RECORDER.

UNITED WE STAND; DIVIDED WE FALL.

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From the Raleigh Register.

DEBATE ON THE BANK QUESTION,

Which took place in the House of Commons, from Dec. 29, to Jan. 6.

Continued

Mr. POTTER said, it was a little remarkable that though the gentleman from Newbern admitted the State Bank, at least, had acted improperly, yet he was unwilling to take any step for calling her to account. The language of one of the gentleman's resolutions in relation to the banks, states, that, "from an issue of paper beyond their ability promptly and regularly to redeem, the consequence has been a depreciation in the currency of the state, injurious to the interests of its citizens and the character of its public institutions, and leading to evasions and expedients in the managers of these institutions, always disreputable, sometimes at variance with their charters, and often oppressive to their customers."

Mr. P. did not know how the acts of the banks could be at variance with their charter, without being violations of it.

He adverted to the manner in which the committee who have had the subject under consideration was appointed. When first chosen, there was a majority of the body in favour of proceeding against the banks; the next day additional members were added to the committee. The gentleman from Newbern was named on it, but he declined serving. He would inquire what had now become of the gentleman's scruples? He now takes an active part on the subject, is seemingly forgetful of the delicate situation in which he stands. If the resolution under consideration be adopted, says that gentleman, the result will be ruinous to the parties or disgraceful to the state. For if the charges made by the committee prove untrue, or if true, be insufficient in law to warrant a dissolution of the charters of the banks, the state will be disgraced for having thrown the circulation of the country into confusion, when there was not sufficient ground to sustain the charges brought against the banks.

When he called upon the gentleman from Newbern the other day, for an explanation on a certain point, he said he would give it at a proper time. But he had not yet done so.

Mr. P. here enlarged on the distresses experienced by the people from the oppressions of the banks, which he said could be properly appreciated only by those who were eye witnesses of them.

We have, said he, seen the banks carrying on a system of brokerage, and varying, at pleasure, the standard value of the currency of the country, as they determined, from time to time, the amount of money which should be put into, or drawn from circulation. And one of these institutions is now making preparations to extinguish its currency altogether; and thus, by withdrawing one-half of the money in circulation, will be the means of increasing the difficulty of paying, and, in effect, double the amount of the debt to be paid.

Mr. P. did not think it necessary to go into an explanation of the law on this subject, though he had a case at hand (the one which had been cited by the gentleman from Newbern) which would clearly show that the State Bank had been guilty of usury.

We look up to these bank-men, said Mr. P. because they are supposed to have plenty of money, at a distance, with a kind of veneration; for if it were not from fear, or some other feeling, we should at once put them down.

And shall we go back to the people, and tell them that we ought to have had justice done to them for the abuses which the banks had heaped upon them, but that we could not succeed, though, if they will send us another year, we shall probably be able to effect our object?

The gentleman from Newbern, and the members connected with him, will laugh in their sleeve at such a course. They will say to their bank friends, you may go on as you please; it is true, you have set all law at defiance; but you may continue your course, and whenever a prosecution shall be proposed, we have nothing to do but raise a few legal difficulties to prevent any proceedings against you.

If, said Mr. P. the present wretched condition of the people be not sufficient to induce you to enforce the law against these institutions, nothing that I can say will have any effect. The question is merely one of courage. Have you the spirit to put the law in force against the banks, or will you submit to their dictation?—Had the gentleman from Newbern happened to take the other side of the question, Mr. P. believed there would have been scarcely a dissenting voice to the course now proposed. He was of opinion of the gentleman from Mecklenburg, that it is in the power of the legislature to provide by law, that in a case of a dissolution of the charter of the bank, the decree of forfeiture shall not work an extinguishment of the debts due to or from the corporation; and we should thus be relieved from the evils predicted by the gentleman from Newbern.

It had fallen to his lot, Mr. P. said, to visit distant parts of the globe. He had been in a country which consisted of wild extensive forests, inhabited by thousands of wild animals, which without some art being used for the purpose, could not be tamed or approached by any human being. But though wild and fierce when you first approach them, 2 or 3000 being got together, may be driven to and fro, until at length they can be penned and slaughtered without difficulty.

And formerly, said he, we were a bold, high-spirited, independent people; but by the sly, insidious means used by bank managers, we have nearly been brought into the same situation with the above described wild animals, and are ready for destruction.

Mr. P. said he should take his seat, in the hope that some gentleman friendly to the course proposed, would give an explanation of the law as connected with this question.

Mr. ALEXANDER rose, and observed that he did not rise, at present, to enter into the subject before the committee generally. He held in his hand a modification of the resolution and bill offered by the gentleman from Granville, which he offered as substitutes for those at present before the committee.

Mr. A. said, he had no doubt that the cases reported against the Banks of Newbern and Cape Fear, would sustain the charge of a violation of their charters; but every one could see that they had been much less flagrant in their conduct than the State Bank. He wished therefore, to confine the proposed proceedings to the State Bank alone.

Mr. A. said, he hoped to have another opportunity of replying to the arguments of the gentleman from Newbern.

[The resolution and bill offered by Mr. A. were confined to the State Bank, and, it is believed, were precisely the same that Mr. Potter afterwards introduced, as a substitute for his resolution and bill, on its second reading, and on which the final question was taken.]

Friday, Jan. 2.

The house sat in committee, Mr. Nash in the chair.

Mr. Alexander had no doubt, the patience of the committee was nearly exhausted. But he considered the subject important, and must therefore, beg their attention for a few moments. He believed the members were desirous of doing what was right, without knowing precisely the best course to be taken.

There was no doubt, Mr. A. believed, amongst the members generally, that the State Bank had frequently violated its charter—its managers seem to have paid no regard to the requirements of its charter. A majority of this house, he believed, were therefore disposed to call them before the law.

It will be recollected, that the legislature commenced this inquiry into the conduct of the banks, on the recommendation of our late respectable governor. The committee appointed on the subject had been engaged in the inquiry for several weeks. They have reported to the house, and we are now called upon to authorize proceedings against one of these institutions. But it is said, if we do this, we shall depreciate the value of our bank notes. These are already depreciated—the banks have themselves by their improper conduct depreciated them; they have met together, and publicly declared they would not pay specie for their notes.

The gentleman from Buncombe (Mr. Swain) in his remarks, a few days ago, objected to prosecutions being instituted against any of the banks, upon a ground, which he conceived to be wholly untenable—that although the banks might have violated their charters, that the legislature had connived at it, and therefore been equally to blame with the bank directors. Mr. A. made some reference to authorities in support of his opinion. He believed, that if the facts stated by the committee can be established, no doubt could be entertained of the success of the prosecution, the result of which would be, the forfeiture of the charter and the dissolution of the corporation. And the gentleman from Newbern has said, that an annihilation of all debts due to and from the corporation will, of course, take place.

When he had the honour, some days ago, to address the house, he had denied this consequence. What he meant to state, was, that debtors to or from the bank would not by such an issue, necessarily be discharged from the payment of their debts.

If the committee, then, said Mr. A. be convinced, that the State Bank has violated its charter—if this be granted, and they find that a dissolution of the charter, will not necessarily be an annihilation of the debts to and from the corporation, but that the only consequence will be a winding up of the concerns of the bank in such a way as shall have due regard to the rights of the stockholders, the claims of the creditors and the condition of the debtors, will not the committee sustain me in my position!

Mr. A said, he was not one of those who could say he was regardless of the consequences which might possibly flow from a dissolution of the bank charter. He would be as unwilling as any man to injure the widow or orphan whose property might be vested in this institution; nor could he support any measure that would subject the property of our banks to plunder. But when it is proved that a corporation has repeatedly violated its charter, and when an attempt is made to bring the managers of the institution to justice, its advocates in this house, set the legislature and the Supreme Court at defiance, he was willing to have the matter brought to issue.

Mr. A. recited and advocated the provisions of the bill which he had introduced. He said, the gentleman from Newbern had denied the competency of the legislature to pass a law of this kind, founding his objections on the provisions of the constitution of the United States and of this state. But Mr. A. was of opinion that after the charter was declared to be forfeited, the debts and property might be vested in the general assembly. He saw nothing in the constitution forbidding this course.

Mr. A. referred to the act of 1786 making notes of all kinds negotiable; and to a decision in *Conference Reports* p 341, to the *Escheat Laws*, and to 1 *Hawks*, 224, and to other authorities, which he cited from a Digest of Cases.

After dilating at some length on these authorities, Mr. A. concluded with noticing the remark of the gentleman from Newbern, that the final decision of this suit, if prosecuted, would doubtless be made in the Supreme Court of the union. To this, he said, he should have no objection. Indeed he should wish that it might be decided there.

Mr. GASTON requested a moment's indulgence, while he gave a short answer to the additional legal argument just urged, and to the questions asked by the gentleman from Mecklenburg. Abandoning the position which he had first taken, and admitting that in law a dissolution of the charters does produce an extinguishment of all debts to and from the banks, the gentleman nevertheless insists, that his second position remains unshaken—still contends, that by an act to be now passed, we can change this penalty for past misconduct into a forfeiture of the property to the state. Mr. G. had already attempted to show that the state could not thus impair the obligation of contracts by adding new conditions or terms to its own grant; that it could not thus divest its citizens of vested rights by partial legislation; and that it could not thus, by an *ex post facto* law, inflict new penalties for past misconduct. And how are these objections answered? By the allegation that the state had exercised this power in many analogous cases, and that the righteousness of this exercise of power had not been questioned.

Sir, said Mr. G. there are few weak arguments so frequently urged as those which are formed from loose and hasty anologies not well examined. A resemblance between cases, where there is any, strikes at first view, the careless as well as the observant; but the difference between them is not noted, until both be attentively considered. Now what are the instances upon which the gentleman relies? In 1789, the general assembly made a grant to the university of the right which the state had to succeed to escheated lands. But long after this, the general assembly passed acts regulating the descent of lands, by which acts, persons were admitted to inherit, who by the existing law of 1789, could not inherit, and thus lands were prevented from escheating which otherwise would have escheated. And the gentleman asks is the constitutionality of these acts doubted? I have never known any discussion on the subject; but I presume the acts are admitted to be constitutional, and this because they do not impair the grant to the university, nor lessen any of its rights. Escheat, is the returning of lands to him of whom they are holden, because of a want of heirs of him to whom they were given. This right to take lands when no heir can be found, the late acts of the assembly have not taken from the university in whole or in part. The legislative power to regulate the descent of inheritances, the assembly never granted, and could not grant to the university; and when they made a gift of the right of escheat, they entered into no covenant, express or implied, to prevent them from exercising their power over descents in such a way as they deemed most conducive to the public weal, although it might render escheats less productive. Once, indeed, the legislature, in a moment of caprice to gratify the popular clamour, and misled by the impious maxim *vox populi vox dei*, did undertake to repeal this grant of the right of escheat. The validity of this attempt came before your judges for consideration, and they decided the act to be repugnant to the constitution, and utterly null. To the honour of the general assembly, they repealed at the next session the unconstitutional act, because they would not have their code polluted by its presence.

The gentleman has also referred to the case of *Wilkinson* v. *Wright*, reported in *Conference Reports*, 341 as much in point. Before the year 1786 a bond could not be so transferred by indorsement as to enable the assignee to maintain an action at law on it in his own name. He was nevertheless considered as the owner of the bond in equity, and he might, even at law, sue on it in the name of the person to whom it was made payable. In that year, the legislature authorized such bonds to be assigned, and the assignee to bring suit at law in his own name. A question arose whether the law then enacted, was intended to embrace bonds already executed before, as well as those to be executed thereafter. On an examination of all the sections of the act, the court in the case of *Wilkinson* and *Wright*, held that it applied only to bonds executed thereafter. So far, there was nothing decided which bore upon this question. But Judge Hall, in delivering his opinion, remarked that if the decision depended on the construction of one section alone, "*perhaps* it might not be improper to hold the action well brought in the name of the assignee"—Perhaps! And this "perhaps" is the sure and solid ground on which the gentleman is fearlessly to risque the most important interests of the state!—Perhaps!—Surely, such an experiment is any thing but wise.

It will be seen, that the inquiry whether the act so construed, would have been repugnant to the constitution or not, was not raised. And no wonder. So delicate and weighty an inquiry is never raised without necessity, and all necessity was in the case before the court saved by the construction given to the law. *Perhaps* if its meaning had been otherwise determined, it might still have been defined constitutional. The legislature always retain the power to alter remedies so as to protect existing rights, although they have not the power to impair or change the rights themselves. And to allow the assignee of a bond to bring an action at law, instead of leaving him to his bill in equity, would seem to be little more than a mere change of remedy, without injury or alteration to the rights of any party. A distinction substantially the same with this, was recognized by our Supreme Court, in the case of *Harrison* v. *Burgess*, determined on the act of 1820, which vested the Supreme Court with jurisdiction of errors in matters of fact. The court held, that the legislature could not, if it would, give them any new law by which to decide on existing rights; but it might give them jurisdiction over controversies where they had not jurisdiction before, and thus enable them to apply to these rights the ancient law, which application, but for the grant of more extensive jurisdiction, the court might have been unable to make.

The gentleman has asked, if lands granted to a corporation revert to the donor, on a dissolution of the corporation, what becomes of those so granted which the corporation may have sold? There is no difficulty presented by the question. Lands which a corporation has lawfully sold, cannot be claimed by the donor upon a subsequent dissolution of the corporation. The corporation had a fee in them, for the body politic might endure for ever. To this estate was attached by law the power of sale and alienation. The gentleman will recollect the old doctrine about conditional fees at common law. In these, if the tenant after birth of issue, aliened the land, such alienation barred not only his own issue of the inheritance, but also the donor after reversion. But if no alienation was made, and the issue afterwards died, the land reverted to the donor. If a power of sale be attached to the estate of a tenant for life, when the power is exercised the sale remains good, notwithstanding the death of such tenant. Chancellor Kent has accurately made the discrimination in the passage before referred to, "the lands of a corporation, *which have not been sold*, revert on such dissolution to the donor."

One word more, sir, (said Mr. G.) and I have done. No consideration shall tempt me, I think, to trouble the committee again. The gentleman from Mecklenburg, while he insists that all the banks have violated their charters, and that such violation makes it our duty to assert the supremacy of the law by a judicial prosecution, yet wishes to confine this prosecution to the State Bank alone, as the greatest offender. Sir, I am opposed to this distinction. If all have offended so as to merit civil death, the question of comparative guilt becomes unimportant. If it be our duty, by such a prosecution to vindicate the law, let us go to the full extent to which duty calls us. At all events, if such prosecutions must be instituted, I trust that the bank with which I am connected will not be overlooked upon this occasion.

Mr. FISHER, of Salisbury, addressed the chair. He said, that when the discussion first commenced, he had not intended to trouble the committee with a single observation on the subject. Believing as he then did, that he would have to take up some time on his own bill, he was unwilling to obtrude himself too often on the attention of the house. But the ground has been changed; and he now felt it his duty to notice some of the arguments that have been advanced. The question now seems to be—not which of the reports shall we adopt?—but whether we shall legislate at all on the banks, or suffer them to escape unnoticed?

The progress of the debate shows that much interest has been excited, and that great difference of opinion exists on the subject. In this house, he remarked, that a strange and unusual division of parties was to be seen.

First, we see a party disposed to go all lengths against the banks; without making any distinction between the innocent and the guilty, they seemed determined to bring confiscation, ruin, and disgrace, on all concerned with these institutions: take their property without a trial; seize it wherever you can find it, and leave to a future legislature to say whether they will return any portion of it, and if so, then to whom they will return it—in short, hang first, and try afterwards, seems to be the rule of action. At the head of this party stood the energetic gentleman from Granville (Mr. Potter.)

Directly on the opposite extreme stands another party. If the first wishes to do too much—the second wishes to do nothing at all. They seem to think that we ought not to touch these sacred institutions with our profane hands; they seem to desire, that we should stand by with folded arms, and quietly and calmly see the banks violate their charters, and spread ruin and distress throughout the land. At the head of this party may be placed the distinguished gentleman from Newbern, (Mr. Gaston,) and under his shadow we see gathered, with a few exceptions, all the junior members of the profession.

It is somewhere remarked by the ce