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...slature of North Carolina.

HOUSE OF COMMONS.

...bate on the Bank Question.

...k place between the 29th Decem-...ber and the 6th January last.

(*Continued.*)

...Webb intended to have given ...ent vote on this question; but ...ould not sit and hear such re-...ks as had fallen from the gentle-...from Granville, without noti-...them.

...hat does the gentleman recom-...d? That this Legislature should ...their hands upon the property ...e present Banks, and confiscate ...he debts due to, and owing by ...n. And out of the wreck of this ...perty, he wishes to establish a ...Bank; in aid of which the Go-...ment is to borrow a million of ...ars on the faith of the State. ...t if the course which the gen-...an recommends to be taken with ...present Banks, be adopted, he ...ld not be surprised if, instead of ...llion, $100 could not be borrow-...the faith of the State! ...hat else does the gentleman re-...mend? If his constituents will ...him, he tells us, that he is ready ...eed them, enter the Court-house ...s county, and hurl out of doors, ...agent of the Banks who shall ...to attempt to recover any of ...e debts from the people! ...t, sir, however willing the gen-...an may be to head such a mob, ...n confident, from the knowledge ...ch I have of them, that the peo-...of Granville will have more re-...ct for themselves and for law and ...er, than to join the gentleman in ...such violence.

...Mr. W. hoped that whatever mea-...s might be adopted in relation to ...Banks, they would be such as ...ld be creditable to the State, ...such as would not render the ...ation of the people worse than it ...present. For his part, he be-...d that if the course advocated ...he gentlemen from Granville and ...klenburg were to prevail, in-...d of our Bank notes being at a ...ount of three, four, or five per ...at the North, as they had for ...e time been, they would sink to ...perhaps 50 per cent. below par, ...that this depreciation would ...ce more distress in the commu-...than had ever yet been seen. ...hoped therefore no such bill ...ld pass.

...r. Gaston said, that having al-...ly occupied not a little of the ...of the committee, he regretted ...necessity which compelled him ...to address them. But for the ...pected appearance of the re-...table gentleman from Mecklen-...g, (Mr. Alexander,) as a co-ad-...r to the gentleman from Gran-...this necessity would not have ...ted. It is true, that the gentle-...from Mecklenburg has not ex-...itly stated the extent of the aid ...h he proposes to render, and ...G. had a perfect conviction, ...he could not, and did not mean ...ncur in the entire project. Yet ...d Mr. G.) he had denied most ...itively certain constitutional & le-...positions, which I had advanced as ...d, and with equal confidence has ...rted others, which I firmly be-...to be most dangerous and erro-...

...he Resolution before the Com-..., after premising that the ...s have violated their charters, ...committed great frauds on the ...le of the State, whereby they ...forfeited the powers and pri-...es granted in their charters, ...ses, that the Attorney-Gene-...behalf of the State, shall, by ...of Quo Warranto, or other le-...process, prosecute a judicial en-...y into their conduct. It must ...understood, and it is avowed, ...the prosecution is to be carried ...in order to obtain a judicial sen-...e of forfeiture of the charters. ...re is no question but that for a ...e prostitution of its powers, and ...grant violation of its charter, ...cially ascertained, in a suit in-...ted for that purpose, the charter ...Corporation may be forfeited, ...the corporation dissolved. If ...e could be any doubt on this ...t, he would refer to 1 *Bl. Com.* ...and 2 *Kent' Coms.* 291. He had previously stated, as a necessary consequence of this dissolution, an absolute extinguishment of all debts due to or from the Corporation. To his surprise—to his mortification—this position had been peremptorily denied by the gentleman from Mecklenburg. Let us see with what propriety.

"A Corporation is an artificial person, deriving existence solely from its charter, and continuing to exist so long only as the charter endures. Take away its charter, and it dies—in appropriate language, the law pronounces that its *dissolution* has taken place. What is a debt? A thing in *action*—money in the hands of one person which another is entitled to demand by suit. When a Corporation dies, *it* cannot be sued. There can be no action without a defendant. There can be no process served—no legal demand advanced—no defence made—no trial had—no judgment rendered. Against the Corporation, therefore, which, after dissolution, is as though it never had been, there can be no action. Can you proceed against the individuals who formerly composed the corporate body? As *individuals* they owed nothing, and a debt can only be demanded from the debtors. But it is unnecessary to argue this on principle, since it is clearly settled by authority. It will be enough to cite the case of *Edmunds* v. *Brown & Sillard*, 1 *Lev.* 237. As the debts due from a Corporation are extinguished by its dissolution, those due to it must be extinguished also. It would be monstrous, if dissolution destroyed its obligations, but kept alive its rights—if it were absolved from all it owed, but could demand what was due to it—if it could recover debts, but could be compelled to pay none. The Corporation cannot sue, for there is no corporation—and the individuals cannot sue, for they have no claim.

The language of the elementary and authoritative writers on this subject, is too perspicuous to be misunderstood. "A body politic," says Blackstone, "may be dissolved in several ways, which dissolution is the *civil death* of the Corporation, and in this case, their lands shall revert to the person or his heirs who granted them. The debts of a Corporation, either to or from it, are *totally extinguished* by its dissolution, so that the members thereof cannot recover, or be charged with them in their natural capacities." 1 *Com.* 484. The distinguished American Jurist, Chancellor Kent, lays it down in his *Commentaries*, (*vol.* 2, *pages* 245, 246,) that a Corporation may be dissolved by a forfeiture of its franchises, judicially ascertained—that the dissolution of a Corporation is its civil death—and that, "according to the *settled law* of the land, upon the civil death of a Corporation, all its real estate, remaining unsold, reverts back to the original grantor and his heirs—the debts due to and from the Corporation, are all extinguished—neither the Stockholders nor the Directors of the Corporation can recover those debts, or be charged with them in their natural capacity—all the personal estate of the Corporation vests in the people, as succeeding to this right and perogative of the Crown at common law." The distinction taken between the three kinds of property which may belong to a Corporation—lands, personal chattels, and debts—is so manifest, and the analagous principles of law, which illustrate the distinction, are so obvious, that it is most extraordinary how any professional gentleman could fail to perceive it. Land, which is regarded as of a permanent enduring nature, may be granted for life. Land conveyed to a corporation is granted during the continuance, or the life of the Corporation—to the members thereof and "their *successors* and assigns." This life may endure forever, but whenever it is determined by the dissolution of the body politic, the land reverts to the grantor, as in every case of a grant for life. Personal chattels cannot be granted for life only. They are regarded as of a transitory, perishable nature, and a gift of them for life, passes the entire ownership, and leaves no residuary estate vested or contingent in the giver. When a Corporation is dissolved, therefore, its chattels would be entirely without an owner, liable to be seized by the first occupant, and to become the subject of general strife, if the law did not vest them in the Sovereign. But as to its debts—as to money in the hands of individuals, which the Corporation may claim at law—when that Corporation dies, the money must remain in the hands of the debtors, because there is no creditor in existence.

I know, said Mr. G. that the gentleman from Mecklenburg has become convinced that his denial of the position that the debts are extinguished by a dissolution, was hasty and incorrect. How much is it to be regretted that, on a subject fraught with such momentous consequences, crude and erroneous doctrines should be so rashly advanced, and sanctioned by his respectable authority! But the gentleman has, with perfect confidence, asserted, that, even were an extinguishment of the debts the regular consequence of a dissolution, it is competent for this Legislature to prevent such a consequence from the judgment of forfeiture, by enacting that, instead thereof, they shall be seized and placed at the disposal of the State. This doctrine appeared to Mr. G. not only as unfounded as that which had just been examined, but utterly repugnant to the genius of our institutions, prescribed by the express enactments of the Federal and State Constitutions, and leading inevitably to results which no friend to freedom or the stability of property could contemplate without horror.

And how was this bold position attempted to be sustained?—The committee had been reminded of the various Acts of the Legislature passed during the Revolutionary struggle, usually called the Confiscation Laws, by which the property of those who had refused allegiance to the State was disposed of to the use of the State. Every step taken in this discussion shews the hardy temerity of those who are bent upon this prosecution. Facts are advanced upon supposition, and legal doctrines quoted which have never been studied. Can it be possible that the gentleman from Mecklenburg has never read, or has totally forgotten the cases of *Farris* v. *Simpson* and *Benzien* v. *Lenoir*, decided in our Court of Conference, and published in Conference Reports? If so, let him permit an old friend to intreat him to read attentively the opinion of *Judge Johnston*, a distinguished patriot of the Revolution, and a no less distinguished member of the Congress that framed our Constitution, and he will see the true principles of the authority which the Legislature exercised in the Confiscation Acts. When the people of North-Carolina had thrown off the British yoke, they assembled in Congress to form a Constitution. This Congress "clothed with *all* the power of the People and invested with *all* their rights, restrained by no law and unawed by any authority, in the plenitude of *their* power," declared all the land within certain specified boundaries to be the right and property of the people of this State, reserving to individuals, members of that collective body, such portions of it as they held or claimed by former titles or possessions. There were at that time certain persons inhabitants of this State formerly fellow-subjects with its citizens, who did not accede to the Revolution, and formed no part of this collective body, but who by the law of nations and the sacred principles of humanity, had a right to remove themselves and to dispose of their property. But this property was by the Declaration of Rights vested in the State, and of course, like all other public property, was subject to the disposition of the Legislature, under such limitations and restrictions as they might deem proper. By the first of the Confiscation Acts, liberty was given to all those persons to sell this property, and to appoint attornies to make sales for them. By an act passed at a subsequent session, it was enacted that all this property (except of course what had been sold under the former law) which had vested in the collective body of the people, should be "confiscated to the *use of the State*," unless every such person should within a limited time come forward in the mode prescribed, "and be admitted *to the privilege of a citizen of the State*, and (mark the peculiar and emphatic language) *restored* to the possessions and property which to him *once belonged* within the same. Did the sages of that day imagine that they had a right to confiscate the property of citizens? Let the gentleman attend to the language of the same venerable Judge. By the Bill of Rights and the Constitution, the property of individual citizens, "is placed out of the power of the collective body of the people—no act of their Representatives in the General Assembly could impair their titles—any act which might be unadvisedly or arbitrarily made to that purpose would be a mere nullity—the Bill of Rights is paramount to acts of the Assembly, and exercises a controlling power over them as often as they exceed the bounds prescribed by that instrument, which should ever be held sacred and inviolable, as the best security of our rights against the assumption of tyranny—such an act ought not to have any weight or influence in a Court of Judicature."—*Conference Reports*, 253, 259.

An act passed in the year 1786, "to bring to condign punishment, &c. certain persons therein described," is referred to as proof that the Legislature may *now* provide that the forfeiture of the charter of a Corporation by reason of *past* misconduct shall not be visited with the penalty which the law *then* attached to the deed, but with a different penalty *now* first to be denounced. If the act referred to sanctioned such principles, it would merit a severe and full examination—and it might then appear to contain provisions unadvisedly made under the influence of honest excitement, repugnant to constitutional principles, and therefore not entitled to weight in a Court of Judicature, or to serve as a precedent for subsequent legislation. But it sanctions no such doctrine. It directs a Court to be holden for the trial of persons accused of certain crimes, but leaves the punishment of these crimes to the Law—such as it was when the crimes were committed. It lays down no new rule for judicial decision to be applied to acts already done, but raises a Court and invests it with jurisdiction to try the character of those acts and apply thereto the antecedent and still existing Law. It prohibits *future* acts to be done by the parties accused, such as flight or alienation of their property—and prescribes penalties for a breach of these prohibitions. But however strong its language—however questionable some of its enactments when tested by the Constitution—it furnishes no precedent for this doctrine of retrospective law-making. The doctrine is new in North-Carolina, and if it can be now established this Legislature may justly claim the high infamy of being the first to introduce into our free code, one of the most abominable practices of exploded tyranny.

The detestable *Caligula* wrote his laws in small characters and hung them up upon high pillars, so as to render it difficult for the people to discover the penalties to which they were made liable, and for this atrocious tyranny his name has been handed down with execrations to an indignant posterity. But even he did prescribe the penalty before the deed. It was *possible* to know the law and the consequences of its violation, and although the citizen might be ensnared, he was not kept in necessary ignorance. But a law fixing the penal consequences of an act—after the act done—is an absurdity in terms. The very nature of society forbids it—the eternal principles of justice stamp it with reprobation, and the Genius of Freedom mocks at its impotent and insolvent claims to respect. "The Legislative and Judicial powers," thus speaks our Bill of Rights, "ought to be forever separate and distinct."—It is the province of the Legislative power to lay down the rule of conduct—it is the right and duty of the Judicial Power to apply the rule. Under the pretence of legislation, to order the Courts to pronounce a sentence which the rule previously given does not justify, is an act of flagrant usurpation. "No free man ought to be taken, imprisoned or disseised of his freehold, liberties or privileges, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land."—*Sec.* 12. If a definition of the law of the land be wanted, it will be found in the cases of the *University* v. *Foy*, 2 *Hay*, 310-374, and of *Robinson* v. *Barfield*, 2 *Mur.* 390, that permanent, uniform and universal rule of action previously laid down for the government of the conduct of the citizen.—"A particular act of the Legislature to confiscate the goods of Titius does not enter into the idea of a Law; for the operation of this act is spent upon him only, and has no relation to the community in general—it is rather a sentence than a law." 1 *Bl. Com.* 44. "All laws should be made to commence *in futuro*, and be notified before their commencement, which is implied in the term *prescribed*."—*Ib.* 46. "No State," says the Constitution of the United States, Art. 1. Sec. 10, "shall pass any ex *post facto law*, or law impairing the obligation of contracts." By a tacit condition annexed to the creation of a corporation, its charter may be forfeited, and its existence terminated by a judicial decision that it has abused its franchises. But the consequence of this penalty which the law has imposed, would be ruinous to the State—one of the corporators, and the gentleman would therefore substitute, by a legislative mandate to the Courts, a different sentence—a sentence of confiscation. And this he would do after the alleged abuse committed. If this be not ex *post facto law*, what would be such an act?

It is readily admitted, that, as the object of this prohibition is the protection of the citizen, a law *lessening* the penalty for a past crime, would not come within its purview. The State, which may claim the exaction of the whole penalty, can, at any time before punishment, remit the whole, or any part of it. But the substitution of confiscation to the State, of all the lands, effects and credits of the Corporation, as a consequence of a dissolution of the charter, is the enactment of an entirely distinct penalty, at least equally severe, with respect to the body politic, as that which the law now attaches—and with respect to many of the corporators, far more severe. Several of these are debtors to the Bank. They may indeed lose their stock by a dissolution, but then they are partially indemnified by being released from their debts. But if this retrospective enactment be valid, they must lose their stock and pay their debts besides. Such an enactment would be a violation of the faith of contracts. The charter is a contract, the obligation of which the State is not permitted to impair. A tacit condition annexed to the charter is, that for a gross violation of franchises, judicially ascertained, the body politic shall be dissolved—all its lands shall revert to those from whom they came, and all the debts due to and from it shall be extinguished. The State is a member of the Corporation—the largest Stockholder. Upon this condition, it granted the charter, and upon this condition, it also became an associate in the company. It may insist on this condition, and thus share the lot of the other corporators, but it cannot substitute different conditions from those agreed upon, by which it shall not only escape from the common fate of the Stockholders, but enrich itself by the ruin of their companions. Let gentlemen but examine with attention the celebrated case of the Dartmouth College, decided in the Supreme Court of the United States, and reported in the 4th of *Wheaton*, and it will be impossible for them to maintain any longer the extravagant doctrine contended for. It should be remembered, too, that this Supreme Court of the United States will have to pronounce, in the last resort, upon this very doctrine. While, indeed, our own Courts are distinguished by the virtue, the learning, and the firmness which now characterise them, a necessity for such a resort can never exist. They will uphold the sacred principles of constitutional law, unmoved by clamour, unterrified by the apprehension of legislative displeasure. But if, what I sometimes fear, it is designed by another bill which is before the House, to drive from the Bench the eminent, and able, and independent Magistrates who now adorn it, and to fill their places with ignorance, rashness and subserviency to legislative will, even this desperate design, however completely executed, can avail nothing. For a judgment of the highest Court of a State, in any suit, where is drawn in question the validity of a State Statute, on the ground of its repugnancy to the Constitution of United States, and where the decision is in favor of the validity of such Statute, may be re-examined by writ of error, and reversed or affirmed, in the Supreme Court of the Union. The principles which will govern the decision of that high tribunal, are too clearly & authoritatively pronounced, in the case referred to, to leave a doubt of the result.

But, Sir, said Mr. G. I do acquit the gentleman from Mecklenburg of ultimately intending plunder. His object is, by confiscation, to place the concerns of the Bank, against which his efforts are mainly directed, in the hands of the Legislature, trusting that they will dispose of them with proper regard to the principles of right, and hoping thereby to prevent the debtors from being pressed too eagerly for the payment of what they owe. Let me, however, conjure him to reflect, anxiously, again and again, upon every step in this tremendous experiment, before he ventures to execute it. The file affords no precedent. It has never been tried before. A failure may be utter ruin. He must see that some of his notions were crude and erroneous, and he ought to distrust the correctness of others. Should the consequences be such as I predict, and such in the sincerity of my heart I believe they will be—the gentleman, to the last moment of his life, will rue the day in which he lent his agency to produce them.

Mr. G. said, that he had now done with the examination of the legal questions into which he had been drawn by the argument of the gentleman from Mecklenburg. He was thoroughly satisfied himself, and trusted that he had proved to the Committee, that a judicial sentence of forfeiture of charter must be followed by an extinguishment of all debts due to or from the Banks. There were some other topics connected with this subject, on which he would ask the further attention of the Committee. Something had been said of a practice which prevailed at some of the Offices of the State Bank, of calculating interest for ninety-two days, on a note made payable eighty-eight days after the day of its discount, and this had been stigmatised as Usury. Is it possible that gentlemen should so misunderstand this usage, or be ignorant of the acts & adjudication of our own Supreme Court upon this very objection? On every such note, three days of grace were allowed for payment, after the day of payment stipulated in the note. The note was therefore, in fact, payable at the end of ninety-one days *after* the day on which it was discounted. But the borrower had the use of the money on the day of its date—that is, for ninety-two days, and this being the term of forbearance, the Bank deducted the interest for that term. Whether this practice was usurious or not, was a question distinctly presented for adjudication in our Supreme Court, in the case of *State Bank* v. *Hunter*, reported in 1 *Badg. and Drew's Repts.* 99, and the practice was decided to be legal.

There had been no act or omission on the part of these Institutions, which he considered so reprehensible in its nature, or so mischievous in its consequences, as the want of punctality in redeeming their issues. By suspending specie payments, the only effectual check upon redundant issues—the criterion by which to judge of the fair demands of business—and the standard by which to regulate collections—was lost. Punctuality in making payments ought to be the point of honour with Banks, as much as courage in a soldier, or chastity in a woman. Here was the only serious ground of complaint against these Institutions, and however the State and the community—public feeling and the importunity of debtors—however truly they all come in of a full share of the blame, yet there was most serious cause of censure. But it was to be remarked, that in the purposed prosecution, a failure on the part of the Banks to pay their notes on demand, could not be assigned as a *violation of charter*, or a cause of forfeiture. It was indeed a violation *of promise*, and as such, subjected to be sued.—The charters contained no provision whatever upon the subject. The Banks were under no further or other legal obligation to pay the demands upon them than that which the law imposed upon every individual of the community, and of course a breach of this obligation could expose them to no severer legal penalty than that which the law of the land inflicted on every unpunctual debtor.—It may be more injurious to the credit of a Bank—it may more extensively injure the community, for a Banking Institution to evade or deny payment of its debts, than for an individual or any other body politic, but it is in all precisely the same breach of duty, & where the law has made no distinction, it must in all, be prevented or redressed, by precisely the same remedies.

The object of this proposed quo warranto or "other legal process," is, not the redress of individual injury, nor the punishment of offending individuals. Is there a man in the community who has suffered wrong at the hands of any of these Institutions? The Courts of justice are open to hear his complaints, and our laws are strong enough to command for him complete relief. Let it not be objected that these may be poor men, for our benevolent code has provided, that in such case they may sue without cost. Have the