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

(Continued.)

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Friday, January 2.

The House still 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 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 enquiry 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 enquiry for several weeks. They have reported to the House, and we are now called upon to authorise proceedings against one of these institutions. But it is said, if we do this, we shall depreciate the value of our Bank notes.—Thes 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 the debts due to and from the corporation will, of course, take place.

When he had the honor, 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 due 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; also to a decision in *Conference Reports*, p. 341, to the *Escheat Laws*, and to 1 *Hawks*, 324, 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 rightfulness 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 analogies 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, and 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 authorised 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 & 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 enquiry 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 enquiry 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 deemed 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 right of any party. A distinction substantially the same with this, was recognised 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 forever. 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 celebrated Mr. Hume, that the extremes are generally much nearer to each other than most people think. Mr. F. said he thought it would have puzzled even Mr. Hume himself to show wherein these two parties approach each other—unless it be in the fact, that they are both wrong.

But, said he, there is yet another class of members in this House. It consists of those who are impressed with the necessity of doing something with the Banks, but before acting, wish to see their way perfectly clear. On the one hand, they are not willing, regardless of consequences, to hurry into violent measures; and on the other, they are not willing to stand by, and suffer the Banks to proceed in a course that seems to put all law at defiance, and threaten wide spread ruin throughout the State. They wish to act in such manner as would extend protection to the people, and do justice to the stockholders. This party had no head, but he hoped it had numbers; he hoped it had firmness enough, to resist violent measures; and resolution enough, not to be frightened from their duty and their purpose, by the long speeches and awful forebodings of the friends of the Banks.

In adverting further to the course of gentlemen, Mr. F. said, the whole proceeding reminded him of a criminal prosecution:—the Banks standing at the bar of the House as the criminals; the gentleman from Granville acting as the unrelenting prosecuting officer, while the gentleman from Newbern appears as advocate for the accused—and lucky indeed are the Banks in having such an advocate—one so able and so zealous. All that could be said in defence of the Banks, has been said by that gentleman in the shape of the most ingenious arguments, with studied eloquence, and not without effect. His displays, said Mr. F. reminded him of what is reported of an able lawyer, who once flourished in this State—one now no more, but who, in his day, shone as a distinguished luminary at the bar of North-Carolina. The great forte of that advocate, was in the defence of criminals. Such was the ingenuity of his arguments, and the power of his eloquence, that he not only bewildered the Court and Jury, but often times the criminals themselves were astonished to find how innocent they were. It is said, on one occasion, this gentleman was employed to defend a man charged with horse-stealing—a crime then punishable, for the first offence, by hanging. The evidence was pointed, and the general opinion was, that the accused must swing.—The advocate however made an unusual display of ingenuity and eloquence, and the Jury returned a verdict of not guilty. After the prisoner was discharged, he was asked by an acquaintance, whether he really was innocent, or not? He answered, that he all along thonght that he had stolen the horse; but his lawyer, on the trial, had convinced him that he was mistaken. If, said, Mr. F. any of the leading spirits of the Banks had been present in the gallery, listening to the gentleman from Newbern, during his ingenious and labored defence of them, they too, like the horse-thief, must have been delighted and astonished to find themselves so very innocent.

Mr. F. said, that no one in this House was more opposed to the original project of the gentleman from Granville, (Mr. Potter,) than himself; and he would add, that he did not like the preamble to the amendment offered by the gentleman from Mecklenburg (Mr. Alexander.) Before he sat down, he would offer as a substitute, the paper he held in his hand. The leading principle of the bill, however, he was decidedly in favor of;—he was in favor of a judicial investigation into the couduct of the Banks. Sir, said Mr. F. it is due to the people of North-Carolina, as well as to the Banks themselves, that a judicial enquiry should be instituted. The Banks have been publicly accused of violating their charters, and of practices illegal and corrupt. They are either innocent, or guilty. If innocent, they should be publicly acquitted—it is the only way in which they can be restored to public confidence. If guilty, then it is due to the character of the State that they should be brought to justice, and the offending agents punished. It is not our province to pronounce their condemnation, or their acquittal. We are the legislative branch; all that we ought to do, is to satisfy ourselves, that there are just grounds of suspicion; and when we are thus satisfied to hand the offenders over to the Courts of Justice to be dealt with according to law.

He would ask, if we have not sufficient grounds of suspicion?—He would ask, if the facts laid before us are not strong enough to justify the ordering of a prosecution? Look at the report of your committee—not of the minority, but of the majority itself. Look at that white-washing report, and even there you will find proofs that the Banks have grossly violated their charters, and done many acts for which an individual could not escape punishment. Is the practice long pursued by the State Bank, of taking interest for 92 days, instead of 88, not usurious and contrary to law? Let any one make the calculation, and he will find, in this way alone, that Bank, during its extensive operations, have illegally exacted from the people of North-Carolina, an immense sum of money. Is the extensive speculation in cotton in this State, in South-Carolina, and in Georgia, not a violation of charter? What, sir, do you think of the practice of reducing the value of their own notes, and then sending agents into market to buy them up, at a discount, with specie funds, wrung from their debtors at a clear loss to them of from 6 to 10 per cent? Are these facts not strong enough to induce this Legislature to order a prosecution? If they are not, he knew not what would be.

Mr. F. said, he did not like the course prescribed by the advocates of the Banks since the subject has been before the House.—In private life, when an individual is wrongfully accused, he is anxious for a trial; knowing his innocence, he seeks an investigation as the only method to remove suspicion and vindicate his injured character. The guilty man, on the contrary, always avoids a trial if he can; he prefers being under public suspicion, to going into Court, for to him, odium is better than punishment.—How stands the case with the Banks? Have they acted like the innocent, or the guilty man? Do they come forward and say, let us go to trial, and show the world that we have been wrongfully aspersed.—No!—from the very first moment an investigation is talked of, we see their friends in this House, and out of it, busily at work, throwing every obstacle in the way to prevent it. Every argument that could be mustered up by consultation, has been urged here and elsewhere, to dissuade us from acting. The gentleman from Newbern, has presented to us a most frightful dilemma—says he, "If you fail in this business you will be disgraced, and if you succeed you will be ruined,"—and therefore, as a consequence, we must stand still, and let the Banks go on acting as they please. But the gentleman, probably suspecting that his arguments on the subject might fail to convince the House, assumes the attitude of menace, and directly threatens us with the Federal Supreme Court! Honest men, said Mr. F. are not to be driven from their duty by threats; on the contrary, they grow firmer in their purpose. He hoped it would prove so on the present occasion.

It has been charged against the Banks, said Mr. F. as a violation of their charters, that they have refused to pay specie for their notes, and to his great astonishment, the gentleman from Newbern, seems to deny that this is a violation—holding up the book in his hand, he told us that the charters contained all the powers and restrictions of the Banks—and that by these charters they were no more required to pay specie, than any individuals in the discharge of their ordinary contracts! Can it be the fact, that the Banks by their charters are not bound to pay in specie? He denied the position. Without recurring at the present, to the Cape Fear and Newbern Banks, Mr. F. said, that he would for a moment call the attention of the House, to the history and charter of the State Bank. At the time that Bank was established, our currency consisted of the old Proc. bills—torn, ragged and unsightly in appearance, and of the Cape Fear and Newbern notes. The old Proc. bills were a legal tender in the payment of debts, and payments exacted by execution were always made in this ragged paper. The Cape Fear and Newbern Banks also avoided paying specie, by tendering these bills to the holders of their notes. This being the condition of our currency, it became a subject of ridicule and scorn to the neighbouring States, and our own citizens grew ashamed and tired of it. The character of the State actually suffered, and a strong desire every where prevailed to see our currency placed on a better footing. It was under circumstances like these that the projectors of the State Bank came forward with their plan, and strongly urged in its favour, that it would not only rid the State of its paper money, but furnish in its place, notes convertible into specie, at the pleasure of the holder. This was, in truth and in fact, the strong inducement held out, and the argument that mainly influenced the Legislature in granting the charter.

The remainder of Mr. Fisher's Speech in our next paper.

Self regulating Wind Mill.—There is advertised at Washington, a new Wind Mill, which suits itself with every change of the wind, or shuts up its sails in a high blow, so as to receive no more pressure than will give the motion and power required. The sails are thus left in the wind day and night, so as to receive the benefit of the breeze, *with or without the attention of the miller*. Its inventor (Isaac Clowes) affirms that "it can be set in motion or stopped instantly, and laid by in safety, without the miller's going out of the house." Such a wind-mill seems to be almost complete. It leaves nothing farther to desire—except that of *raising the wind*—to put itself in motion!