

Wm. B. Duane, C. S. J.

# RENCIDER.

UNITED WE STAND. DIVIDED WE FALL.

## DEBATE ON THE BANK QUESTION.

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

Mr. NASH observed, from the patience with which the house had listened to other gentlemen who had at different times addressed them on the subject now under consideration, he trusted he should be heard with like indulgence. In need, and the importance of the measure proposed, he had no doubt, late as it was in the session, and jaded as members must be, they would willingly hear any one who wished to address them. The subject, sir, is one of deep and general interest—to us, to the full amount of our characters for intelligence and firmness, and to the people at large, to the full amount of all their social and domestic comfort. I remain to be decided, sir, whether, true to our trusts, we shall pursue that course which the interests of our constituents demands, or yielding to the denunciations and threats which have been so often thundered in our ears upon this floor, shrink from the performance of our duty, and pass this destructive bill. Pass it, sir, and from the mountains to the sea-shore, it will be felt and deplored. It is not my intention, sir, in addressing the house at this time, to discuss the several constitutional and legal questions which have arisen in the course of former debates, upon other bills. If the arguments of the gentleman from Newbern have failed to carry conviction to those who heard him, it would indeed be folly in me to attempt it. I shall not therefore stop to inquire whether this legislature can, in any violation of the constitution of the United States, of our own state, and of the repeated decisions of the highest judicial tribunals known to our country, pass laws of confiscation, or ex post facto laws, or laws violating the obligation of contracts. Nor shall I stop to inquire whether it be the law, as has been asserted, that upon the dissolution of a charter, the real estate held by the corporation reverts to the grantor, the personal to the sovereignty of the country, and that as a consequence of such dissolution the debts due both to and from the company, are extinguished. Nor shall I inquire whether the specifications of offensive and illegal acts on the part of the officers of this institution, are such as, if judicially ascertained, will result in a judgment of forfeiture of their franchises; but shall, for the present, take it for granted that the charters are forfeited—that these consequences do not follow—that we have a right, a legal and constitutional right, to pass the bill on your table, and confine myself to the inquiry ought it to pass? It has become fashionable for the gentlemen who address the house upon this subject, to inform us in what relation they stand to these institutions as stockholders or debtors, and it seems to be the opinion of some, that in order that their opinions should have due weight, that they become the trumpeters of their own independence. In compliance with this new requisition, permit me to say, I am not and never was a stockholder in the State Bank, nor am I its debtor as principal or security. My name does not, to my knowledge, appear upon its books. I have therefore no other interest in this matter than that which pertains to me as a citizen of the country. I am not, sir, the apologist of this bank. I believe its affairs have been greatly mismanaged—that its officers have resorted to measures disreputable to themselves, injurious to the character of the state, and oppressive to its dealers—I am not its advocate to show that the acts complained of are not forbidden by its charter, were necessary to the safety of the institution, and not injurious to the community at large. I am here, sir, as the representative of a portion of the sovereignty of this state; and as an advocate for the people at large, I do most solemnly warn gentlemen of the tremendous results of the bill upon your table if passed into a law, and do most earnestly beseech them, in their blind fury against this bank, not to lose sight of what is due to the citizens of the state. It will be recollected, sir, that the bill now under consideration is essentially different from the one proposed by the gentleman from Granville. By that plan, the banks were to be plundered of all their property of every species, and the proceeds confiscated to the use of the

state, a joint corporator in each institution, and equally answerable, in conscience and justice, for every act of fraud, injustice and oppression. Nay further, a bill in equity was to be filed by the attorney general, the object of which was, as was suspected, to wrench from some of these corporators their superfluous wealth. This was the original plan—and one of more gross and unpropitious iniquity never was presented to the legislature of North Carolina. It has been applied designated, the plan of rapine and plunder. This plan was altered, and the chancery part struck out—and on yesterday, sir, we were presented by the gentleman who have combined to remedy the diseases of the body politic with the present. Stript, it is true, of the odious and disgraceful features of the original plan, (but still fraught with danger and destruction to the community,) and for this partial return to virtue and good sense, we are indebted, I presume, to the gentleman from Mecklenburg. I have known him, sir, long, and known him well, and was satisfied he was too sound both of head and heart, to sanction the first or second bill. The measure now proposed, pays a silent homage to the argument of the gentleman from Newbern, by abandoning the principles against which he reasoned, and recognizing as true, the doctrine so much declaimed against, of the debts due from and to the banks, by a dissolution of the charters.

[Here Mr. Potter, rose to explain.—Mr. N. resumed the floor. Mr. P. observed he owed it to himself and the gentleman who had assisted in framing this bill, to state distinctly, that they retained their opinions heretofore expressed, that the debts would not be extinguished, and that the clause alluded to, was inserted from abundant caution.]

Mr. N. resumed by observing he had nothing to do with the private opinions of gentlemen, nor had he made any allusion to them. Nor would it be proper for him so to do—he could look at and notice gentlemen's opinions, only as they were made public property. He had stated, that the bill recognized the correctness of the opinions pronounced by the gentleman from Newbern, for it expressly provides that the debt shall not be extinguished. The gentleman from Granville says, this clause was inserted from abundant caution—no caution sir—and yet we have been told on this floor repeatedly by that gentleman, that the stockholders in this bank had already derived from their stock more than the law allows—that all over is unjust—and that they ought not only to lose what is now due them, but be made to disgorge their iniquitous gains. But, sir, to return to this bill—its friends tell us they have two objects in view, one, is the punishment of those interested in the State Bank for the improprieties of their conduct, and the other to give relief to the people. Will it effacuate either of their objects? I think it can be clearly shown it will do neither. The first object is the punishment of the banks. Let us see how far and in what way it works this end. We have been told officially on this floor that the bank is solvent, and only so through the solvency of its debtors; and the ability of its debtors to meet their engagements at the bank, rests upon the indulgence which may be extended to them. And we have heard day after day, that there is in the community one general clamor against this institution in particular—that it is odious, and sir, we have found that no devotion to public service, no brilliancy of talent or purity of life and morals, are sufficient to protect the individuals connected with it, however innocent of the obnoxious acts complained of, from loss of public confidence, or shield them from gross insinuation. Sir, this odium and clamour does exist, and the State Bank officers cannot be ignorant of it. By a public report, they have proclaimed to the world that their stocks yields them little or no profit, that it would be better for each one to have the management of his own money—that it is due to themselves and to their debtors to begin to wind up their affairs, and they have given public notice that they will call in their debts at one tenth of the whole every ninety days. This resolution, sir, I cannot but think, injudicious and ill timed. It has increased the fears and discontents of the community, and a general inability to comply with it, is felt and expressed, and we have been repeatedly told, it is our duty to interfere and to prevent the execution of this destructive measure. And, sir, what does this bill propose? Monstrous

as it may appear, it actually compels the state either to collect the whole of the debts due this institution immediately, and to distribute them among the stockholders, and thereby ruin the community, or to give indulgence to the debtors, and guarantee their solvency to the bank. Is this the fact, sir, or is it not? I beg gentlemen to take up the bill, and accompany me while I read the second section. (Mr. Nash here read the 2d section.) By this section, upon a judgment of forfeiture being rendered, and I am taking it for granted, sir, that the gentlemen reporting this bill are too profoundly versed in the constitution and laws of their country, and with the evidence before them, not to know what will be the judgment of the court—commissioners are to be appointed, whose duty it shall be to proceed to collect the debts due the institution, and after paying the claims upon it, to distribute the proceeds with due attention to the rights of all the parties concerned. The commissioners must proceed to collect—there is no alternative, no provision in the bill for the renewal of notes, nor mode pointed out by which it is to be done. Let it be recollected, sir, that although this assembly is a political body, your courts of justice are not. Pass this bill, institute this prosecution as you legally may—place these individuals at the bar of justice, and their rights at once become sacred. The idle declamation with which we have this session been compelled often to listen, will pass by them as the idle wind, and though passion and interest may clamour without, the ear will not be more deaf than your judges in listening to any law and the evidence. Look at their warrant, the act we pass, and there find themselves directed to proceed with a due regard to the rights of all parties. What will be those rights? That the debtor shall pay when the time agreed on has expired. Sir, I have assumed that your judges are honest men—that they have sworn to execute the law without favor or affection, they will obey this law as far as it is constitutional so to do. Are the people able to pay immediately what they owe the State Bank? Sir, it is well known they are not. The people, according to official statements on your table, owe this institution \$2,500,000. It has in circulation something under \$1,000,000. Suppose the whole of this sum in this state, and to be applied to the extinguishment pro tanto of the debt—there then would be left a debt of \$1,500,000 to be discharged. And how is this to be done? It cannot be done. What then, sir, is the consequence? that in twelve months after the passage of this bill into a law, the real property now owned by the debtors of this institution, together with their slaves and other personal property, will have passed into the hands of these lords or holders, as they are termed. This must be the case, for they will be the only bidders—there will be none others in market. But, sir, suppose your judges not to be honest men—suppose them regardless of their official duty, and to grant indulgence, either by not collecting the notes due the institution, or by erecting themselves into a Banking Concern, and renewing the notes so due. What, in that case, would be the result. The state of North Carolina, by every principle of honour and justice, would be bound to guarantee to the State Bank the solvency of its debtors. Let it be recollected that the State Bank is no party to our act—her consent is neither asked for nor permitted. Your judges and commissioners are your agents, over whose acts, the bank has no control.

If, then, by their improper conduct, either with or without your sanction, a loss accrues, upon whom is that loss to fall? By the clearest principles of justice and of law, upon the party appointing. We will suppose a case. A and B are partners in trade, and by the articles of agreement it is provided, that upon a dissolution of the partnership, A shall wind up and settle the business. A dissolution does take place, and A appoints C, his agent to collect the debts, and by his negligence or improper conduct, debts are lost—upon whom is the loss to fall? Shall B, who had no agency in appointing him, and to whom he is not accountable, be burthened with a share of the loss, or shall A, bear the whole? Most clearly A shall bear the whole. And will it be pretended that the state is not bound by the same principles of justice which bind her citizens? Will she take by violence, and with the strong hand, from one of her citizens

the management of his own business, entrust it to an agent of her own appointment, and then refuse to make good any loss that may, through his negligence, be sustained? And if she would not do this iniquity to a single one, will she do it to many? This then, sir, is the mode of punishment which is proposed by these gentlemen for the State Bank. You relieve them from all the additional odium which the collection of their debts will accumulate upon them, and kindly take it upon your own shoulders. They are willing to give their debtors two and a half years to pay. You undertake to collect for them what is due immediately, or to stand between them and all loss from delay in collecting. Is this legislature prepared to adopt it? True, by one mode of procedure, you do effectually ruin the bank as an institution, but in a mode that makes the heart sick to contemplate—its first victims must be its debtors. By the other, you pledge to the bank the aid of the state to make good its debts. I ask again, sir, are gentlemen prepared to take either course? I turn my eyes to the measure, if the community suppose that the process would go into effect, and would go into effect. You have which some to covet, the dust the happy. I think, sir, I cannot perceive that it in any respect answers the objects of its advocates. To my apprehension, it is but a compound of absurdity.

I have thus far, sir, confined my remarks upon the bill before you, to the effects which it is calculated to have on the State Bank, and those immediately connected with it, as debtors. Is this the only, or the most important view which is to be taken of it? Are these the only individuals, or the only interests, to be affected by this bill if passed into a law? Far, very far from it. By nearly all the gentlemen who have preceded me in this debate, the subject has been discussed, as if these institutions and their creditors were the persons alone to be effected by our measures. Sir, has the state of North Carolina anything at stake—of character or interest? Have those of her citizens who have no connection with this bank, no interest in the question we are discussing? These are important inquiries, which it becomes us to make with all deliberation—and which, as guardians of the public weal, we are not permitted to disregard. Let it be recollected, that the state of North Carolina is a stockholder to a larger amount than any other in this bank; that she has derived large profits from it; that her treasurer is ex officio a member of the board of directors; that by the charter, he has a right to an inspection of the books every three months—and that annually reports are laid before the legislature. If these nefarious transactions have taken place, why have they been permitted to sleep until now? If usurious gains have been made, into whose coffers have they flowed? If oppression has been practised, to whose benefit has it been done? If a traffic in their own notes has been indulged in to the disgrace of the institution, and to the swelling of the coffers of the stockholders—who, I ask you, of those stockholders have had their coffers the most richly filled? Sir, the citizens of this state do not constitute the only tribunal who will sit in judgment upon the transactions of this day. The people of the United States are lookers on, and they will be impartial judges—and if there be disgrace, much, I fear, it will not all be found adhering to the skirts of the bank. To the people at large, this bill is deeply important. The revenue of the state is about 120,000 dollars; half this sum is derived from the banks, either in the shape of taxes or dividends accruing to the state as a stockholder. In the State Bank we have stock to the amount of 300,000 dollars, and in the other banks to the amount of 391,600 dollars. The bill before us, we are told, is the commencement of a system which proposes the destruction of all—for the report of the minority of the bank committee assumes, that all have sinned, and by their resolution they propose the same punishment for all. The destruction of the banks, or of either of them, involves necessarily the loss of that portion of the revenue derivable from that particular source—and of course we

sir. They can shut up their doors and refuse to renew the paper of their debtors, and commence an immediate collection; or they may divide among themselves their stock of notes, and each take his share and sue in his individual name. What is to prevent it? Does the present bill? Suppose an action brought by the bank—under those circumstances, where would the debtor go for relief? To a chancellor? What would be the answer of a chancellor to an application for an injunction, upon the ground that the bank had forfeited its charter, and that process had issued, and was then pending to repeal it? It would be, that as long as the charter was unrevoked, the corporation could not be disturbed in the enjoyment of the legal rights existing under it, except for equities growing out of the contract—and that if the charter were vacated, the bank was working no injury to its debtors, for the state would be bound to collect for the benefit of the stockholders—out suppose it alleged, that by the 3d section of the bill, the bank is restrained from transferring its evidences of debt. You would be told that no man, nor set of men, in this country, can be legally punished for offences until the existence of the offence is legally ascertained—that until the judgment of the court pronounced them guilty, the law deemed them innocent; and that it is not the province of this legislature to adjudge the cause, or inflict the punishment. In every point of view, then, sir, in which I can consider this bill, I cannot perceive that it in any respect answers the objects of its advocates. To my apprehension, it is but a compound of absurdity.

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