DEBATE
ON THE BANK QUESTION,
Which took place in the House of Commons, from Dec. 29 to Jan. 6.
(Continued.)

Mr. Potter said, gentlemen opposed to the measure proposed, were ready to admit that the Banks had been guilty of great irregularities; but insisted that the Legislature had partaken of their guilt from having authorised certain of their measures, and by consenting to the rest by their agents.

The speech of the gentleman from Buncombe, with which the committee had just been favored, was but a repetition of the sentiments of the gentleman from Newbern of yesterday. He could not but feel indignant that gentlemen should take so much pains to throw the blame which ought alone to attach to the Directors of the Banks, upon the Legislature of the State.

These gentlemen had spoken of the large amount of stock of which the State had become possessed in these institutions, for which it had paid nothing. No blame, Mr. P. said could attach to the State on this score; whatever interest she has in the Banks, was freely assigned to her by the parties.

Mr. P. objected to the course resorted to by the gentleman from Buncombe, of bringing forward arguments used in debate on the passage of the Bank laws, to elucidate the meaning of those laws, instead of being governed by the plain enactments themselves. He had no doubt, from the words of the act passed in 1814, that the General Assembly, had no idea of any thing else than specie being paid for the additional stock; and in support of this opinion referred to the evidence which had been recently given to the committee.

Many objections had been urged against the course of proceeding which he had brought forward. Amongst others, it had been said, that it would require years to bring the proposed suit to an issue—that every stockholder would have to be made a party.—Which would by no means be the case. The stockholders are not known in the law. The bill will be filed apainst the officers of the Bank who had committed the frauds charged. It would not therefore require a longer time to bring the suit to issue, than any other of an ordinary kind.

He trusted that the committee would not be deterred from acting on this subject, by objections of this nature. All that was desired by him and those who acted with him, was, that these Bank Directors should be made to answer to the law for their conduct. The gentleman from Buncombe had spoken of the care which our forefathers had taken, in the formation of the Constitution, in order to preserve the property of men of wealth, as well as to protect the poor man against the oppression of the rich. But Mr. P. was of opinion that if our ancestors could have foreseen the existence of those overgrown monied institutions which we have at present, and the influence which the men who manage them have in the community, they would have gone still further, and prohibited all such persons from having a seats in their legislative Assembly; and he had no doubt, if a constitution were now to be formed, such a provision would make a part of it.

If the Legislature would join me, said Mr. P. I would be for bearding these daily violators of the law, and for placing our feet upon them.

When he offered his services to his constituents to serve them in the Legislature, Mr. P. said, he told them, that if they thought with him, they would not suffer an attorney to be heard in favor of the Banks—he would hurl from their presence, men who should appear in the Court-house to support the claims of the Banks against the people.

Gentlemen might say this would be a rash course. But if the law is to be violated, it is better to preserve the country, than to destroy it.—And he believed if these institutions were permitted to go on in their oppressive measures, that the people would take this course, and he would be ready to head them in it!

Mr. P. said he should, for the present, withdraw his proposition for establishing a new Bank.

Mr. Webb intended to have given a silent vote on this question; but he could not sit and hear such remarks as had fallen from the gentleman from Granville, without noticing them.

What does the gentleman recommend? That this Legislature should lay their hands upon the property of the present Banks, and confiscate all the debts due to, and owing by them. And out of the wreck of this property, he wishes to establish a new Bank, in aid of which the Government is to borrow a million of dollars on the faith of the State.

But if the course which the gentleman recommends to be taken with the present Banks, be adopted, he should not be surprised if, instead of a million, $100 could not be borrowed on the faith of the State!

What else does the gentleman recommend? If his constituents will join him, he tells us, that he is ready to head them, enter the Court-house of his county, and hurl out of doors, any agent of the Banks who shall dare to attempt to recover any of their debts from the people!

But, sir, however willing the gentleman may be to head such a mob, I am confident, from the knowledge which I have of them, that the people of Granville will have more respect for themselves and for law and order, than to join the gentleman in any such violence.

Mr. W. hoped that whatever measures might be adopted in relation to the Banks, they would be such as would be creditable to the State, and such as would not render the situation of the people worse than it is at present. For his part, he believed that if the course advocated by the gentlemen from Granville and Mecklenburg were to prevail, instead of our Bank notes being at a discount of three, four, or five per cent. at the North, as they had for some time been, they would sink to 25 or perhaps 50 per cent. below par, and that this depreciation would produce more distress in the community than had ever yet been seen. He hoped therefore, no such bill would pass.

Mr. Gaston said, that having already occupied not a little of the time of the Committee, he regretted the necessity which compelled him again to address them. But for the unexpected appearance of the respectable gentleman from Mecklenburg, (Mr. Alexander,) as a co-adjutor to the gentleman from Granville, this necessity would not have existed. It is true, that the gentleman from Mecklenburg has not explicitly stated the extent of the aid which he purposes to render, and Mr. G. had a perfect conviction, that he could not, and did not mean to concur in the entire project. Yet (said Mr. G.) he had denied most positively certain constitutional and legal positions, which I had advanced as sound, and with equal confidence has asserted others, which I firmly believe to be most dangerous and erroneous.

The Resolution before the Committee, after premising that the Banks have violated their charters, and committed great frauds on the people of the State, whereby they have forfeited the powers and privileges granted in their charters, proposes, that the Attorney-General in behalf of the State, shall, by writ of Quo Warranto, or other legal process, prosecute a judicial enquiry into their conduct. It must be understood, and it is avowed, that the prosecution is to be carried on, in order to obtain a judicial sentence of forfeiture of the charters. There is no question but that for a gross prostitution of its powers, & a flagrant violation of its charter, judicially ascertained, in a suit instituted for that purpose, the charter of a Corporation may be forfeited, and the Corporation dissolved. If there could be any doubt on this point, he would refer to 1 *Bl. Com.* 485 and 2 *Kent's Com.* 251. 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 prerogative 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, proscribed 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*, 258, 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 insolent 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. *Fay*, 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*."—Do. 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 an *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 the 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 and authoritatively pronounced, in the case referred to, to leave a doubt of the result.

The remainder of Mr. Gaston's Speech in our next.