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Plebs sic jussit.

LIVY.

Such is the will of the people.

“It is not for kings, O Lemuel! it is not for kings to drink wine, nor for princes strong drink; lest they drink and forget the law, and pervert the judgement of any of the afflicted.”

PROVERBS, XXXI. 4. 5.

In No. 36, speaking of the custom of the *Charriwarri*, I claimed to myself the merit of being the only publisher in Canada who stood forward to vindicate the custom itself, and to reprobate the outrages and injustice that had been committed in the attempts made to suppress it. I am happy to withdraw that claim, and acknowledge the editor of the *Literary Miscellany*, as entitled to rank amongst the fearless writers, who are not to be frowned into silence, by men in power, or by men of influence, by the clamours of foreigners and upstarts, the pompous virulence of the Hon. John Richardson, or the guns, swords and bayonets of those “well disposed” bellwethers, who, to preserve the peace of the city, have undertaken to be authorised peace-breakers. He has anticipated that proposition which I announced my intention of maintaining, that this custom was not only harmless and innocent, but laudable, proper and moral; and I shall not find much to add to what he says, on that head, which I therefore take the liberty of extracting.

He dissents in opinion, he says, “from those officious scribblers, who, to make themselves conspicuous as champions for public order, raise an outcry, affecting to be offended with the ancient custom of *Charriwarri*, and blaming the conduct of the magistrates for having suffered it to take place in Montreal to the annoyance of the orderly and peaceable inhabitants. Now it remains to prove that *Charriwarri*, so far from deserving to be considered in so odious a light by impartial and disinterested minds, ought to be ranked among the noblest institutions of the ludicrous kind, if its object and design be rightly understood. Experience has frequently demonstrated that nothing is more destructive of domestic concord than marriages founded, not on the pure, generous, ardent, free, and constant, passion of mutual love, but on the sordid, servile, and corrupt, desire of filthy lucre, whence proceed those jealousies, jars, and quarrels,

which render life a scene of wretchedness and discontent. Of this too fatal truth, Mr. Pope has given us an elegant and charming picture in that enchanting poem, entitled *Eloisa to Abelard*.

“Love free as air, at sight of human ties,
Lifts his light wings and in a moment flies.
The jealous God when we profane his fires,
Those restless passions in revenge inspires,
Which make perverse and erring mortals groan,
Who look for aught in love, but love alone.”

In order to prevent unnatural unions, such as youth with age, health with sickness, vigour with imbecility, and sanity with dotage, was *charivari* intended. Who, then, will deny that the intention of this ludicrous custom is not truly laudable, having, as has just been observed, the fairest object in view; namely, the securing of conjugal felicity by the prevention of unequal matches? For, since the law has not provided any remedy to check the evils in question, is it not just that ridicule, which has been found, on many occasions, potent and successful, should be used as a proper application to those distempers which destroy the vital springs of matrimonial happiness? Nor are the benefits derived from a *charivari* confined solely to what we have already mentioned. It embraces another object worthy of the commendation of every good man; which is the relief of the indigent children of misfortune, by applying to their use whatever money is exacted from the sons and daughters of Mammon, who, by their unhallowed unions, violate the laws of nature, and profane the mystery of love. Reflecting on these and other mischiefs that have at all times been occasioned by avarice, with the poet I am ready to exclaim; “*Auri sacra fames, quod non mortalia pectora cogis?*” But to resume the

Well may it be said of such as barter love for money, that with them

“Gold is a sovereign precious metal,
That solders sexes like a kettle,
And Cupid sly oft takes his stand
Upon a widow’s jointure land—
His tender sigh and trickling tear,
Long for five hundred pounds a year;
And languishing desires are fond
Of statute, mortgage, bill and bond.”

Literary Miscellany.

There is a sentiment too, in a stupid, rhyming, tragedy of Sir Charles Sedley, called *Antony and Cleopatra*, on this subject, which is one of the only two passages in that play, I have marked in my commonplace-book as worthy of preservation:

“*Cesar*. Th’ unable, sure, the ugly, or the old,
First in affairs of love made use of gold,
Then, princes, to outbid them, threw in power;
Now, heart for heart’s, the traffic of the poor.”

topic from which I have digressed; is it not the squeamishness of affectation in some of our scribblers who pretend to be scandalized at the Charrivarri, and the non-interference of the magistrates to prevent the fatal consequences of that disgraceful scene, as they have termed it?

Too true it is the entertainment of the night was disgraced by the calamitous event that had occurred. But who will assume such a front of hardihood and sophistry as to throw blame on the conductors of the Charrivarri, or on the magistrates? To whom is then the guilt to be attached? At whose door does the blood of the unoffending man so foully murdered lie? Let H. and his accomplices answer, and tell us what they have to allege in vindication of their black, atrocious deed, of "that

To which, being in a quoting vein, I wish to add from another old poet

"For money is the only power
That all mankind fall down before.
Your petty foggers damn their souls
To share with knaves, in cheating fools:
And merchants, venturing thro' the main,
Slight pirates, rocks, and horns, for gain."

"For money't is that is the great
Provocative to amorous heat;
'T is beauty always in the flower
That buds and blossoms at fourscore,
'T is virtue, wit, and worth, and all
That men divine and sacred call:
For what's the worth of any thing,
But so much money as 't will bring?
Virtue, now, nor noble blood,
Nor wit, by love, is understood;
Gold alone does passion move,
Gold monopolizes love.
A curse on her, and on the man,
Who this traffic first began!
A curse, all curses else above,
On him who used it first in love!
Gold begets in brethren, hate,
Gold, in families, debate,
Gold does friendship separate:
These the smallest harms of it:
Gold, alas! does love beget.
It guides the fancy and the mind,
No bankrupt finds a fair one kind.
Thus money, like the swords of kings,
Is the last reason of all things.

L. L. M.

rank offence which smells to Heaven, which has the primal eldest curse upon it—a brothers blood!" Perhaps the sanguinary monster and his abettors would attempt to urge the plea of self-defence in extenuation of their crime. Vain subterfuge! *quantum in Charybdi laborant!* "Let it first be proved that an assault endangering life and property had been committed—an assault sufficient to justify their firing upon a promiscuous crowd, most of which were no otherwise concerned in the Charrivarri than as mere spectators. Till this be clearly evinced, the plea of self-defence will never serve their turn; it becomes rather an aggravation of their crime, as its obvious tendency would be to libel the magistrates and misrepresent the whole affair."

The general propriety of these reflections, can not be denied, but the particular application of that part of them which relates to the conduct of the magistrates would lead to the conclusion that their conduct throughout was praiseworthy. It has been the contrary. True, they did not interfere to prevent the Charrivarri; but I am not inclined to give them credit for their forbearance in that respect, as proceeding from a conviction that to do so would have been, as is the fact, illegal and improper, but from timidity, vacillation, and old-womanism. Their subsequent conduct proves this; as well as the absurd prohibition of the Charrivarri, which we find in the ridiculous editions of blue-laws that are facetiously called police-regulations. Instead of making all possible exertions to discover, take up, and bring to justice, the perpetrators, advisers, abettors, and accessories of the unprovoked and malicious attack that was made upon the populace by a predetermined, and prepared, set of sturdy malignants, and of the murder that was committed in consequence; they have been as quiet and indifferent on that subject, as if it was not deserving of notice, and no more to be reprehended than the slaughtering of sheep for the shambles. whilst on the other hand, every exertion has been used to find out, harass, and prosecute, the innocent, unoffending, and aggrieved, persons who formed the Charrivarri. Nay, as far as I at present know of the matter; the enquiries and examinations have been confined to the persons and events, the characters, dresses, and vociferations, that occurred, previous to the firing of the fatal shot which was the first breach of the peace, the first and awful act that was committed; as yet even the parties who subsequently, the evening after, attacked the house whence the firing took place, and who certainly were guilty of a riot, have remained I believe, unquestioned, probably for the very excellent reason, because they had not their masquerade dress on, which it seems is the front and head of their offence, in the eyes of those wisecracks who pretend that the Black Act is applicable to this case.

I quit the subject for the present, with repeating my exhortation to all the good people of Montreal, who dare stand up for their undoubted rights and privileges, for the liberties of the subject, the maintenance of law, morality and propriety; not to fail; whenever any other ill-assorted match takes place; (and there are reports of more than one upon the tapis,) to assemble as a *charrivarri*, and to set at defiance the usurped power that would suppress it. Do it peaceably, and orderly, (not quietly, for noise is an essential part of the ceremony,) and the first evening, or as long as you are unmolested, forbear from taking arms with you, either open or concealed; but if you are interrupted, or any one of you attempted to be taken into custody, assemble the next night, in greater numbers, go armed, and resist by main force, those who endeavour to coerce or restrain you in your lawful amusements and customs; and upon their heads be all the blood and evil that may follow. When tyrants and tigers overrun the community it is time for the really "well disposed," to dethrone and muzzle them. L. L. M.

I have seen with surprise the promotion of John Fletcher, Esq. from the bench of police-magistrates at Quebec, to the office of judge of the newly erected Inferior District of St. Francis. This appears to me to be another pregnant instance of the facility with which the good disposition of the earl of Dalhousie is liable to be abused by designing and interested people, and with which he may be led, upon erroneous representations and injudicious recommendations, to place high and important trusts in the hands of unfit persons. When a governor first comes among us, he has undoubtedly, in that respect, a most difficult task to perform: the most penetrating judgement, and the quickest apprehension, must fail to discriminate amongst the various candidates for office, and numerous and apparently respectable recommendations he receives, whom, and which of them, it becomes the statesman, the guardian, the father of the country, (for such it behoves a governor to be, and such I feel an internal conviction it is my lord Dalhousie's ardent desire to prove himself,) to promote and listen to. But every year, every season, nay every day, (and his lordship has been with us four years) must tend to enlighten him in that respect, and the study of the characters, and dispositions of those around him, combined with deep and anxious enquiry into all the circumstances of the country, and the natives, ought not, to fail to endow him with armour of proof against the designs and pretensions of the unworthy. Unfortunately I am afraid, that lord Dalhousie, has too decided an inclination to listen solely to the representations of those characters, who have, at the chateau, the reputation of being respectable, influential, and intelligent, without stopping to enquire whether that reputation is well founded or

not, on paying regard to the popular opinion, relative to them, or their mimons and favourites. Unless this were so the appointment of such a man as Mr. Fletcher, to the office of a judge could in no case have taken place; and particularly not in a district, where it will be found essential, that the tempers and feelings of the inhabitants should be conciliated by every wise and as it were, patriarchal, arrangement, to allay the ferment that has arisen amongst them, by the peculiar circumstances in which they are placed. But while I contend, that Mr. Fletcher is personally improper, as I shall presently endeavour to shew, the previous nomination of the Hon. Alexis Caron, as a judge for that district, induces me likewise to declare that the principle is essentially wrong for police-magistrates in any case, to be exalted to the bench of judges. Mr. Caron filled the station of first police-magistrate at Quebec, along with Mr. Fletcher as his assessor, for a considerable time; and was, in 1821, appointed judge of the Inferior District of Gaspé. I have nothing to say against Mr. Caron; I believe his conduct as a magistrate, though not marked with any peculiar talent, or extraordinary sagacity, was respectable, moderate, and rather conciliating than otherwise; and, if we may decide from the letters that have been published in the papers, as having passed between some of the principal official characters at Gaspé, and him, on the occasion of his projected translation to the district of St. Francis, in which the former testify to the "impartial, prudent, regular, and able, administration of the duties of his high office," and entreat him to "make a longer stay among them," and the latter expresses his determination, in consequence, to "lay aside his private convenience for the public good, and to remain in that district," he has also respectably sustained the character of a judge. Yet, upon the broad principle that human nature must acquire a bias from the circumstances, and collisions, which men have, in their several stations to encounter, it is easy to argue that justices of the peace, and police-magistrates especially, must be very unfit for the sedate, impartial, and dignified station of a judge. Their very office is that of *ex parte* examiners; they must necessarily have more of the *fortiter in re* than the *suaviter in modo*; they have to encounter and baffle, evils and men, of flagitious nature, and desperate dispositions; they are to the bench, what constables are to themselves, what jackals are to lions, what sheriff's officers are to lawyers; and no one will say that a constable is fit to be a justice, a jackal to be a lion, or a sheriff's officer to be a lawyer. They can not avoid carrying into the judgement-seat, the harshness, the superciliousness, the arbitrariness, and the impatience, which can scarcely fail becoming habits with those who have none but very inferior officers, and delinquents, to deal with; who possess

an arbitrary power, (necessarily given them for the purposes of temporary justice,) which they are often required not to be shy or delicate in using; and whose patience is often put the severest trials, by the perverseness or insolence of those who are brought before them. This does not indeed, apply to simple justices of the peace,* but to such as are constantly, as police-magistrates, or regular quarter-sessions gentry, called upon to exercise the functions I have been remarking on; but it is upon these general grounds I object against any such being exalted to the supreme judgement seat, both in civil and criminal cases. These are general arguments against the appointment I am censuring; but, I consider it as my public duty to censure it likewise, on account of the knowledge I have, both personally, and from information, and public report, of the unfitness of Mr. Fletcher to be a judge. He is, I believe, as good a lawyer, as study and knowledge of the written law can make him, without the rationale of it. Verbose, intricate and mysterious; possessing industry of research, and acuteness of perception, sufficient to make rather a shewy than a useful, exhibition of his forensic acquirements. So far, it will be said, nothing has been shewn in this respect, to cry out against; but he has one, besetting sin that totally disqualifies him for the situation of a judge, which ought to have effectual, as it has frequently almost, ejected him from that of magistrate. In one word he is, an habitual drunkard. I make no apology for this round assertion. I have seen instances of it myself. All who know any thing of his conduct whilst he enjoyed the situation of commissioner for Indian affairs, in conjunction with the Hon. W. B. Colman, can bear witness to the glaring debauchery of his conduct during that mission, and which compelled his dismissal from it, before its object was terminated. Numberless instances of a misbehaviour, approaching to lunacy, which is to be attributed to the prevalence of this darling vice, in this, now "*honourable judge of the Inferior district of St. Francis,*" must be within the knowledge and recollection of the inhabitants of Quebec, during the time of his possessing a seat on the policebench. A natural arbitrary disposition, fostered, and invigorated by his station as a chief of the constables, runners, and thief-takers of the metropolis of Canada, has been rendered, at times, ferocious, ungovernable, and unbearable, by the stimulus of strong drink. I speak out; but I call all Quebec to witness that I speak out nought but what they all know. If such a man as this, my lord Dalhousie, has been recommended to you, and represented as fit to sit

* I do not, gentle reader, by "*simple justices of the peace,*" mean, justices who are simple justices (of which I fear there are a vast number in Canada,) but such as are simply justices, without being police magistrates, or of the quorum.

on the bench, to be invested with the judges' ermine, and entrusted with the lives and properties of his Majesty's subjects, how much ought you not to be upon your guard against such base conspiracies against your administration? for, as nothing will bring your administration into greater and more deserved contempt, than the employment of improper persons in the high offices of judicial and executive government, so the attempt to impose such upon you, may be considered as a conspiracy, against your station, your dignity, your popularity, and your utility, as governor in chief of these provinces.

But, perhaps, other motives lurk under this appointment: perhaps it was desirable to get rid of Mr. Fletcher; that his exaltation to the proctorship of an inferior district may be considered as a kind of honourable exile, or, in vulgar language, "a good riddance of bad rubbish." Perhaps the townships were considered in such a lawless and criminal state, that it was doing grace, and honour, and nothing but due justice, to send them a drunken judge, a sort of chief thieftaker, to preside at their courts. Nay, if this recommendation came from any of the Scotch intriguers who have so much the ear of his excellency, perhaps it may be a subtle refinement of demoniac policy:—to make the inhabitants of the eastern townships, (who have felt much satisfaction at the incipient step that has been taken to ameliorate their condition by the erection of a court of justice for them,) dissatisfied and turbulent, and induce them to continue to listen to the false insinuations of the unionists, that all the evils they complain of are to be attributed to the influence and power of the Canadians in the house of assembly. "See," they might say, "how nugatory what is pretended to be done for you is: the assembly, it is true, have consented to the erection of a new district, but they have caused a worse than king Log to be sent among you as a judge.—you will never be well treated, never have your wishes fulfilled, or justice done you, till we, the unionists, get into power. Be as clamorous, therefore, as ever, for a union. Stick to us, hoist us up into the chief controul of affairs, and then you shall see—what you shall see."

But it is not yet too late, my lord; give Mr. Fletcher a station better adapted to his habits—if there is not one ready-made, since you claim the right of putting your hand in the public purse, and paying who and what you like, without accounting to the people, it is easy to create an office—and select some one from the bar in Canada, of more unexceptionable talents and habits, to sit upon the seat of England's Royal Majesty in his court of justice,—to sit upon **THE KING'S OWN BENCH.**

L. L. M.