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Ours are the plans of fair political peace,
Unwarped by party rage, cold as the rocks.

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LIBELS.

The following is an interesting Report of a Committee of the Pennsylvania Legislature (of which Dr. Leib was Chairman) on that part of the Governor's Address which relates to libels, which will no doubt be read with considerable interest. They report:

THAT they have been deeply impressed with the importance of the subject committed to them, and have given to it a candid and deliberate consideration. They cannot but regret the irksomeness of the duty assigned to them; inasmuch as they are compelled by it, as members of the house and citizens of a free community, to exhibit an analysis, which may prove grating to the feelings of some, and lead others to a misconception of the motives under which the committee acted. As members of the General Assembly, they have sworn to support the constitution of this commonwealth, and "to perform the duties of the office with fidelity; they cannot, therefore, avoid expressing their feelings and their judgment in terms which the subject referred to them demands. However desirous they feel of paying a becoming deference and respect for one of the organs of the people; and however unwilling they may be to wound any feeling in the discussion of an important and deeply interesting topic, they are compelled to enter upon it, regardless of any monitor but duty, of any obligation but that which they owe to the people.

In the opinion of the committee, the suggestions in the Governor's address, in respect to the restrictions to be imposed upon the press, are highly exceptionable, as they relate to the body to which they were addressed, to the constitution of this commonwealth, and to the liberty of

The following is the passage in the Governor's Speech alluded to:

"May I not here be allowed, without incurring the imputation of a personal motive, to remind the legislative guardians of the reputation, as well as the lives and fortunes of our fellow-citizens, that libelling (gross and malignant libelling) has become the crying sin of the nation and the time! It is not the licentiousness of a single person; nor the machinations of a particular party, to which in the faithful execution of my office, the legislative attention is thus directed. The crime is to me the same, whoever may be the criminal and whoever may be the victim. But it is the general prostitution of the liberty of the press, that overwhelming torrent of political dissension, the insupportable demolition of public characters, and the barbarous inroads upon the peace and happiness of private individuals, which constitute, in my mind, a subject for the highest concern for yourselves and to your posterity. The fatal consequences of this public malady began already to appear. The press has lost its uses as an instructor and censor. Citizens of the same community are pledged to mutual hatred and persecution. All respect for the magistracy and the laws is falling into derision. Good and wise men were abandoned the field of public service. And with a fatality not uncommon in the history of nations, the avowed friends of a free representative government are arming its real enemies with weapons for its destruction.

"The civil gentleman, is obvious and affecting; but where shall we seek the antidote and the cure? The most zealous advocates of a free press have always thought that to preserve its liberty, its licentiousness must be restrained. The law provides perhaps sufficiently for the punishment of a convicted libeller; but the inadequacy of that species of reparation to the feeling and fame of the injured, and even the opportunities to escape conviction, are points on which the law is still susceptible of great and constitutional amendment. I would, therefore, venture to suggest that every printer who assails the character of a citizen, should be compelled, if required to publish his defence; that every printer and editor of a newspaper, or other periodical work, should register his name in some public office of the proper county, to be evidence of the fact of publication, upon trials at law; and whenever a grand jury shall present a press, as a public nuisance, the printer and the editor should be bound in a recognizance with sureties for their good behaviour, and the court authorized to suppress it for a limited time. But after all it cannot be denied, that the only effectual remedy must be supplied by the good sense and virtue of the community; since the crime of libelling, like the crime of duelling, will forever depend for its indulgence and its impunity upon public taste and public opinion. Your predecessors indeed, have enacted a law for the more effectual prevention and punishment of duels; but reflecting that duels are among the natural and natural effects of duels, you gentlemen, will I am confident, be solicitous to discredit and suppress the cause of such complicated mischief, by the influence of your example and advice, as well as of the exercise of your legislative authority."

the people. It appears to the committee, that the Governor must have felt either a want of respect for the honor and integrity, or for the understanding of the General Assembly; or he could not have submitted projects to them, which, if carried into effect, must implicate them in guilt or ignorance. In either view, his suggestions do not accord with his professions of deference for "the purity of our motives, and the rectitude of our conduct;" and the committee would consider themselves as unfaithful to their trust, if, from false delicacy, they had been compelled to silence on this subject.

The 11th section of the first article of the constitution declares, "that the Governor shall, from time to time, give to the General Assembly, information of the state of the commonwealth, and recommend to their consideration, such measures as he shall judge expedient."

The Governor then is directed to recommend to the General Assembly, such measures as he shall deem expedient; but those measures, the committee are warranted in saying, are to be in consonance and not in conflict with the constitution.

By the eighth article, "members of the General Assembly, and all officers, executive and judicial, shall be bound, by oath or affirmation, to support the constitution of this commonwealth, and to perform the duties of their respective offices with fidelity."

The 26th section of the ninth article, contains this solemn and emphatic declaration: "To guard against transgressions of the high powers, which we (the people) have delegated, WE DECLARE that EVERY THING IN THIS ARTICLE IS EXCEPTED OUT OF THE GENERAL POWERS OF GOVERNMENT, & SHALL FOREVER REMAIN INVIO-LATE."

The 7th section of this ninth article, thus excepted out of the general powers of government, and which is forever to remain inviolate, declares, that "the printing presses shall be free to every person, who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man; and every citizen may freely speak, write and print on ANY SUBJECT, being responsible for the abuse of that liberty."

Assuming the constitution then as their text, and the chart and compass by which they are to be guided; and having sworn to support that instrument; and considering the project suggested by the Governor as subversive of our frame of government, the committee cannot withhold their reprobation of a measure, which, if carried into effect, would involve the General Assembly in the guilt of perjury, and prostrate the dearest and best rights of the people.

Will the committee be told, that because freedom of the press in G. Britain, means only a freedom from the previous restraint of the licenser, therefore such is the freedom of the press in our republic? Is the fabled constitution of that monarchy, to be classed with the real one of this commonwealth? Are we to resort to the political vocabulary of kings, to define the liberty of an American?

The constitution of G. Britain exists only in imagination. The omnipotence of Parliament is the constitution and the law. There the liberty of the subject is in the safe keeping of a Monarch and his obedient and dutiful Parliament, and there the freedom of the press may mean the freedom from previous restraint, because the government so wills it. But is the General Assembly, like the King, Lords and Commons, bound by no rule but will, and restricted by no limit but expediency? Does the liberty of the citizens here depend upon a General Assembly? Are there no land marks to direct them, no bounds beyond which they dare not pass, no brief of the people which defines and describes their powers? And because the abolition of a licenser of the press in Great-Britain is there considered as its freedom, are we thus to consider it here? Is the liberty of

an Englishman the standard by which we are to measure the liberty of an American? Forbid it justice!

In Pennsylvania, such licenser of the press ever existed; and, therefore, the freedom of the press means more here than in Great-Britain. No previous restraint upon the press was removed, because none had been imposed; and therefore the freedom of the press cannot imply a freedom from imprisonment.

Let us revert to the constitution itself, and not to British authority, to tell us what are the powers delegated to the government, and what are the rights reserved by the people. That constitution authorizes every citizen *freely* to speak, write and print on any subject, being responsible for the use of that liberty. As responsibility is a sort of cabalistical term in the mouths of some of our jurists, when applied to the people, but not to their servants, the committee will submit their view of it by the light of reason, common sense and the constitution. The twenty-sixth section of the bill of rights, as was before said, excepts out of the general powers of the government every thing contained in that bill of rights; the guarantee of the freedom of the press is contained in the bill of rights; and, therefore, the press is excepted out of the general powers of government. The legislature have no authority derived from the constitution, to legislate on the subject of the press, and, therefore, no law can be passed by them to operate even as a subsequent restraint upon it. Existence is necessary to freedom, and how can a press be free that is deprived of its being!

How, then, it may be triumphantly asked, is a citizen to be responsible for the abuse of the liberty of the press? To this question there is a plain and ready answer. The existing law on the subject, at the time of the formation and adoption of the constitution, was deemed to have checked enough upon licentiousness—it was the common law, which the committee will hereafter notice, that put the citizen to a rigorous responsibility. It was surely unnecessary, as will be shewn hereafter, to establish a responsibility more severe; nay, it is scarcely compatible with the principles of a free government, that it should exist in the degree it now does, much less that its momentum should be increased.

The constitution and the trial by jury have furnished themes of anonymous declamation, when an obnoxious but salutary law was to be defeated, or office to be acquired; but when a printer is to be ruined in his fortune, and his resources of subsistence cut off, then indeed the constitution and trial by jury are not heard of; and from the death like silence in respect to them, it would appear as if they were assigned to the tomb of "the Capulets."

The 9th section of the ninth article declares, "that in all criminal prosecutions, the accused hath a right to be heard by himself and council; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land."

The 5th section of the same ninth article declares, "that trial by jury shall be as heretofore, and the right thereof shall forever remain inviolate." By the constitution, then, a printer cannot be compelled to give evidence against himself; neither can he be deprived of his property; unless by the judgment of his peers or the law of the land.

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The press of a printer is as much his property, as the ship which belongs to the merchant, or the library to the attorney; and to suppress the former on the presentment of a grand jury and the fiat of a court, would be equally an infraction of the constitution, as to scuttle the ship of the merchant, or to seal up the office of the lawyer under a similar presentment. Every man's occupation or profession is as much his property as the materials he employs—it is his living, and if you deprive him of his living, he is deprived of his all. The trade or art of a printer then, is his property, and he cannot be deprived of his property, unless by the judgment of his peers.

The committee cannot but recur to a memorable declaration made by the Governor, in his reasons for negating a bill to alter the mode of appointing the Comptroller and Register-general. "I have no ambition for power!" (said he) but I trust I shall be excused in holding it as a sacred duty, to transmit the constitution (which approaches as near to perfection as any that ever did or does now exist in the world) unimpaired and unshackled by any act of mine;" and they are of opinion the house ought to reiterate the declaration, and with unaffected solemnity and sincerity aver, that they are not ambitious of power, and that they hold it a sacred duty to transmit the constitution to their successors unimpaired and unshackled by any act of theirs.

The committee cannot admit, that if the General Assembly possessed the power, it would be expedient to impose the suggested restrictions upon the press. To borrow the language of the eloquent Junius, "Let it be impressed upon your minds, let it be insilled into your children, that the liberty of the press is the palladium of all the civil, political, and religious rights of an American." Shall we then consent to put this palladium into the keeping of grand juries and courts? O! like the sacred fire, shall it be guarded alone by the vestal eye of the people?

In the regions of monarchy, the deadly night shade of the common law on libels and contempts might thrive and flourish under the Governor's regimen; but the temperate climate of Pennsylvania is not adapted to its existence or its culture. Here we desire not a star chamber or a Jeffries, the will of the people, and not that of a Governor or a Judge, must be the law of Pennsylvania. What said our Envoys, Marshall, Pickney and Gerry, to the French Minister of Foreign Relations?—"The genius of the constitution cannot be overruled by those who administer the government. Among the principles deemed sacred in America;—among those rights considered as forming the bulwark of their liberty, which the government should contemplate with awful reverence, and approach only with cautious circumspection, there is none of which the importance is more deeply impressed on the public mind, than the liberty of the press;" and even in England says the enlightened author of the Spirit of Despotism, "the liberty of the press is not openly infringed—it is our happiness and our glory—no set of men, whatever be their power, or their wishes, dare to violate this sacred privilege. But in heathen mythology we learn, that when Jupiter could not force certain obstacles by his thunderbolts he found an easy admission in the shape of a golden shower."

That there are presses which are nuisances, and that have lost their uses "as instructors and censurers," we need not travel out of this borough to demonstrate; but the committee are of opinion, that even they ought to remain undisturbed as monuments of the safety with which error of opinion may, unexampled licentiousness may be tolerated when reason is left free to combat it."

What, your committee would ask would be the effect of the restrictions suggested? The suppression of certain presses, obnoxious to a court and the ruling powers, while those of a different cast, yielding implicit homage to men dressed up in a little brief authority, flattering their follies and applauding their

vices, would roam at large, unbounded and uncontrolled, thirsting for and glutting themselves with the feelings and the reputation of more than half of the community. If the press is an evil, let that evil be corrected by the press itself—let the presses stand on the footing of equality, and the good sense and virtue of the people will decide between them. The committee cannot be persuaded, that the humane and benevolent citizens of Pennsylvania "are pledged to mutual hatred and persecution," although they have no doubt, that hatred and persecution have had an unfortunate reign among us; neither can they admit, that all respect for the laws is falling into derision, whatever feeling may be entertained for the magistrates, by some of whom those laws have been too long directed.

They cannot admit that the presses which are the objects of denunciation, merit the fulminations against them; neither are they disposed to allow, that "good and wise men will abandon the field of public service," unless the presses should be surrendered to the discipline and correction of grand juries and courts. The wise and the good hate nothing to fear; vice and crime only start back with dismay from public scrutiny, and seek to conceal themselves in the regions of silence and fetters.

Let us look at the state of typographical warfare in our state, and what do we discern? A host arranged under the banners of the administration, while a small but Spartan band defends the pass of Thermopylae for the people. If we recur to the report of the register general we find, that hundreds of dollars have been distributed to partizans and favorites, who, no doubt, have rendered the wished for service, although without the pale of the law, and who will again, for the same fees, offer their panoply to protect the good and wise men in office—where then the necessity of new restrictions? They cannot be wanted, or their cause must be in despair.

The committee would think themselves guilty of a *fals de se*, if they could ever consent to arm "armed friends of a free representative government," any more than "its real enemies, with weapons for its destruction."

The conflagration of the Alexandrian library by barbarians was not more fatal to literature, than this project would be to the freedom of the press and of the citizen. We might indeed hear of the liberty of the press, but in the language of Ossian, it would be "like the memory of departed joys, melancholy only to the soul."

The committee may be told, as there is no phrase or sentiment which sophistry cannot pervert, or ingenuity torture, that the licentiousness of the press is not its freedom, and to restrain its licentiousness is not to impair its liberty. This was the subtlety and refinement offered in support of the sedition law; but the committee would ask, whether a person is permitted the freedom of speech, who has a gag put into his mouth by order of government, or who has his tongue tied, or his lips sewn up? And yet we are gravely told that to gag the press, to tie its tongue, or to sew up its lips, is no violation of its freedom!

Will it be contended, that Palm, who was lately sentenced to death by a court martial, and executed for publishing a libel, enjoyed the liberty of the press? And yet there was no previous restriction upon his press; he did publish and he was doomed to death for it; and yet our casuists with as much propriety might say, that in Palm, the press was free, because there was no imprisonment upon it, as to contend that our printing presses will be free, when a grand jury and a court have the power to prevent their publications by a suppression of them. The committee can discern no difference between a previous restraint upon the press, and a subsequent penalty that shall have the effect of commanding it to silence. Will it be admitted that a man is free to commit murder?—surely there is no previous restraint upon him—he has the physical power to commit the act, and, therefore, he