotch intriguers will permit us, to emulate, at humble distance, the superior qualifications of their favourites. That these gentlemen have a most complaisant opinion of themselves, and a most wretched one of us, miserable Canadians! is true enough, or the following narrative is false; to the refutation of which I again invite those gentlemen. Three or four years ago it was, I think, at a dinner-table in Montreal, stated by one of the big (tall, if you choose,) men who are now of the hospital, that, "it was impossible to make a medical man of a Canadian, because of his possessing an intellect naturally unsusceptible of acquiring any thing like a knowledge of the profession." This sapient remark, which does equal honour to the head and heart of the assessor, was, a short time after, repeated to me by one of the persons present when this libeller advanced this dictum of his, infinitely less founded in truth than would be the assertion that he is both ignorant and arrogant, and no great wizard withal.

I can not better expose the reasons for the personalities that

have ghded into my compositions on this occasion, than in copying a paragraph of your own, from No. 40, page 317 of the Free-Press. "I regret," you say, "that these remarks are so decidedly personal, but if men who aspire to act a public part; will act improperly; they must pay the tax of that situation; by being exposed to scrutiny and blame."

I fearlessly say I am actuated by no motive other than these which should influence every good and honest man, who is ardently attached to the prosperity of that country which has given him birth and fortune. And I will again and again attack such abuses as are within my competence; whenever they exist; and I am only sorry my ability does not do justice to the zeal with which I have ever espoused the cause of right.

In my next I shall obey the categorical call of Phineas, which contains the only remark at all worthy of my notice in his lucubrations—that is; with regard to the "election of the medical officers of the hospital." For the peace of his conscience, I will inform him that I will "knock down abuses," and prove that "it was done for the public good."

Depend upon it, Mr. Editor, I have too much respect for the public, for your paper, and for my own character, to advance any thing, which I can not substantiate, nor shall I, in future, deviate from my design by noticing the invectives of such puny opponents as Phineas has proved himself to be. I borrow from the poet a happy sentiment for the conclusion of this paper;

"A lash like mine no honest man shall dread,"
and only occasionally will I descend to chastise a
"babbling blockhead in his stead."

A FRIEND TO TRUTH.

In my next I shall be able to disclose some facts that will shew what determined enemies some of the Scotch party are to the welfare of this country.

PRETENDED BANK OF KINGSTON.

In the first section of the act we are discussing, an absurd and unintelligible phrase will cause, and I believe has already caused, much legal dispute and quibble. In giving authority to the board to "ask, demand, sue for, recover, and receive" all demands due or growing due to the association, it is added "notwithstanding a future day may be given;" this is, in the first place, nonsense as it stands, and therefore, according to the well known maxim of law, that supernumerary or unmeaning words, when by mistake, or otherwise, inserted in an act of parliament, are to be considered as void, and as if they did not stand there, these might, along with the other harmless tautologies, and needless circumlocutions, that abound in such doc-

uments, have passed without particular notice, had it not been understood that they were deliberately and expressly inserted by the learned framer of the bill in order to meet some particular cases. Some persons indebted to the bank, obtained from the board of directors time to discharge their debts, and entered into agreements to pay them by instalments; it was the intention that these agreements should be invalidated, and the claims immediately enforced by the board—for this purpose the clause ought to have been worded, "notwithstanding a further day may have been given," and even thus it would have been awkwardly introduced, and scarcely even within the limits of that jargon which lawyers wish to make us believe is English law-language; but by the faulty construction of the phrase, it may be explained to mean the very reverse of the intention of the framer, and that the clause gives permission, that, even if a limited time had been fixed for the payment of a debt to the bank; (as in the case of notes after date,) still "a further day may be given," and the time extended in order to suit the abilities of the debtor for making satisfaction. But in either view of the case I contend the words ought to be considered as entirely null, and not forming part of the act. For, if they be interpreted to mean that the board have power given them, to destroy an agreement made between man and man before their own appointment and organisation, such a power would be void and van, and no one would be bound to respect or act upon it; inasmuch as it is not competent for any, the highest authority to interfere with, or change, such private arrangements, *provided they are not contrary to any law existing at the time of their being made.* As well might the Imperial parliament pass an act that all bills of exchange previously drawn at three months, should be payable at the end of one. No one would or could be bound to obey such an act. Every intelligent lawyer I am sure will be able to refer to numerous high authorities by which the incompetency of parliament to enact laws that militate against the acknowledged principles of English legislation, and the illegality of such laws, (if the expression be allowable,) are declared upon grounds that, in this case, must be obvious to almost any understanding, and therefore unnecessary to be enlarged on. Now, on the other hand, if the words are explained to give an option to the board to shew indulgence, they were perfectly needless, as it constitutes an essential part of the discretion with which such a board must be necessarily clothed, for them to have the power of granting delay: for otherwise it would follow that their imperative duty would be, to institute a legal process on the very day default was made in payment, and the granting a single day would be as much beyond the line of their duty, as six months or a year would be. If I have set this matter in a clear light, it will, I hope, have the effect of les-

sending the quibbles and difficulties that are expected to arise in the course of the many law-processes with which Kingston is threatened, under this injudicious, and unintelligible act.

It is likewise a serious and unanswerable objection against the act, that, "it has not provided for an equitable dividend, nor indeed any apportionment whatever of the proceeds of the bank-funds among the creditors, but has left the commissioners at liberty to prefer whom they please." They are to report progress *once a year*, and settle their administration at the day of judgement, unless the legislature shall, in the mean time, pass an act requiring an earlier settlement before some earthly tribunal.²² It appears indeed to have been contemplated as a business of many years, not confined, even to the lives of the present commissioners, but extending to their successors, as by the first clause, any two survivors, (although this is not clearly expressed,) have power to fill up vacancies in the board; affording thus the comfortable prospect of permanent profits, to a succession of commissioners, clerks, attorneys, solicitors, council, sheriffs, bailiffs, printers, auctioneers, agents, messengers, &c. (who are all to be *first satisfied* before any of the bill or stockholders are.) not exactly "till time shall be, no more," but "till Kingston shall be no more," which, if the act be not repealed or altered next session, may not be very long first.

In the second section there are again very unnecessary, or very incomplete, words introduced, where, speaking of the stock originally subscribed, the board have power given to them to decide as to the claims for such stock, *whether declared forfeited by the rules of said bank or not*. Very unnecessary, if it were the intention that claims for such supposed forfeited stock should be inadmissible, and very incomplete, if the contrary was meant; a matter which I contend, being one of principle, but not of circumstance, ought to have been determined by the legislature, and not left to the discretion of commissioners. By this too the legislature have actually recognised the bank as an associate body, one entitled to make rules, whereas it ought to have been their study to stigmatise it as an illegal institution, and incompetent to frame the slightest rule or bye-law. Be this as, it may, however, under the act of 14 Geo. II. before referred to, subscribers whose deposits for stock might have been supposed to be forfeited, under the pretended regulations of the bank, would have their remedy by an action of damages, against any one or more other stockholder or holders, in which they may recover treble damages, with full costs of suit. But it seems to me that the intention is that such supposed forfeited deposits, were meant to be considered as proper claims for admission, as indeed they ought in justice to be, as much at least as any other stockholders claims; and, if so, the act is most vague, and incomplete, in that respect. Moreover, before I dismiss this section, it is right to observe that the

prohibition to pay any certificates that may be granted to any of the directors, officers, or stockholders of the institution, is general, and indiscriminate, whether such certificates be given for stock, or for the bills or notes such persons may happen to hold: which is not only very inequitable in itself, but manifestly gives the advantage to those speculators in the notes of the bank, who were not directors, and consequently is greatly in favour of those of the commissioners who have so speculated, as before mentioned, and who will no doubt take care to pass their own certificates with all celerity, seeing they are to bear interest from the day of their date.

I now come to those inquisitorial and unconstitutional clauses which give to the commissioners, *and their clerk*, power to drag before their tribunal all persons connected with the bank, that is as directors, or officers, to examine them on oath, and if they are not satisfied with their answers, to deprive them of their liberty, or hold them to bail: "I can do no better in this place than again quote the words of "a disinterested spectator."

"This tragico-farical inquisition," says he, "while it violates the great principle of common law, that no man shall be compelled to criminate himself, is, under existing circumstances, as ridiculous as it is irritating and ignominious. The president, cashier, teller, agent, and solicitor of the bank, have already been examined; and given their respective statements of the facts within their knowledge before a committee of the house of assembly. To suppose that a repetition of their examination before the inquisitors, armed with all their errors, will produce any essential addition or variance of information, would betray a deplorable ignorance of human nature." And here it ought to be remembered that the report of the committee, did, from the very answers of those individuals, confine all suspicion of misconduct to the president, cashier, and teller; and also, that, "as to the other directors whose names are gibbeted in this act, it is now understood, though it may not be known to those who, in future times, shall see these names recorded in the public statutes of the province, as of suspected persons, *unworthy to be trusted with the disposal of their own property, without the gracious permission of the commissioners*; yet it is at present well known here, that these directors have not been in situations to be enabled to give any material information personally respecting the alledged "abstraction" of the funds of the bank, the principal subject of investigation. Under such circumstances, the inquisition must be a disgusting farce."

(To be continued)

Intending to have made some remarks on the returns made, as published in the Quebec Gazette, of the population of Lower

Canada, and to shew both the fallacy of the mode in which those returns were procured, and the perfectly-erroneous nature of them. I have been waiting for some information expected on the subject. I see, however, that the question has been taken up by the York Weekly Register, in which upon the assumption that those returns are correct, the proportion of revenue which the Upper Province ought to derive, in consequence, is maintained to be, (*risum teneatis amici*) ONE HALF! I shall, therefore in a very early number, bend my attention to this object; and in the mean time shall be glad to be favoured, with any information relative to it, which my correspondents can give: say, as to the mode of procuring the returns, the districts and places enumerated in the Quebec Gazette, estimates as to the real population, &c. the numbers of inhabited houses in those districts and places, particularly in Quebec, Montreal, and Three Rivers, &c. &c. According to that statement, the whole numbers returned, or the actual population, are

For the district of Quebec	114,546
Three Rivers	44,134
Montreal	301,372
Gaspé	4,454

Total 384,546!!!

which I am tolerably confident I shall be able to prove is 200,000, at least too little. L. L. M.

Subscribers to the *Free Press* at Quebec, are particularly referred to the notice which appeared in No. 36, not to pay, except upon production of receipts signed by the proprietor, S. H. Wilcocke, all such as may have paid otherwise than upon such receipts in his own hand writing, will please to demand the money back, as soon from whoever they may have paid it to, as they will be made to pay it over again.

In future no single number of the *Free Press*, will be sold at Quebec, but those who want it must take it for a quarter, or NOT AT ALL. Neither will any person be employed to distribute it to the few subscribers retained there. It will be sent thro' the post, and must be delivered by the post office (for which a compensation is paid,) as all other papers are.