

VETO OF THE BANK BILL.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN:—The bill entitled "An act relating to Banks, and to provide for the better government thereof," is herewith returned to the Senate, in which it originated, without the Executive approbation, and with the following reasons why that sanction is withheld.

This Bill relates to a subject of deep and universal interest to the people of Pennsylvania; and to its consideration I have brought to the energies of my mind, and all the lights that experience of upwards of half a century has furnished. I cannot persuade myself that duty or patriotism would justify my sanction of its provisions. Some things contained in it, I would gladly approve, but I cannot believe that the penalties imposed on the Banks, so far as relates to the citizens of this Commonwealth, ought to be repealed, or that the issue of notes under the denomination of five dollars by the Banks, for an amount of six millions of dollars, for the term of five years, should be authorized.

It would be useless to go into a discussion of the causes which have led to the present derangement and embarrassment of our monetary affairs. It is enough to know that they exist, and that our banking institutions, generally, have been unable to meet their engagements. We have had three bank suspensions in less than four years. The result is an almost entire destruction of the confidence of the public in our banking institutions. The intimate connection existing between our banks has involved all in one common fate. Those conducted with prudence and care, are suffering from the misconduct of others. That there are some great and cardinal errors in the mode of conducting our banking operations, must be obvious to all, or those things would not occur so frequently as they have done. The public will, seeking the public good, has required that these errors should be corrected. That correction, all must be aware, cannot take place at any time, without cases of individual suffering and hardship. These are to be regretted, but yet ought not to prevent the correction of greater evils to the public large. The indulgence given to the banks, by the resolution passed on the third day of April, 1840, which suspended existing penalties for not meeting their engagements until the 15th January last, it was hoped would have enabled them then fully to resume. When I approved those resolutions, I believed that it was necessary to give the banks and the people some time to meet their engagements. That given, however, was greater than I then apprehended to be necessary, or exactly satisfactory to the public. But as it was a mere question of expediency as to time, I yielded my assent, rather than run the risk of having no legislation on the subject. The indulgence thus given, was dictated by a spirit of extraordinary forbearance, and the public fully expected at the time appointed, the banks would be fully able to meet their engagements. Such were most certainly my own expectations. Those expectations unfortunately have proved to be groundless. The banks are now in a state of general suspension, and this bill is designed by the Legislature as a remedy for the evil, and a relief to the community. Let us examine how far it seems likely to answer the end proposed.

The principle features of it are, that it repeals absolutely and unconditionally the penalties of forfeitures to which the banks of this Commonwealth are subject for the non-payment of their liabilities on demand, and renders the banks liable, as natural persons or individuals are, agreeable to the laws of this Commonwealth for the payment of their bills, notes and other liabilities; and also, that it authorizes the banks for the term of five years after the passage of this act, to issue circulating, and receive bills or notes of the denomination of one, two, and three dollars to an amount not exceeding fifteen per cent, on the amount of capital actually paid in. It also provides sundry regulations, and imposes certain restrictions upon the banks. Some of these restrictions and regulations are wise and salutary, but many of them are, in my opinion, calculated to produce far more mischief than good.

In relation to the repeal of the penalties and forfeitures, and placing the banks on the same footing of natural persons, it seems to me, that the bill is peculiarly objectionable in several material respects. It prescribes no time when the repeal shall cease to be operative, and it serves none of the special provisions of the law under which, independent of the penalties and forfeitures to which the banks are subject, they may be required to pay their liabilities. It seems to me that it would have been far better, if any law of this nature is to pass at all, instead of repealing absolutely the penalties and forfeitures, to suspend the law imposing them for some definite period of time.—They would then, at the expiration of that time, again take effect without any positive legislation upon this subject. But agreeably to the provisions of this bill, they are repealed forever. Should subsequent events require their re-enactment, we might be met with the objection, that the charters are inviolate; that the provisions of the bill in question, when accepted, became part of the same, and that the Legislature possesses no power to re-enforce the existing penalties so taken off.

Great caution should be exercised in the passage of laws affecting corporations or private rights, and private remedies in regard to them. Corporations being creatures of the law, and acting only by its express authority, and being responsible only in the manner pointed out by the law, may, by a hasty and considerate alteration of the law, the whole operation of which was not foreseen at the time of its passage, be ruinously crippled in their actions, or placed beyond the reach of the citizens who may have dealings with them, or demands upon them. There are so many different modes in which the banks of this Commonwealth are connected with the general interests of the community, and there are so many legal provisions regulating that connexion, that it appears to me to be an extremely hazardous experiment to say, that so far as respects demands against them in their corporate capacity, they shall be repealed, and the banks be placed on the footing of natural persons or individuals. At the first glance it appears to be plausible, but it may result in a manner very prejudicial to the community or to the banks, or probably to both. Without tracing its operations further, it would relieve the banks from a serious inconvenience in giving bail on suits brought, and on appeals from awards obtained against them; although the popular impression is, that it would free them from no such liability. There may be other changes which it would effect, but I shall not occupy any time in following them out. It would have been perfectly convenient to have simply provided on this subject, that so much of any laws of this Commonwealth as relates to the penalties imposed upon the banks, of the forfeiture of their charters, should have been suspended, leaving all the other laws for enforcing demands against them untouched. Then all the questions that can relate to the enforcement of the law; for the collection of demands against the banks, would have been known precisely what the condition of the banks was; but not under this law which places them in the same general class with natural persons or individuals.

So far as respects the authority given to the banks to issue and circulate notes under the denomination of five dollars, I beg leave to refer you to my annual message transmitted to the Legislature of last year and to the present Legislature, for my general views. The untoward circumstances which have placed the banks of this Commonwealth in the present situation, are to be deeply regretted, and in no particular more so, than in the embarrassments thereby created, in procuring small sums for the common purposes of change among the citizens in their various transactions. The embarrassments are undoubtedly, in many instances, a severe hardship upon the community, but the question presented for consideration is, whether this mode of relief would not, in the end, be more injurious to the community than the temporary inconvenience they now suffer. This provision would authorize the issue and circulation of bank notes for less than five dollars, to the amount of six millions of dollars and upwards, and we might then well despair of seeing a dollar in specie in circulation.

Whatever arguments might be adduced in favor of a limited amount of small notes, for a short period, to aid in the resumption of specie payments, the force of which has not been conclusive upon my mind, the amount authorized by this bill, and the period of time during which they are permitted, are, in my judgment, greater than can be required by the exigency of the occasion, or than the people of the Commonwealth would willingly tolerate. The latter part of the same section too, for the first time in the legislation of Pennsylvania, expressly sanctions the issue of post notes. No portion of our citizens, so far as I have been informed, have asked this at the hands of the Legislature; and the policy of issuing them by the banks, has been more than rendered doubtful by the experience of past years, and has been loudly reprobated.

I have already stated, that the regulations and restrictions imposed upon the banks, were, some of them wise and salutary, and I shall confine my notice only to some of the principal ones which I consider peculiarly objectionable. In the first place, this bill provides that the directors of any bank, individually or collectively, shall not contract any liabilities to the bank exceeding certain limits; that is, when the capital stock actually paid in does not exceed \$250,000, the amount of such liability shall not exceed the one-sixth part of the aggregate loans of such bank; and proceeding to provide, that as the capital of each bank increases in amount, the relative proportion of liabilities shall be increased. At a cursory glance, this provision might appear to be a very considerable security to the public against the monopolizing capacity of bank directors; but upon more mature consideration, it will be manifestly fraught with dangerous consequences. One of the most grievous complaints against the banks of this Commonwealth, has been their over issues and expansions. The direct tendency of this provision seems to me to produce them. If, for instance, a bank has made loans to an amount of \$100,000, the liability of all the directors can only amount to one-sixth of this sum. But should they wish to obtain more, they have nothing to do but to increase the extent of loans to \$200,000, or to any other sum without limit, and they can increase their own liabilities to one-sixth of that amount. It is evidently, therefore, offering a direct inducement to

expand their circulation, and that too, perhaps, by loaning their money to unsound borrowers, or for purposes not calculated to promote the interest of the public. I cannot, therefore, yield my assent to such a provision as this.

The Cashiers of the banks are specially entrusted with all their cash and other property; yet by the sixth section of this bill, they are prohibited from keeping any private or individual account with the banks of which they are cashiers. If there be wisdom, or additional security to the public in this, it is, I confess, beyond my comprehension.

A material change in the number of votes to which stockholders of banks shall be entitled, is almost made. It is provided that every share of stock not exceeding fifty, shall be entitled to a vote, and a proportionate increase of votes to the number of shares of stock held is extended to an indefinite number. By the law as it stood before, fifty shares of stock were entitled to thirteen votes, with a relative proportion for any number of shares. It appears to me that the effect of this change would be to place the control of each bank in the hands of a few persons, and to enable them to monopolize its management. I cannot think, therefore, that this provision is calculated to advance either the interests of the banks or secure the interests of the public.

This Bill further provides, that directors hereafter to be elected, in banks with an amount of capital stock paid in not less than three millions of dollars, shall be holders, in their own right, of not less than three thousand dollars of the stock of said bank, and extending a like proportionate qualification, to the directors elected in all other banks—and further providing, that persons to be elected State Directors in the bank of Pennsylvania and in the Philadelphia bank, shall be stockholders to the amount of one thousand dollars, and in the Columbia Bank and Bridge Company, to the amount of five hundred dollars. The whole system here proposed to be established, of requiring the directors of the several banks of this Commonwealth to be holders of stock to so large an amount, seems to me to be exceedingly objectionable. It places the control of the banks, at once, in the hands either of the rich or of the large stock jobbers and stockholders. So far as respects the country banks in particular, its operation will be a hard one. It will amount to a disfranchisement of some of the most competent and efficient directors in the Commonwealth, and will eventually place the banks in far less competent hands than even those that manage them. The banks are already aristocratic enough without the addition of this, which is in effect, a property qualification to their directors. I can see nothing so peculiar in the character and duties of a bank director, as to require that he shall possess from five hundred to three thousand dollars of property to qualify him for it, when no other office in the Commonwealth requires a qualification. Nor do I know that experience shows that it is a wise standard to measure a man's intelligence or capacity by the length of his purse. Nor can I believe that in this enlightened age, such a standard ought to be adopted.

As respects the State directors in the banks referred to, it appears to me, that the interests of the public will be far more likely to be secured, by the election of state directors who have no stock, or a very small amount, than by the election of those who are interested in having so large an amount of stock as this bill requires. The stockholders in these several banks are fully represented by the directors, whom they elect themselves, and the State, which has not a full proportion of representation in the board of directors, according to the amount of stock she holds, is supposed, in theory, at least, to be represented by the State directors elected by the Legislature. Is it not unreasonable therefore, to require that those who are to represent the interests of the State, which may sometimes be adverse to those of the stockholders, should also be so deeply interested in representing the stockholders, who have more than their fair share of representation already? I cannot approve this feature in the Bill.

The provisions in the 18th section, requiring the Banks of this Commonwealth to issue and pay out none but their own notes, without the consent of the parties to whom the same are tendered, is entirely wholly nugatory, by the exception of "special contracts." Banks can very easily evade the operation of this section by making a special contract with all those who deposit money with them, and obtain discounts from them, to make payment for the same in current bank notes or in such manner as they may choose to specify. It is useless to enact a law, which can be so easily rendered inoperative.

The authority given to the Stockholders of the bank of the United States, to reduce its capital from thirty-five to fourteen millions of dollars, has never been asked for by either the directors, or the stockholders of that bank, and in the form which this bill prescribes, seems to me, to be unwise and unnecessary. If the Legislature is of the opinion, as a great many of the citizens of the Commonwealth undoubtedly are, that the capital of that bank is too large, this bill should have provided imperatively, that in order to entitle the bank to enjoy the indulgence which it gives, the capital should be reduced to such sum as seemed compatible with the public safety and public interest. This bill however, leaves

entirely to the discretion of the stockholders, whether its capital should be reduced, and in case the stockholders shall choose to make the reduction, then the bank is to be released from the obligation imposed upon it by its charter, of making a permanent loan to the Commonwealth, not exceeding six millions of dollars, and a temporary loan not exceeding one million of dollars in any one year, at an interest of four per cent. The bank is to continue to enjoy all its exclusive privileges, for the length of time for which it was incorporated, and to be released from this obligation, which at the time of its creation was considered one of the most beneficial to the public contained in its charter. The bank affects to treat its charter as a contract between its stockholders and the State. It has very recently succeeded in pleading that contract, as a protection against the provisions of the common law, which passed 3d A. S. 1840. A single case in court has decided, that under the laws and constitution, this charter exempted it from the operation of those resolutions of the Legislature, without proof of the assent of the bank to be bound by those resolutions; and now it is proposed by this bill to extend a most liberal boon to the bank, without subjecting it to the laws and regulations of the Legislature which control the other banks of the Commonwealth.

But in relation to this section of the bill, a much more grave question is presented. The 25th section of the 1st article of the Constitution of this Commonwealth provides, that no corporate body shall be hereafter created, renewed, or extended, with banking or discounting privileges, without six months previous public notice of the application for the same, in such manner as may be prescribed by law. Nor shall any charter for the purposes aforesaid, be granted for a longer period than twenty years, and every such charter shall contain a clause, reserving to the Legislature, the power to alter, revoke or annul the same, whenever in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner however that no injustice shall be done to the corporators.

It is conceded that no notice, such as is required by this section of the Constitution, and the act of 1st June, 1839, passed in pursuance thereof, has been given in relation to the bill now under consideration. The 17th section of this bill has certainly absolved the Bank of the United States from some of the conditions imposed upon it by the act granting its charter, and if the provisions of that section do not come within the letter of the 25th section of the 1st article of the Constitution, they certainly come within the intention of it, which was to give the public notice of all intended applications for creating or changing the charters of money institutions. If this section of the bill in question should be deemed to come within the section of the Constitution quoted, it omits the very important provision which the Constitution requires, of a reservation to the Legislature, of the "power to alter, revoke or annul the same," when found injurious to the citizens of the Commonwealth, upon the terms of doing no injustice to the corporators.

These are the principal objections to the form and details of this bill, that present themselves to my mind; and in addition to these, there are others, which would render this bill, as a measure of relief, either to the banks or to the public, wholly unavailing. I have retained this bill without returning it to the Legislature almost to the last period when I could do so, with the power of returning it with my objections, for the purpose of ascertaining, if possible, the views of the most enlightened practical business men in the community, in relation to its various provisions; and I speak advisedly when I say, that if this bill were to become a law, it is questionable whether one tenth of the banks of this Commonwealth would accept of its provisions. Indeed I can scarcely find among either the friends or the foes of the banks, or among any party, notwithstanding the extent of my intercourse with the citizens of the Commonwealth, from all quarters, any intelligent person who now believes that this bill ought to become a law. When it first was presented to me, I examined it in view of a single provision which promised either to give relief to the banks, or to the people, and I feel strongly fortified in my convictions upon the subject, by the coincidence of the opinions of almost all practical persons who, so far as I knew, have expressed opinions in all quarters of the Commonwealth, and engaged in all pursuits of life.

The present condition of the banks and the citizens of Pennsylvania is calculated to awaken our most earnest and serious consideration. With an ample amount of resources to meet all their liabilities, and with the assurance that those resources are hourly multiplying, our pecuniary affairs are surrounded with embarrassments and difficulty, and the forebodings of many, for the future, seem to afford little to cheer or to encourage. I do not myself believe that there is any real ground for the despondency that seems generally to prevail. We have met with a slight revulsion of fortune, and without waiting to estimate its true extent, are seized with panic and apprehension. I fear that neither the measures adopted by the Legislature, nor the language held by many of its members, is calculated to dispel this panic and apprehension. It is one of the incidental evils of a government like ours, that not only the condition of the public, but every action of those entrusted with the govern-

ment, is liable to innocent misunderstanding, or to interested misrepresentation. The instant a slight disturbance in the prosperous business of the country occurs, either from any derangement of the general laws of trade, or from the mismanagement of the banking institutions of the country, or from any combination of causes, not easily developed, it is seized hold of, and made a theme of partizan declamation, against those who happen to differ in their political opinions from the declaimer. Truth is too often sacrificed to expediency, and the welfare of the public made to yield to the private or personal interests of those, who are contending for power. By such means as these, is the public mind harassed and disturbed; business men checked or driven from their vocations; the resources of the country depreciated, and the measures designed for the relief of the people thwarted, and rendered fruitless. What but the operation of such a state of things as this, could have produced the prevalent expression that the great and substantial State of Pennsylvania, with her rich and cultivated fields—her inexhaustible coal mines—her numerous furnaces and foundries, was on the verge of bankruptcy—her citizens within the very jaws of ruin—her business men of all kinds languishing on the very point of general prostration and annihilation? It is true that the banks of Pennsylvania have suspended specie payments, and many of her citizens have, by engaging somewhat too extensively in business or speculation, become considerably involved in debt and embarrassed; but her banks, with possibly one or two exceptions, have ample means to meet all demands upon them; and those of her citizens who are embarrassed, with few exceptions, have abundance of property, which may not be convertible instantly into money, sufficient to pay all their debts; but the resources of the entire people of the State, would almost in a single year, liquidate all the demands that can be made upon them from abroad. Under such circumstances as these, communities must regulate themselves by the same general rules of wisdom, prudence and economy, which never fail to extricate individuals from similar difficulties. The substantial means of the people of Pennsylvania to pay off all their liabilities, are not the slightest degree impaired. The people of this Commonwealth need nothing but a little time, reasonable patience under temporary evils; the application of their own persevering and hardy industry, in producing and transporting to market, her two great staples, coal and iron, and the precious blessings of Heaven upon her harvest fields, to replace them upon that solid footing of prosperity and independence, which they so proudly occupied, before they were hurled from it, by the rash and headlong spirit of speculation. Those who, with their eyes open to these things, will persist that Pennsylvania and her citizens have been precipitated into to the bottom of the gulf of bankruptcy, must be permitted to cherish the phantoms of their own creation, and wait until the common sense of the people, and the return of prosperous times, have convinced them of their error. Those who believe that their own interests or those of the political party with which they happen to be associated, will be promoted by reducing the credit of the State, and representing her condition to be one hopeless indebtedness and distress, must be allowed to pursue the course which they have seen fit to adopt, until the unerring intelligence of the people has detected the deception, and held them up to the reproof of all honest men, for attempting to practice upon their credulity. Pennsylvania, like most of the sister States of the Union, and some of the commercial nations of Europe, has engaged beyond her available means, in trade, enterprises of improvement, and speculation, but her recuperative energies will enable her to take the lead of all of them, in extricating herself from the embarrassments which beset her. Her resources are of a nature that seldom fail in furnishing an annual supply, and never can want a market. The industry of her citizens is untiring, and they love not only their own State, but its independence too well, to repine at the payment of a few dollars tax, or the suffering of a temporary inconvenience, to see that State placed beyond the reach of fruitless demands made upon her justice, or unanswered calls upon her honor. A few may be found, who would persuade them that their property and industry are to be taxed forever, and who would inculcate the unworthy sentiment, that those who are in favor of maintaining the faith and honor of the State untarnished, are the foes of the people, but they meet no encouragement from the great mass of honest men, and are justly regarded as faithless or interested advisers. On the important subject, public feeling is sound and united, and will do much to direct the efforts, and inspire confidence and resolution among our citizens.

Owing to its peculiar geographical position, the city of Philadelphia is made the great distributing mart of foreign and domestic goods and manufactures, for a large portion of the Western and Southern States of the Union. This circumstance has rendered both the banks and her citizens debtors, to a large amount, to New York and the Northeastern States, and to Europe, and rendered the purchasers of these commodities in the West and South, in the same manner indebted to Philadelphia. The moment the banks of Pennsylvania resumed specie payments on the 15th January last, large demands upon the banks, merchants and citizens,

of Philadelphia, which had been held in reserve in New York and the Eastern States, both on the account of the citizens of those States, and on account of the foreign creditors of Philadelphia, were presented to the Philadelphia banks for payment in specie. Nearly eleven millions of dollars in specie, or specie funds were, I believe, drawn from the Philadelphia banks during the nineteen days they continued specie payments, and immediately taken out of the State. This enormous sum, so drawn out of the Philadelphia banks, and the manner in which it was disposed of, strongly leads us to the belief, that there must have been some combination or understanding among those by whom it was obtained, to make an almost simultaneous rush upon the Philadelphia banks, either for the purpose of compelling them again to suspend, or of restraining in some way, their general operations.

It is believed that there are large sums still due from the banks and citizens of Philadelphia, to the citizens of other States and to foreign creditors. Under the laws of this Commonwealth, imposing penalties and augmented rates of interest upon the banks, these demands will undoubtedly be made, and their efforts for the relief of the citizens of this Commonwealth, be fatally restrained and crippled.

The banks of Pennsylvania having been established for the benefit of the people of Pennsylvania, the enforcement of the penalties to which they are subject, may be safely left in the hands of the people. So long as the existence of the banks is believed to be useful, and their general conduct is such as to deserve and secure the confidence of the public, they will not be disturbed, although hourly liable to the infliction of the penalties which the laws prescribe. Experience on former occasions during suspensions, clearly demonstrates this. If it be the interest of the public that the banks should continue to exist, it is the interest of the banks to conduct themselves in such a manner as to satisfy the public that such is the fact. If the public forbear towards the banks to enforce the penalties, the banks should doubtless forbear towards the public to produce distress and embarrassment. The banks can do much by the mode in which they treat their debtors, to create or to diminish our pecuniary difficulties. They have not only a right, but it is their duty to exact adequate security from their debtors; but should they pass them unreasonably—should they bring to a Sheriff's sale, and consequent sacrifice, the property of those who, by a safe and reasonable course of treatment, might have paid them, they will peril that public confidence which under the law is the shield of their protection. In times of hardship and difficulty like the present, mutual justice and mutual forbearance on the part of the banks and the people, is the great guaranty for the rights and interests of both. Let the banks of Pennsylvania therefore act with discretion and justice, and they have nothing to fear from the citizens of this Commonwealth. But the citizens of other States, and the foreign creditors to whom I have above referred, have neither the same interests nor perhaps the same inclination, in extending indulgence to the banks of this State, to promote mutual advantage. It will be within their power to harass them, and thus to augment, in a very great measure, the difficulty and embarrassments under which the citizens of this Commonwealth suffer. It seems to me to be the part of duty, and I can see no injustice whatever, in protecting the citizens of this Commonwealth from this impending calamity. I regret that the Legislature, after a session of three months, should not have devised and presented to me something that would secure this salutary object. I would most cheerfully approve of any measure that will protect the banks of this Commonwealth from being crippled in their operations, and from the forfeiture of their charters, by combinations of brokers and speculators of other States and of Europe, to exact the penalties which were originally designed for the safety and security of the people of this Commonwealth. Let those persons having demands against our banks be deprived of no civil remedy, which can be afforded by the law; let our courts remain open to them; let them recover judgments and enforce them by execution, with such interest as is allowed in other like cases of debt; but the penalties which can be enacted only at the hazard of creating embarrassment and difficulty among our citizens, should be reserved to be enforced by our own citizens, who are so deeply interested in the consequences. Let those who are to feel the effects, judge who thus will strike the blow. Such a law as this, would be a measure of self preservation, and could give no just ground of complaint to those who would be deprived of no legal right they now enjoy, and of no privilege, but that of annoying and disturbing their neighbors without obtaining any benefit for themselves.

In all our Legislative acts we should remember, that without encroaching upon the rights of the citizens of other States our first and highest duty is to take care of the interests of Pennsylvania. This I expected from us by the people, and less than this would be an unpardonable shrinking from our duty.

DAVID R. PORTER.
EXECUTIVE CHAMBER,
April 8, 1841.

We never yet knew a dandy that could take a hint unless accompanied with a kick

of Philadelphia, which had been held in reserve in New York and the Eastern States, both on the account of the citizens of those States, and on account of the foreign creditors of Philadelphia, were presented to the Philadelphia banks for payment in specie. Nearly eleven millions of dollars in specie, or specie funds were, I believe, drawn from the Philadelphia banks during the nineteen days they continued specie payments, and immediately taken out of the State. This enormous sum, so drawn out of the Philadelphia banks, and the manner in which it was disposed of, strongly leads us to the belief, that there must have been some combination or understanding among those by whom it was obtained, to make an almost simultaneous rush upon the Philadelphia banks, either for the purpose of compelling them again to suspend, or of restraining in some way, their general operations.

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