DEBATE
ON THE BANK QUESTION,

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

(Continued.)

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Mr. Potter said, he meant to detain the House but for a few moments. He had examined the 2d section of the bill under consideration, to which his attention had been drawn by the gentleman from Hillsborough, and could see nothing in it alarming or objectionable. The gentleman, he was sure, was too sound in head and heart, to be willing that the directors of this Bank should retain in their hands, what they had gained by rapine and plunder for twenty years past.

But the gentleman says, there is no provision in the bill for renewing the notes of debtors to the Bank. But, said Mr. P. the bill states, the Court shall make such regulations as they judge proper, having due regard to the rights of all the parties, which would certainly include the power to renew notes.

The gentleman from Hillsborough also states, that the Commissioners will demand from the debtors the whole of their debts at once, otherwise the State will be liable for any deficiency which may happen. The bill contains no such provision. He hoped, therefore, that the members would not be alarmed at this statement.

The gentleman also predicts that the notes of the State Bank, in consequence of the proposed prosecution, will depreciate to an extraordinary extent, the Governor's proclamation in their favor notwithstanding. Mr. P. had no faith in his prediction.

He also says, that to take the course proposed, would be to confer a favor on the Bank, as it would relieve it from the trouble and risk of collecting its own debts from its customers. Mr. P. did not believe the friends of the Bank so considered it, or they would not be seen hanging about the bar of the House, denouncing every man who favored the measure.

Mr. P. concluded, by stating that it was with great difficulty, that the advocates of the present measure could bring these Bank managers to the bar of justice. Unhappily for us, said Mr. P. men who have been long regarded as the oracles of the law, judges and lawyers who have gone through the land, are leagued together against us—it is their interest to oppose us—and said he, shall we be influenced by the opinions of men who would not be allowed, in a court of justice, either to give their testimony, or to sit in judgment in the case? He trusted not. He should regard a successful issue in this business, as a most glorious event for the people, as it would shew that there does not reside in North-Carolina a power greater than the law. There is, I trust, said Mr. P. a redeeming spirit in this Legislature that will protect the interests of the people: And if so, they will hail us with acclamations, as their worthy guardians and friends.

Mr. Allison. I had not intended, Mr. Speaker, to trouble the House with any remarks on this occasion—but the importance of the measure proposed in the bill, together with the extraordinary positions taken by those who oppose its passage, induce me to submit, in a few words, the reasons which compel me to support it. The tones of the opposition have been as various and as changeable as the colors of the cameleon. We have been told that the writ of quo warranto could not be sustained in this country—that it was unconstitutional. It has been asserted by high authority, that the disfranchisement of these Corporations would be *ipse facto*, an extinguishment of the debts due to and from said Corporations—And that no sooner had your Supreme Court pronounced a decree of forfeiture, than the State Bank notes would be no better than oak leaves. Yes, Mr. Speaker, gentlemen have not stopped here:—they have confidently told you, that not only this would be the effect of a dissolution, but that you had not the power to prevent it—that no law can be passed by this Legislature—that no provision could be inserted in the bill on your table, to prevent such effect. That such provision would be *ex post facto*. They go still further:—they tell you of the difficulty and delay which will be produced in this investigation—that it will not be settled before the time Charles Fox set to pay his debts—the day after judgment. An appeal is threatened to the Supreme Court of the United States—the doubts and fears of members are wrought on—every thing the ingenuity of man can devise is seized on, to deter us from handing over to the judicial authority, Institutions, whose best friends are compelled to acknowledge, have abused their privileges, and in many instances acted in violation of all law. Again, Sir, we have been told, the investigations into the affairs of the Banks have been attended with pernicious consequences—that their notes have depreciated since the session of the Legislature—and that, in consequence of the facts which have been brought to light, odium is attempted to be thrown on those who have been foremost in this investigation.

I ask gentlemen, if their notes have depreciated, whose fault is it? Was it our duty, as representatives of the people whom they have been so long goading to death—of whom they have been collecting such enormous sum of money by usury and extortion—to chime in with them, and instead of endeavoring to bring every thing to light, to remove suspicion, or produce certainty, as to the charges which have been in circulation—to become ourselves aiders and abettors of the nefarious practices, by hood-winking the people? With what face could we have returned to our constituents, and told them, notwithstanding our attention was directed to the affairs of the Banks, by the Governor in his Message, that we deemed it inexpedient, yea, dangerous, even to raise a committee of investigation, lest their real situation might be exposed, and their notes depreciate still more? But some gentlemen seem to think, that notwithstanding the facts disclosed, the committee should have taken into consideration the evil consequences which might ensue from this being published to the world—that they should have white-washed all—turned advocate for the Bank—and mildly recommended that it was inexpedient for the Legislature to interfere in their concerns—that the Directory would no doubt wind up their affairs as mildly as the nature of things would admit. Wind up their affairs, Mr. Speaker! Yes—and, in the language of the gentleman from Granville, the affairs of the people of North-Carolina too. That gentleman, Mr. Speaker, by his zeal in this investigation, has incurred the animadversions of a great and powerful part of this community. I need not tell *you*, Sir, that the heavy artillery of this House has been steadily directed towards him. But, Sir, with a manly front, he has stemmed the torrent of opposition, and thus far carried the breach. He is deserving of credit, Mr. Speaker; and though the distributors of laurels have not given it him, there is a tribunal which will award to him the commendation which he so richly deserves.

And now, Mr. Speaker, I beg leave to call the attention of the House to the bill as now modified. It provides, that prosecution be forthwith commenced against the State Bank—not that the friends of the principle think this Bank the only one deserving of censure, and liable to the vengeance of the law, but because they consider her as most culpable, and therefore deserving notice first. The friends of the measure proposed in the bill before the House, have thought proper, on the ground of expediency, to frame the prosecution against the most notorious delinquent first, reserving the rest for the other two, as necessity may hereafter dictate. The bill provides against every objection which the framers could anticipate would be urged as to the details, and is, in my humble opinion, well calculated, should the Supreme Court disfranchise that Corporation, to protect the people from the ravenous claims of the hungry Stockholders, who are now ready to pounce upon them, and who pretty plainly intimate their intention of so doing in their late report. Yes, more, Sir—while under the direction and regulations of the Supreme Court, the Commissioners might wait with the debtors—the faith of the State is pledged for the redemption of the notes in circulation, which, it seems to me, would prevent that depreciation which is now so much apprehended; for surely, Mr. Speaker, the State of North-Carolina can afford a better pledge for the redemption of the notes than the Stockholders can, when she holds in her hands not only the effects of the Stockholders, but the resources of the whole country.

But gentlemen seem to look upon the bill as a perfect Pandora's box—pass it, and the people are ruined. The gentleman from Hillsborough, who has just taken his seat, tells you it is thevery thing the stockholders want done—that were he called upon to advise them what would be most for their interest, he would advise the President of that Bank to come before the Court and surrender the charter. He admits, though, that it is competent for this Legislature to order a judicial investigation into the conduct of the Banks, and does not pretend but the writ of quo warranto is constitutional. I also understood him, though he denied it in the commencement of his remarks, to concede in his argument the contested point, which has been the raw-head and bloody bones to many members—that a dissolution of the Corporation wrought an extinguishment of the debts to and from the Bank. (*Mr. Nash* explained, and said he still contended that such would be the effect.) Then, Sir, I will direct my attention to that objection.—If the gentleman's construction of the law be correct, and this bill don't provide against this consequence, the objection is insuperable. Mr. Speaker, two questions here present themselves:—1. Would a decree of disfranchisement produce an extinguishment *ipso facto* of the debts? And 2. If so, does not the provision in the bill—which is in these words, "That upon a judgment or decree of forfeiture of the franchises of any corporation being had, or that the same is dissolved, that such dissolution shall not work an extinguishment of the debts either due to or from such corporation"—prevent such operation of the common law from taking effect? Notwithstanding, Mr. Speaker, it has been so confidently asserted on this floor, as the pledged opinion of legal gentlemen, that a decree of forfeiture of their franchises would work an extinguishment of the debts due to and from the Banks—and that no interference of the Legislature could prevent such effect—and that any provision which we can now make to that end, would be *ex post facto*, and consequently unconstitutional—yet I cannot subscribe to that opinion. In the course of the discussion, we have heard that asserted from the highest authority to be law, which now seems to be conceded not to be law. I therefore do not feel bound to receive any thing for law, coming from the opposite side, upon the *ipse dixit* of any gentleman. But, Mr. Speaker, by way of set-off to the legal opinion of the learned gentlemen who tell us that a dissolution is an extinguishment of the debts, and that no law can be passed to prevent such effect, that would not be *ex post facto*, I have the legal opinion of gentlemen, but little if any inferior to that of the gentleman from Newbern, who assert a directly contrary doctrine. I have not the vanity to assert my own opinion in opposition to that of the gentlemen from Newbern and Hillsborough. But I beg the indulgence of the House whilst I offer an argument which, to my mind is conclusive of the power which the Legislature have to prevent, by the mere operation of law, the extinguishment of debts due to or from Corporations not yet dissolved. Should that, for argument, be conceded to be the fact, which I will here take the liberty of remarking is not conceded, as might seem to be from the provision in the bill—a provision which was inserted not from a belief of its actual necessity, but with a view of making certainty doubly sure, and removing the doubts of gentlemen who might be induced to believe there would be danger of an extinguishment of the debts. This, I say, Mr. Speaker, was the reason for the insertion of the clause which I have just read. Then, Sir, suppose for a moment that this clause is essentially necessary to prevent the consequences which gentlemen so earnestly tell you will ensue. Of what avail will it be? Will it prevent an extinguishment of the debts? Gentlemen tell you it will not—that such provision is *ex post facto* and unconstitutional. Are they sincere? Or do they sound this bugbear in our ears for effect? What is an *ex post facto* law? The gentleman from Newbern tells us, and I think correctly—that it is to making of that criminal which was not so when committed—inflicting new penalties for past misconduct—though I cannot perceive by what process of deduction he applies it to the present case. The Legislature have declared that debts of a certain character which had been due a certain length of time, should not be recoverable. See 3 *Murphey—Sharpe* v. *Jones, Ex'r. of Jones, and Winbourne.* This was an action brought by the plaintiff Sharpe, against Jones, the Executor of Jones, and one Winbourne, upon a note sealed by the testator Jones, though not by Winbourne, the other defendant, given in 1810. The suit was commenced in 1816. The Executor of Jones availed himself of the plea of fully administered; and Winbourne relied on the act of 1814, declaring all contracts not under speciality, irrecoverable after three years from the accruing of the cause of action—three years had elapsed in this case before the act was passed, and therefore, from the ratification of the same, the recovery of this debt was barred as to Winbourne. Here the Legislature have said a debt which is in existence shall not be recovered—but the Judges do not say that act is unconstitutional. If it is competent for the Legislature to bar the right of recovery to a previously existing debt, have they not the power, *e converso*, to prevent the bare operation of law from destroying the right of recovering *bona fide* debts. Again, in 1820, it was enacted that Justices' judgments should be barred after three years from the rendition, or from the issuing of the last execution. In 1825, the time was extended to seven years. Here under the operation of the act of 1820, the recovery of a debt might have been barred for two years, and yet recovered by the act of 1825. But it is not contended that such dormant right of recovery is not revived by the act of 1825—or that this act is *ex post facto*, in relation to such claims, though it does effect rights existing previous to its passage. If then, I say again, the Legislature have the power to call into existence rights, which by the operation of law had been extinguished, have they not the power, *a fortiori*, to prevent the extinguishment of those which are still in existence, and which, by the operation of law, might expire. These remarks, it will be recollected, are predicated on the supposition that the providing clause, which I have been endeavoring to prove not unconstitutional, was necessary.—Much more might be added in support of the position which I have taken—but I am so well satisfied we might have proceeded in safety without that clause, that I deem it unnecessary further to labor the point.

We have heard of no authority, except the assertions of gentlemen and a few words from Blackstone's Commentaries, which go to establish in any manner the unreasonable doctrine that an extinguishment of the debts to and from the Banks, is a necessary consequence of their disfranchisement. Blackstone's Commentaries, Mr. Speaker, are preeminently superior to any elementary work which we have on the law; we all admire the perspicuity of his style, his profound legal learning and the plain common sense which every where abounds in his writings—But what lawyer ever thought of establishing a contested legal question, upon the authority of any elementary book. Had I, Mr. Speaker, introduced Blackstone's Commentaries to have established the position which the gentleman from Newbern has introduced him to establish, and it had been his object to have established a different doctrine, I should have been hooted at, and you would have heard a hundred passages in that work pointed out, which is not law. Common law is common sense—and when a sentence is quoted from an elementary writer, and attempted to be applied to some particular case, when its application would be a violation of common justice and an outrage upon reason—it may safely be pronounced not to be law. I therefore am clearly of opinion, that whatever Mr. Justice Blackstone might have thought about the extinguishment of debts on the dissolution of corporations, as they existed in his day in England, were he now here he would tell you, that no such consequences would ensue under the provisions of this bill, and in this contest between the State and the State Bank. Yet, Mr. Speaker, and I verily believe it would not take the gentleman from Newbern or the gentleman from Hillsborough either, long to convince the Legislature that no such consequences would ensue. I hope, therefore, Mr. Speaker, that gentlemen will dismiss their idle apprehensions about *extinguishment*—and ask themselves, in soberness and truth, whether they are satisfied to leave this place without adopting some decisive measure to protect the people of North-Carolina from the iron grasp of this mighty giant of their own erection, which now seems to set at defiance the parent that gave it existence—which has been living in the violation of all law—and which is now threatening, by one fell swoop, to spread desolation far and wide throughout the land.

Is not every gentleman in the House satisfied from the reports of the committee, for the two as to facts, do not differ very materially, that the Banks have violated their charters—and that the one now in question has been continually in the practice of abuses incompatible with the ends for which it was established—and in a direct progression to the establishment of the most hateful of all aristocracies—I mean a monied aristocracy. I have already attempted to shew that we need not fear to assert the majesty of the law. That we need not apprehend the direful consequences which the gentleman from Hillsborough has conjured up from the depreciation which he apprehends may take place if we take the management of the institution out of the hands which have so injudiciously, to say the least of it, discharged their trust—and put it in the hands of those who will have no interest but that of the State and the people to look to, and who will be under our control, and consequently that of the people. I say again, the investigation has unfolded the secrets of the prison-house, and they are such as will make the people stand aghast. The bill on your table proposes going through now we have begun, and teaching these men that none are so rich, or so exalted, in this country, as not to be amenable to the law. It has long since been said, Mr. Speaker, and I fear it is too true, or we would not find so much difficulty in carrying into execution the measures proposed by the bill on your table. That through tattered cloaths small vices do appear. Silken gowns and furred robes hide all—Plate sin in gold, and the strong lance of justice hurtless breaks—arm it in rags, and a pigmy's sting doth pierce it.

Mr. Speaker, I may, and will no doubt, incur the displeasure of some whose friendship might be of essential service to me, by the remarks which I have made and the course which I have taken on the question. Be it so; when personal considerations influence my vote, then am I no longer worthy of a sent on this floor, or of the confidence of the honest and intelligent citizens which I have the honor in part to represent. What do we ask for? Is it punishment without judge or jury? No, sir, it is simply an assertion of the dignity of the State and the majesty of the same. If the managers of this institution have not conducted as we have charged them, let them come forward and assert their innocence; let the suspicions be removed. The institution will stand fairer before the world if they be acquitted, and the supremacy of the law will be maintained. We expend thousands of dollars every year in bringing individuals to justice, and why should we dread a little cost on the present occasion. Mr. Speaker, it is my motto, and I hope it shall ever be my principle, *fiat justitia ruat cælum.*

Debate to be concluded in our next.

STATE RIGHTS.

The growing disposition to *cant* about State rights, which seems to afflict so many of our *aspiring politicians*, would be somewhat surprizing, in the actual state of things, if we were not enabled, by noting the signs of the times, to give a shrewd guess at its object. It is the fashion of the times to view with jealousy the general government: It is a larger concern than any one of the individual "sovereignties," and therefore it is assumed from the simple fact—for really we know of no other, that great danger is to arise to the latter, from the power of the former. The chimera is dressed in a thousand fanciful shapes, by the would-be great men, and addressed to the perceptions of those who think little on the subject, and whose passions are easily excited. In some sections of our "great clime," the trick has taken wonderfully. It has been quite a profitable investment. In some of the states, the most furious declaimers against the power and the tyranny of the general government, have reaped the highest honors, and—what they loved quite as well—*rewards*, of the state governments. The business, in short, has been so evidently a thriving one, that the small politicians of other sections of the country have been induced to join in this hue and cry, to get up little alarms against the general government, from a very disinterested desire of obtaining power and place for themselves. The Cumberland road, and one or two turnpike gates to be erected on it, furnished a subject for lots of cant, about federal encroachment. One gentleman, who used to think that the general government possessed some power to do good, and to promote the welfare of the people, and who had voted some years since in favor of this road, acknowledged himself in the course of the debate regenerate and converted from these horrible opinions. A turnpike gate was a thousand times more alarming to his restored vision, than the windmills to that of the renowned and sagacious Knight of La Mancha.—"By what authority, it was demanded, is such a tremendous power claimed?"—"once establish this strained construction—and I would ask gentlemen, where this splendid government shall be compelled to stop its chariot wheels?"—and all this about a turnpike gate!

Another very great statesman, gives us a speech that was never spoken, and publishes it, after the question is decided. In this novel speech he proves conclusively, by citing Tiberius and the Appian and Emilian ways, that the erection of a turnpike gate is the *ne plus ultra* of a tyrannical government. This gentleman speaks somewhat discourteously of Tiberius, as well as of turnpike gates; yet, if one were to judge from his comportment, when in England, we suspect that had he lived in the days and the country of Tiberius, he would have been among the foremost to hasten along the "Appian way"—to offer his allegiance to the Emperor—had there been a turnpike gate at every step.

Is it not, after all, passing strange, that this great republic has not power to make a road and keep it in repair, when such power is enjoyed by any petty corporation!

On the subject of state rights, and the motives of those who, in the present day, find it expedient to make so much noise about them, we find the following observations in the Savannah Mercury:

"We are ourselves, great sticklers for state *rights*—but we are not ready to sacrifice the *rights* of the *Republic* at *their* shrine. The "sovereignty of the States," in the sense it is generally used by the demagogues of the day, if literally defined, would read thus: *a gudgeon bait for an office hunter to catch the people, by inducing them to believe, while they are enjoying the greatest of human felicity, that they are the poorest devils in the world. This bait is often used by* PATRIOTS *for the purpose of catching the favor of the people, and by tickling their vanity, make it pay tribute to their ignorance.*

In the constitution of this government, as well as of others, *subordination* is an indispensable ingredient—not that slavish subordination which characterises a monarchy or despotism, and destroys equality in political society, but that which combines the *parts* into one harmonious *whole*. If our Union is ever to be dismembered, it will be by the States' trenching upon the right of the general government.—Let her energetically sustain her prerogatives, as they are indicated by the Constitution, and we are safe. But if she does not, she will realise the fate of poor *Lear*, in dividing the Crown among his daughters.

Baltimore Pilot.