SELECTIONS

THE CASE OF GORDON.

The case of Gordon is likely to be a leading case on the subject of martial law, for which reason we commented upon it in an article in January. We then examined the question of the legality of the trial, with reference either to the authority of courts-martial under martial law, or to the arrest of the prisoner in a district *not* under martial law, or to the supposed insufficiency of the evidence. And we expressed our opinion (in opposition to a very positive opinion to the contrary), that courts-martial *had* authority under martial law; that the removal of the prisoner into the district under martial law was perfectly legal (upon the fundamental principle, that the trial of the crime is *local*), assuming that he had committed or been party to the commision of a crime in that district; and that the question whether he *had* been party to such a crime, was for the court-martial, provided there was *any* evidence on which *they* might honestly come to that conclusion. And, finally, we decried as absurd, the idea of trying Governor Eyre for *murder;* and declared, that, though, no doubt, it would be competent to any one, under the 43 Geo. 3, to *prefer* an indictment for murder against him, no judge who charged the grand jury would fail to tell them that they must not *find* the bill unless satisfied that the execution was the result of a wicked conspiracy between the governor, the general, and the court, to execute the prisoner under *colour and pretence* of martial law, not *really* believing him to be guilty, and not *really* in pursuance of a trial and sentence, but merely in pursuance of a murderous conspiracy. Upon which direction, of course, as there would not be a particle of evidence of anything of the kind, no jury would find the bill. These conclusions are now admitted by all rational persons. In an article of the 30th June we adverted to the Report of the Commissioners which contained nothing at variance with them. And the chairman of the Jamaica committee—formed mainly for the purpose of prosecuting Mr. Eyre—has avowed himself so satisfied of the absurdity of the idea, that he has not only declined to adopt it, but has publicly denounced it, and retired from the chairmanship of the committee. We must say, it is scandalous that such a committee should ever have been formed—acting, as they did, for the avowed purpose of promoting a criminal prosecution, and taking every possible means to poison the fountains of justice, and prevent the accused from having a fair trial. This may not have been *intended* by the committee (at all events, by its more respectable members), but it was the *effect* which the means they took was necessarily calculated to produce, and for which, therefore, they would have been criminally responsible. Among the means they have taken was the publication of inflamatory appeals, and even of a legal opinion, tending to shew that Mr. Eyre had been guilty of murder; and almost all our cotemporaries—even our *legal* cotemporaries—were so far turned away by partisan feelings, as to advocate that view. This was the very offence for which Sir Francis Burdett was severely punished. (*Rex* v. *Burdett*, 4 B. & Al. 95, 314). He had published a letter to the effect that the military, in what he called "the Manchester massacre," were guilty of murder, and for this he was fined and imprisoned, on the ground that it had the necessary *effect* of tending to prevent them from having a fair trial. This case is apposite to Gordon's case, in more points than one; for in that case, as in a previous case (*Rex* v. *Harvey and Chapman*, 2B. & Cr. 257), it was recognized as undoubted law, that if a man publishes matter *calculated* to produce a mischevious effect, it must be taken that he *intended* to produce that effect, and is responsible for it.

This brings us back to Gordon's case, with reference to the supposed liability of any one for his murder. We assume—for it has already been established in our former articles, and it is evidently assumed and implied in the Commissioner's Report—that the trial was *legal*; that, as we shewed in our article of the 30th June, would depend on the authority of courts-martial under martial law, which is recognised by the Commisioners, and on the jurisdiction of the court over the particular person and the particular charge, which we established in our article of January, and which is considered very elaborately in Mr. Finlason's "Treatise on Martial Law." But, assuming the legality of the trial, in the sense of the authority of the court, and their jurisdiction over the prisoner, it is said that the conviction was illegal, because it was not supported by the evidence. This in a legal point of view is perfectly absurd. Nothing is more common than for a judge in a court or criminal case to express his *dissent* from the verdict; nay, as Mr. Finlason observes, it is not uncommon for the judge on a criminal trial to tell the jury that, in his opinion, the evidence is not sufficient to sustain the charge, and yet for the jury to convict contrary to his opinion. The judge has no power to withdraw the case from the jury, if there is *any* evidence, however he may differ from them as to its weight and effect, for its weight and effect is for *them* to consider; and if there is any evidence for them to consider, then there is evidence which will legally warrant them in finding the prisoner guilty, notwithstanding that the judge does not deem it sufficient—nay, considers it wholly insufficient to sustain the verdict.

In a criminal case there is no mode of reviewing the judgment of the jury upon the facts; and even in a civil case, where there *is*, the Court will not set aside a verdict merely because the judge differs from the verdict, and deems the evidence was insufficient to sustain