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THE

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Vol. IV.

WEDNESDAY AUGUST 29, 1838.

No. 216.

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(From the Liverpool Courier, July 4.)

By the recent arrivals from the United States we have accounts of the first acts of Lord Durham in Canada. His Excellency has formally assumed the administration of affairs, has issued proclamations, and has made certain appointments. Amongst the latter our readers will have seen, no doubt with considerable surprise, the name of Mr. Thomas Edward Michael Turton, whom Lord Durham has made one of the Secretaries to the General Government. It will, doubtless, be remembered that, in consequence of some occurrences to which it is not necessary more particularly to allude, a member of the House of Lords, on the 20th of May last, asked Lord Melbourne some questions relative to a prevalent report, that Mr. Turton was to be appointed to an official situation in Canada. Lord Melbourne denied that Mr. Turton had received, or was to receive, any appointment whatever in Canada, and averred, that he did not even know that such a person had accompanied Lord Durham. Yet, one of the first acts of the latter is to appoint this very person to an important office! On Monday night Lord Wharncliffe brought under the notice of the House, and requested from Lord Melbourne to explain the matter to their Lordships. This request the noble Premier was unable to comply with, as it seems Lord Durham has not thought fit to mention the appointment in any of his official despatches. But for the announcement of the fact in the *Quebec Gazette*, the government and the nation would have been ignorant of the circumstance. Lord Melbourne said, "he viewed the appointment with suspicion and concern, and he could not but lament that it had taken place." Lord Brougham, while he bore testimony to Mr. Turton's talents, begged their Lordships not to suppose that he was an advocate for the description of offence charged against that gentleman. The discussion, on the subject it appears, was abruptly discontinued. Certainly this is an extraordinary procedure on the part of Lord Durham. If he knew of the statements and wishes of the Prime Minister, it is strange that he should have made the appointment without consulting him, and endeavouring to alter his determination; and it is still more strange, that he should have omitted to communicate the fact to Lord Melbourne in his official despatches.

IRISH TITHES.—THE DIVISION.—The grand battle of the session has at length been fought, and it is not too much to say that the minister came off second best in the struggle. We have not at present the means for entering into a minute analysis of the division, but we find the following very apposite remarks furnished by a correspondent of the *London Standard* of Wednesday evening:—

"On the division last night the Conservatives mustered 298 besides tellers. Mr. Halse's death and Mr. Hope's absence account for a real total of 300. On the great division of 1835, on which the existence of Sir Robert Peel's ministry depended, they could muster but 289. Here is a clear increase of 11.

"But the case yet stronger as against the ministry. The majority of last night, after allowing for Mr. Halse and Mr. Hope, was seventeen. But six gentlemen—to wit, Mr. Fleetwood, Mr. Posey, Sir R. Ferguson, Sir C. Lemon, Mr. Townley, and Mr. Bennett, voted with ministers last night merely to save them from a defeat, who would not have voted in favour of the appropriation clause, but against it. They object to the clause, but they will not inflict on ministers the ignominy of rescinding it. But were the clause proposed, they

have voted and would vote against it. Deduct these six votes from the one side, and transfer them to the other, and the famous resolution of April, 1835, would now be carried by a majority of five.

"The progress of appropriation, *alias robbery*, therefore, is as follows:—
Majority in 1835 37
" 1836 26
" 1838 5!!

"Is not this something like coming to the last gasp?"
In addition to the vacancies alluded to above, it is right to mention that the conservatives have lost one vote through the compromise recently entered into in reference to the Norwich election petition. Had not Mr. Scarlett resigned his seat in favour of Mr. Smith, the ministerial majority would have been smaller by two than it proved.

After this very close division, it is improbable that the House of Lords will yield their acquiescence to any of the measures of the present government affecting the questions of Irish Tithes or Irish Corporations; so that the Crim-Connellite cabinet will be under the necessity of holding office without being able to carry out any of their destructive schemes. Their condition is the most pitiable in which any ministry was ever placed.

ROYAL WILLIAM STEAMER.—An experimental trial was yesterday made in the river, of this fine vessel, with a view of testing her consuming of fuel, and the result was sufficient to satisfy all on board, that she carries a supply adequate to above 1,000 miles further than her destined port of New York. One feature in the construction of this vessel's boilers, merits attention. For two hours she was steamed with one of her three boilers lying idle, thus proving her capability for all that can be requisite in the way of cleaning out, &c.; and during the time she was thus working, the engines had abundance of steam, without any of that black volume of smoke, which usually accompanies the firing of large engines. Another feature merits attention; by a new process, above twenty gallons of fresh water were distilled, thus causing a supply of that necessary article. The appearance of this fine vessel on the water excited much admiration.

BAHIA.—Accounts have reached London by the *Dublin* man of war that the imperial troops have got possession of Bahia. The capture is said to have taken place on the 16th of March.

By the *Cabotia*, which arrived here on Tuesday, we have intelligence from Bahia to the 5th of March. Private accounts received by this vessel describe Bahia as being still the scene of internal discord. The revolutionary faction are becoming bolder in their aggressions, since they have not scrupled to detain the crew of the *Alice Crowther* in prison for four days. Of the circumstances which issued in their rescue or release we are yet ignorant. The commander of the *Cabotia* reports, that the force of the rebels is so strong as to render it impossible to predict the result of the disorders with which the province has lately been distracted.

Further particulars are looked for with much interest.

Letters and Papers from Madrid of the 23d ult. have been received. All sorts of intrigues were on foot to oust the O'falla Cabinet. It was rumoured that Mendizabal was at the bottom of them. Colonel Wylde had reached the Spanish capital on the 20th, to communicate with the government on the subject of Munagorri's expedition. Don Carlos, finding that the loyalty of the frontier troops was not to be depended upon; had ordered them to be changed—a necessary proceeding, which had given

great offence to his partisans. The advices from the provinces were rather favourable to the constitutional cause.—*Sun.*

The whole of the Paris Journals of Friday and Saturday have been received. The British residents in Paris celebrated the Coronation of Queen Victoria by two public dinners on Thursday. After a debate of five hours duration the Chamber of Peers voted its competency to try M. Laity for a treasonable libel, by a majority of 133 votes against 19. The trial is fixed for the 9th, when it is rumoured that Prince Louis Napoleon will suddenly make his appearance and demand to be tried as the real author of the pamphlet published in the name of M. Laity. It is known that he was escaped the vigilance of the police, and is at present concealed in Paris in order to be present at the trial.

St. John's, August 14

(From the Public Ledger.)

On Friday last Dr. KIELLEY, who had been lodged in the common gaol for an alleged breach of the privileges of the House of Assembly, was had up, upon a writ of *habeas corpus*, before the hon. Judge LILLY in Chambers, when his discharge was most ably and eloquently moved by BRYAN ROBINSON, Esq., in a speech of considerable length, which was listened to with all that interest which became the vast importance of the subject.

We annex a report of the arguments.
SUPREME COURT, 10th Aug., 1838.
Before the Hon. GEORGE LILLY, Assistant Judge of Supreme Court.

In the matter of the Imprisonment of EDWARD KIELLEY, Esq., for alleged breach of Privilege of House of Assembly.

The Sheriff was called upon to make return to the writ of *Habeas Corpus*, issued yesterday, commanding him to bring up the body of the said EDWARD KIELLEY, Esq.,—which he did in the following terms:—

I, BENJAMIN GREER GARRETT, High Sheriff of the Island of Newfoundland, Esquire, in the writ hereto annexed, named.—Do certify and return to the Honorable GEORGE LILLY, Assistant Judge of the Supreme Court of the Island of Newfoundland, that before the coming to me of the said writ, that is to say, on the ninth day of August, instant, EDWARD KIELLEY, Esq., in the said writ also named, was committed to my custody by virtue of a certain writ or warrant, tenor of which is as follows:—

House of Assembly, 9th August, 1838.
By virtue of an order of the House of Assembly this day made, these are to require and command you to receive into your custody, and safely keep in Her Majesty's Gaol, at St. John's, EDWARD KIELLEY, Esquire, "for a breach of privilege of the House of Assembly, by making use of threatening language and gestures to JOHN KENT, Esquire, a member of this House, and for contemptuous language and conduct before this House, and for so doing this shall be your sufficient warrant.

Given under my hand the Ninth day of August, in the year of Our Lord One Thousand Eight Hundred and Thirty Eight.
(Signed,) WILLIAM CARSON, Speaker.

To The High Sheriff of Newfoundland.
And these are the causes for detaining the said EDWARD KIELLEY, whose body I have here ready as by the said writ I am commanded.

Dated at St. John's, in the Island of Newfoundland, this ninth day of August, 1838.
(Signed,) B. G. GARRETT, High Sheriff.

Mr. ROBINSON, of Counsel for Mr. KIELLEY, moved that the said Return be filed—which was granted.

He then moved that the said Mr. KIELLEY be forthwith discharged from confinement—his imprisonment being illegal—and addressed his Lordship in substance nearly as follows:—

"With your Lordship's leave I shall read to you the Affidavit of the Prisoner, on which this Writ was granted, for the purpose of succinctly laying before you the circumstances of this case, and the origin of the proceedings, under colour of which Mr. KIELLEY has been deprived of his freedom, and imprisoned in the Common Gaol of this District. The affidavit is as follows:—

NEWFOUNDLAND.
IN THE SUPREME COURT.

"EDWARD KIELLEY, of St. John's, Surgeon but now a Prisoner in the Gaol of St. John's, in the Island aforesaid—maketh oath and saith, that on Monday, the Sixth day of August, instant, this deponent was taken into custody in his own residence, by one THOMAS BECK—who then and there stated that he had a warrant to arrest him from the SPEAKER of the House of Assembly, of the island aforesaid. That deponent demanded on the same day, from the said THOMAS BECK, a

copy of the warrant under which he had arrested him, which the said THOMAS BECK refused to give to deponent, and has not yet given to him or any one on his behalf. That on Tuesday following this deponent was brought by the said THOMAS BECK, before the said House of Assembly, to be heard in explanation touching an alleged breach of Privilege said to have been committed by this deponent, by offending a member of the said House out of the House. That deponent having explained the transaction, and justified his conduct, was ordered to withdraw,—and was still kept in confinement by an order under the custody of the said THOMAS BECK until this day, when deponent was brought again to the Bar of the said House of Assembly,—and the proceedings of the said House on Monday, the Sixth day August, inst. were read as deponent understood and believed, and a paper purporting to be a general apology to the House of Assembly was put into his hands, and he was required to make the said apology;—that deponent wished to ask for what alleged offence he was asked to apologize, when he was instantaneously stopped by the SPEAKER and some Members, and desired simply to say "yes" or "no." That deponent had liberty to withdraw for a few moments, when deponent was again brought to the Bar of the said House—and anxious to apologize for any offence he might have by any means committed against the Privileges of the said House of Assembly, again requested, or was about to request, to be distinctly informed what the alleged offence was wherewith he was then charged, and for which he was required to make an apology,—and was proceeding to say that if he had in any thing offended against the Privileges of the House he would freely apologise,—when deponent was again instantly stopped by the SPEAKER and some Members, and pre-emptorily required to say 'Yes' or 'No,' as to his signing or making the said general apology, and "nothing more"—that deponent feeling it was utterly impossible to make a general apology without knowing for what, respectfully declined giving that required. That deponent was afterwards ordered to withdraw from the said Bar, and was conveyed to the Common Gaol of St. John's, aforesaid, in the Island aforesaid. That deponent demanded of the Sheriff of Newfoundland a copy of the warrant of commitment; when this deponent received the paper writing hereto annexed, from BENJAMIN GREER GARRETT, Esq., Sheriff of the Island aforesaid, at the said Gaol. And this deponent further saith, that on Monday last deponent saw Mr. JOHN KENT, one of the Members of the said House of Assembly, in the public street of St. John's,—when he, this deponent, civilly asked the said Mr. KENT if any relief could be afforded to a poor person to whom this deponent was then speaking, or words to that effect,—showing at the same time to Mr. KENT a written paper, wherein deponent had recommended the pauper to the protection of the Magistrates. That Mr. KENT then said to this deponent, is this all you can do 'you cormorant and robber of the poor;' and that he, this deponent, should relieve the pauper,—and then and there used other and most abusive language towards this deponent.—That deponent being exasperated by the conduct and abusive language of the said Mr. KENT, was led into the use of strong language towards him; but deponent solemnly swears he did not name, or allude in any way, to the House of Assembly—or any manner or way refer to the fact of Mr. KENT being a Member of the said House—or use the 'privilege'—or allude to any act or word of the said Mr. KENT in the said House; nor did deponent intend to infringe the privileges of the said House of Assembly, and is not conscious of having done so, throughout the whole altercation; nor did deponent lay hands on the said JOHN KENT, or obstruct, or in any manner retard his going whithersoever he wished. That deponent understood the above has been construed by the House of Assembly into a Breach of their Privileges, and is that for which he was given to understand he was required to apologize. That deponent expressed to the SPEAKER of the said House of Assembly, by letter, his extreme regret if his heat of temper led him, when before the House on Tuesday, to say any thing offensive to the House, and expressed his desire to apologize for any breach of Privilege he might then and there have committed; but deponent said, that in making such observation before the said House on Tuesday last, he was not attempted to be stopped by the said House, but on the contrary, the SPEAKER said, when some Member wished to make some observation, 'Let Mr. Kielley go on,' Nor was any fault found by the said House in deponent's presence or hearing, with any observation he then and there made.

EDWARD KIELLEY.

"Sworn before me at St. John's, this 9th August, 1838.

"E. M. ARCHBOLD.

"Com. for taking affidavit."

"Your Lordship is now called upon to exercise one of the most important and certainly one of the most gratifying duties of your high office—that of stepping between a fellow subject and the prison—of discharging an individual from confinement, and restoring to him his liberty.

"I do not attempt to conceal from your Lordship, no more than I could