

FROM THE NOVASCOTIAN.

CUSTOM HOUSE QUESTION.

[Continued.]

It is somewhat singular, that in every branch of his enquiry I am compelled to lay down some of those truths in Legislation, which, when explained, are so clear and irrefragable that no one can pretend to deny them. This necessity has been imposed upon me by the way in which the question was argued—by the sophisms which were embodied in its defence—by the appeals which were made to common prejudices—and by a total (though I do not say an intentional) disregard of those sound and practical views, which in the actual business of legislation, alone conduct to accurate and just conclusions.

The strongest and certainly the most plausible argument, upon which my opponents insisted, was that drawn from the 13th section of the 6th Geo. IV. c. 114; in which it is enacted,—“that the Produce of the duties so received by the means and powers of this Act (except such duties as are payable to His Majesty, under any Act passed prior to the 18th year of His late Majesty aforesaid [i. e. the Crown Duties] shall be paid by the Collector of the Customs, into the hands of the Treasurer or Receiver General of the Colony, or other proper Officer authorised to receive the same, in the Colony in which the same shall be levied, to be applied to such uses as shall be directed by the Local Legislatures of such Colonies respectively.” I have distinguished the word Produce by italics; because this was the POINT D'APPUI around which the skirmishing of the troops was held—this, the point of Entrenchment which was successively stormed and defended—this, the debateable ground from which my opponents conceived they had driven their enemies; and chaunted to Pæans from having gained its possession.

“—They sheathed their bloodless swords
And wore the laurels, which they had not won.”

God forbid, Sir, that I should write upon *my* great and momentous question of this kind, from party feeling,—God forbid, that I should charge the conduct of my opponents with blame or impropriety, if it were unmerited,—God forbid, that I should sacrifice candour to propagate my own individual views. I frankly admit that there is much of apparent strength in this argument of my opponents—it would certainly have been more satisfactory, had the clause been expressed in less ambiguous terms; but there it stands for the ordeal of enquiry; and though unhesitatingly I will concede, that the interpretation which was given to it by the majority, was plausible, yet I must charge that interpretation, as at variance with the charter of Colonial Liberty; as being contrary to the intentions of the framers of the Act; and as a boon which under all circumstances, we had no right to demand and as little ground to expect. Upon these three distinct and separate views I shall offer respectively a few remarks.

It is not my intention now to enter into those various causes which conducted to the American Revolution, and ended in the establishment of a Rival Government—the most deadly and implacable which England ever had; for it is well known, and it is a lamentable stain upon the perfectibility of human nature, that the bosom friend, when once converted into an enemy, is animated with the bitterest feeling, and will pursue his revenge to the death. It is sufficient for my present purpose to state, that after the United States of America achieved their Independence, and while the principles for which they had contended were held up as a warning to the Colonies, who still

maintained their allegiance to the Parent state; the British Ministry in the 18th year of his late Majesty, introduced an Act into Parliament to secure the liberties of the loyal Colonies, according to the immutable and sacred principles of British Freedom. By the 1st. section of that Act [18 Geo. III. cap. 12.] it is enacted and declared;—“That from and after the passing of this Act, the King and Parliament of Great Britain will not impose any duty, tax or assessment whatever, payable in any of His Majesty's Colonies, Provinces and Plantations in North America or the West Indies; except only such duties as it may be expedient to impose for the regulation of commerce; the net produce of such duties to be always paid and applied to and for the use of the Colony, Province or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts, or General Assemblies of such Colonies, Provinces or Plantations, are ordinarily paid or applied.”

Now, upon this I have first to remark, that the right of the British Parliament to pass the new Colonial Act—6, Geo. IV. c. 114—has never been disputed in our Assembly—the duties which it has imposed upon our trade have never been cavilled at—they have been always regarded “as duties which it was expedient to impose for the regulation of Commerce”—they were esteemed to be in perfect accordance with the charter of our Liberty; and it was seen, that to strike at them was to blow the first blast on the trumpet of Independence. I charge no man in this favoured and happy Colony with such madness or frenzy.

If the power by which the law was made be acknowledged—if the charter of Colonial Liberty was respected and obeyed—if its supremacy was admitted on one part, it must be so in all—and the conclusion is therefore forced home upon us, that if in the 13th section of the Act, 6th Geo. IV. c. 114, the word *net* had preceded the word *produce*, the whole difficulty would have disappeared, and the power of the Lords of the Treasury to retain the necessary expences of collection from the gross produce of the duties collected at the Custom House before payment to the Colonial Treasury, would never have been disputed.

I am aware, that there are some who interpret the word *net* which appears in the 18th Geo. III. in a different light from that in which I can view it. But I must confess that my intellectual senses are so obtuse, that I could never grasp the refined web of speculation, which they ingeniously wove around it. This question, however, was mooted in the British Cabinet itself—the case was submitted to the Law Officers of the Crown; and here is their opinion.

QUESTIONS.—“1st. Whether the salaries of the officers, and other charges attendant upon the collection of those Revenues, can be retained from the gross proceeds, previously to the same being paid to the Colonial Treasury. 2ndly. Whether the orders given by their Lordships for this purpose, are legal and proper.”

ANSWERS.—“We think the word *produce* may according to circumstances, be constructed either as gross or net produce; and we think in this case it may be taken to mean NET produce, that is, the produce after deducting the expence of collection. If this is incurred in the shape of salaries to the Officers, we think those Salaries may be deducted from the gross amount, and the balance only is required to be paid over to the Treasurer.”

(Signed) “J. S. COPLEY,
“CHARLES WETHERELL,
“Sergeant's Inn, April 12, 1826.”

The whole question thus again reverts to the word *produce* in the act 6, Geo. IV. c. 114; and we are to enquire whether this is to be taken as meaning *gross* or *net* produce.

On this I have in the first place to observe, that it is one of the principles laid down by Blackstone, that in interpreting a statute, we are not only to look to the particular clause, but to the whole act and the object of its creation. We are not to look to mere words only, but to their *rationale*. Now, Sir, in following this suggestion laid down by one of the venerable sages of the law, I ask, what, in common parlance, does *produce* usually mean. The produce of a West India voyage does not mean the whole returns of sugar &c. or coin which are received in exchange for the outward cargo, but the net returns after the necessary and contingent expences incurred, are estimated and discharged. The produce of any speculation means not the gross returns, but the net profit which arises from it. In the common mercantile language of the world, the single word *produce* generally implies not the gross but the net produce. When I say—this voyage has produced me so much—this speculation has produced me so much—does any one for a moment imagine, that this language has any other meaning than the profit which has accrued to me? Nay, further, can any other interpretation be given it? But this reasoning acquires additional strength, when we enquire into the meaning of the word, when used in a Legislative sense. Take up, Sir, any speech of the Chancellor of the Exchequer in unfolding the budget to Parliament, and you will discover that the produce is invariably synonymous with the net revenue derived from any particular tax.

But there is a further view of the case, that has ever appeared to me more conclusive and satisfactory than any argument upon which I have yet touched. It will readily be admitted, that the twelve Acts which were passed in the sixth year of his present Majesty's Reign, for the purpose of repealing and re-enacting in a consolidated form the Laws of the Customs, are to be viewed as one general, connected system. In the 2d section of this act for the management of the Customs, it is enacted “that it shall be lawful for His Majesty from time to time to appoint any number of persons, not exceeding thirteen, to be Commissioners of His Majesty's Customs, for the collection, and for the management of Customs, in and throughout the whole of the United Kingdom, and of any of His Majesty's possessions abroad.” Here then a power is distinctly and unequivocally invested in the Commissioners, to collect and manage the Customs not only in the United Kingdom, but in any of His Majesty's possessions abroad. But after they have received these Customs, how are they to be disposed of. In the 19th section of the same act, it is ordered “that all monies, bills, notes and drafts, received by or coming to the hands of the Receiver General of the Customs in England, on account of the revenue of Customs in G. Britain, shall be paid by him into the hands of the Gov. and Company of the Bank of England.”

Now mark the inference which I mean to draw from these extracted clauses. As regards the amount collected in England, it is plainly enacted that the whole gross sum, that all Monies, Bills, Drafts, and Notes, received by such Receiver General, shall be paid by him into the Bank. Here every item which could be received in the shape of payment is specifically mentioned. Why did not the framer of the Act content himself here with inserting the simple word *PRODUCE*? what need was there for this minuteness of speculation? The reason is at hand, that had he

inserted the word *produce*, only, the net revenue of the Customs, after subtracting the charges of collection, would have been paid into the Bank, which would have been contrary to the wishes and intentions of the framer. Again, if it was intended that the whole amount of the duties collected under the New Colonial Act, c. 144, should be paid into the Colonial Treasury, why was not the same amplitude and clearness of expression used in it as in chapter 106. Considering that the two Acts were conceived by the same mind and written by the same hand, this difference in the mode of expression appears to me to place the whole argument in the clearest and most indisputable light.

ESCHINUS.

ARCTIC LAND EXPEDITION.

The substance of the intelligence received from Captain Franklin, which we gave last week, has caused much regret, particularly as it implied an abandonment of the enterprise almost at a moment when it was about to be crowned with success. We have reason, however, to hope that Captain Franklin will not return without making another effort.

We are informed by a gentleman who travelled with Capt. Franklin from New York to Upper Canada in the spring of 1825, that Captain Franklin was by no means certain of accomplishing the whole distance from Mackenzie's river to Icy Cape in one summer. It is moreover understood that Captain Beechy, of H. M. ship *Blossom* (who we perceive is called a *Whaleman* by an evening paper of this city) was not to abandon Bhering's straits until the close of the summer 1827. If these statements be correct, there is but little doubt that Captain Franklin will make another attempt to reach the South Sea.

The progress made last summer, when we consider that the summer consists of only six weeks navigable weather, and the number of rivers, bays, and inlets it is necessary to examine upon an unexplored coast, was as great as could be reasonably expected. The intrepid navigators embarked in canoes and boats, carried all the way from Hudson's Bay, and the lakes in Canada, at the mouth of Mackenzie's river, which is inland 69, lon. 130; from this point they coasted along the northern margin of the American continent until they reached longitude, nearly, 150, a distance of about 500 miles, and only about 250 from Icy Cape, where the *Blossom* was waiting for them. At this point the thick fogs and the advanced state of the season obliged the party to return. If then no greater difficulty than we are yet apprised of exists, it seems morally certain that they will make at least one more trial, and we fervently hope with success.

Should, however, the expedition return, even now, it will have added much to our stock of geographical knowledge. The Detroit account states that Captain Franklin had satisfactorily ascertained the existence of a continuity of sea coast and easy water communication between the mouths of Mackenzie's and Coppermine rivers. Capt. Franklin informed us, while here, that Doctor Richardson would be deputed to survey that part of the polar coast, and it would, therefore, seem, that his duty has been successfully performed.

Captain Franklin, in his first voyage, penetrated in an easterly direction from the Coppermine to Point Turnagain in lon. 158, and has given a correct chart of the coast; that part of the coast lying between the Coppermine and Mackenzie's it appears has now been traversed by Dr. Richardson, while Capt. Franklin himself has penetrated in a westerly direction from the river of Mackenzie to lon. 150; thus making an aggregate exploration of forty-two degrees of polar coast.