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# THE SCRIBBLER.

Vol. II.] MONTREAL, THURSDAY, 1st AUGUST, 1822. [No. 57.

— *Extrema per illos*

*Justicia excedens terris vestigia fecit.*

VIRGIL.

Hence it arises that to earth's remotest bound,  
Justice hath fled, nor left, but of her name the sound.

*Procul, O procul! este profani!*

VIRGIL.

Hence, ye profane, nor dare to pry  
With listening ear or curious eye,  
When lovers court, or doctor's kill, —  
Beware the murderous frown, beware the death-fraught pill.

*Hos ego versiculos feci; tulit alter honores.*

VIRGIL.

'Twas I the verses made; No, no, 'twas I; I say:  
So struts in borrow'd plumes each literary jay.

The administration of justice is perhaps the most important of all the functions with which the people have agreed to invest their rulers.— It is indeed the very essence of all governments, for the exterior relations of nations, the acts of diplomacy, and the prerogatives of a monarch in his capacity as the fulminator of war, or the restorer of peace, are only those means which judgment has devised, and experience dictated, to preserve to a nation their own modes of administering justice amongst themselves, uncontrouled by others, and uninfluenced by foreign power or foreign customs; the trust which governments have of the nation's purse, the privileges of office, and of nobility, the prerogatives of the sovereign as the fountain of honour, and the mighty influence of patronage, are nought but appendages and supports to the system which is to insure security, justice and satisfaction, to all who form the body politic; whilst the splen-

dour of royalty, the decorations of knighthood, the bishop's lawn, the judge's ermine, and the soldier's plume, are only meant to give an imposing air of grandeur, of solemnity, and of decoration, to the various officers deemed necessary to give stability, and effect to that final object of all political and civil systems, namely, that each man may live "under his figtree and his vine," secure from wrong, and certain of right.

That nation must be the happiest which enjoys the blessings of the most upright judicature, a judicature of unshaken integrity and undoubted virtue, or at least as nearly approaching to those essentials of justice, as the frailty of human nature, and the imperfection of all human systems, can admit. In England, above most other countries, I believe, the nearest approximation to this standard is to be found. This is owing in a great measure to the adoption of what is called *the common law*, as the basis of our jurisprudence, by which is meant the inherent sense of right and wrong, as to men's actions, which exists, in the shape of general principles, throughout the globe, modified by those localities, and those usages, which the peculiarities of the country, climate, and people, have produced. *Statute law*, though now become the great medium through which justice is expounded and administered to the people, should be considered in no other light than as a more clear, distinct, and precise, enunciation of *common law* than can exist either in the traditions, the feelings, or the writings of the country; and I have no doubt that were cases to come before a court, whether criminal or civil, which had not been provided for by statute, and for which no precedent or analogous circumstance could be quoted, the jury and the judge would be acting up to the spirit of the constitu-

tion if they decided them according to their judgment of what was right or wrong under the circumstances, without leaving them as moot points, or undecided cases, until new statute laws (already much too much multiplied) should be made to meet them, as has not unfrequently occurred. Precedent I think, however, has been relied on a great deal too much, in our law decisions, and the constantly revolving changes in times, circumstances, people, and places, neither sufficiently attended to, nor proper scope allowed for the newer lights and opinions that are generated by the improved state of mankind.

But I have been insensibly led too far from the immediate object of this essay. Much too of the superiority which the jurisprudence of England has attained over others, (and even in this respect over that of the United States, which being founded on the same basis, and equally under the check of the public press with the English, rivals it in purity, and excels it in simplicity and despatch) is to be attributed to the judges having been made independent of the crown, and placed above all temptation of violating the integrity of "evenhanded justice"; but the chief guard against juridical oppression in England, the impenetrable shield, the bulwark not to be levelled, that is thrown over and round the rights of Englishmen, is the freedom of the press; the sturdy independence, and concise fidelity, with which reports of all law-proceedings that are in the least interesting to the public, are printed and circulated through the empire, with industry and rapidity, are the strongest checks against legal oppression, or partial judgements. Knowing that they are amenable to this public tribunal, both judges and juries are more bound by the awe they feel for this *imperium in imperio* than

even by their oaths, and their sense of duty, the one often liable to be considered as mere formalities of office, and the other to be warped and perverted by prejudice, and private feelings.

The want of reports of the proceedings of the Courts in Canada, has often struck me as a great evil; but is one that I fear will not be remedied until the editors of papers shake off that pusillanimity that makes them afraid of a great man's frown, of a judge's nod, and, what they think even more dreadful, the loss of an advertising customer. I trust, however, I perceive some glimpses of independence flickering amongst them, which I have the vanity to think, my paper has enlivened, if not kindled; and, were I at his elbow, I should be inclined to clap the editor of the Herald on his back for his promise to *Justicia* in his paper of the 13th July, to expose public men who sacrifice the rights of the public to the opinions or interests of the inconsiderable part of it. But "promises and pye-crust," &c. and until I see something more substantial than promises, I must and will throw obloquy upon those editors who refuse or neglect to give publicity to matters of this kind.

I have been the more led to pursue this train of reflection from some communications that have lately appeared in the Upper Canada Herald, from one of which, signed WATCH, I quote the following passages, as perfectly applicable to my present object.

"The rivet is broke, and the fetters that, in some degree, shackled your press are, I hope, now shaken off. In my views of the liberty of the press, I will not strive to force you into any measure by advice, nor will I further censure you for what I thought amiss in the past; but I hope in future your press will be free for every fair communication."

"When men who are authorised to administer justice, by a partial exercise of power, act contrary to public duty, it is one of the most valuable employments of the press to ex-

pose such proceedings. That neglect, in the editorial departments of newspapers, or some other cause, has generally confined the proceedings of law courts within the narrow and doubtful limits of verbal reports, is too true to admit of contradiction. While our public prints neglect or refuse to publish such reports, imposing power can violate duty with safety ; but by freely printing the proceedings of law-courts, the press becomes an useful and powerful engine to check arbitrary rule in any country, but more particularly in a country newly settled by a people subjected to social order ; because power, in such countries is commonly vested in the garb of ignorance, accompanied by the foul demon of pride, and together becoming the overbearing parents of oppressive rule.

"Your correspondent Justicia has done the public a most essential service by his communication of the proceedings in a case in the Court of Requests, and you have performed a most necessary public duty in printing it. My sincere wish is that the necessary watchfulness to guard our rights, by freely exposing the proceedings of power when it acts contrary to the rules prescribed by the direct calls of duty, may in future furnish the press with the substance of such cases, and the press be always found ready to publish them."

Considering therefore the regular publication of reports of law-proceedings, not only an object of essential utility for the promotion of real justice, but also one that can not fail to be interesting to a great body of my readers, I particularly recommend, and indeed solicit, those students at law, or gentlemen of the profession, who have the leisure and the ability, to make minutes of the proceedings in the courts, in Montreal and Quebec, and other matters connected with them, for transmission to the Scribbler, and which I should hope would form not the least beneficial, and instructive part of this miscellany. Let them not be deterred by the supposition that it is beneath the dignity of the profession ; let them look to the many luminaries of the law that have at home become reporters ; let them recollect the living instance of the celebrated Mr. Chitty,

whose works have now become established authorities. That gentleman, either finding himself unfit for the active part of his profession, or, amidst the great competition at the English bar, without an adequate share of its profits, struck into a new line, became a reporter and publisher, and a lecturer on law-subjects, and has finally succeeded in gaining that fame and fortune which his merits deserve, but which otherwise he had no opportunity of attaining. Neither let them be deterred by the fear of any evil consequences to themselves. The most inviolable secrecy will be preserved (whilst for my own satisfaction it will be necessary that such reports be authenticated by real names.) as to the reporters; and I will stand in the breach for all. I am undaunted, and careless of consequences, when I am doing what I conceive to be right. I have endured the utmost rigour of unjust prosecution and illegal persecution, and laugh to scorn all ideas of fear, as to being considered guilty of *libel*, for I will loudly proclaim the absurdity and injustice of that pretended maxim of law that the truth is no vindication of a *libel*\*; nor am I nice, (farther than the reverence I hold it my bounden duty to pay to all courts of law as being these seats where justice ought to preside,) as to *Contempt of Court*, which

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\* I can not avoid here quoting the law on this subject that exists in the neighbouring state of Vermont, which has proved as excellent in practice as it is sensible in theory.

Chap. 34, No. 1, of the Laws of Vermont, enacts:

Sect. 1, That upon indictment for libel, "the respondent may give in evidence to the jury *the truth* of the words contained in the supposed libel; and if the jury find the words true, they shall bring in their verdict *not guilty* any law, custom, or usage, to the contrary notwithstanding."

Sect. 2. Upon indictment for defaming the civil authority of the state in violation of an act, entitled "An act for the punishment of certain high crimes and misdemeanors,"—"the respondent may give in evidence to the jury *the truth* of the words set forth in such indictment; and if the truth of such words is proved to the satisfaction of the jury, they shall bring in their verdict *not guilty*, any law, custom, or usage, to the contrary notwithstanding."

in many instances, I fear, may be considered as a *contempt of what is contemptible*.

I beg to add that I will with pleasure transmit a copy of the Scribbler, beginning at the 2d vol. gratis, to any gentleman who will furnish me with such reports regularly. L. L. M.

To preserve a character of impartiality I insert the following letter, although with regard to the offence that seems to have been taken at the expression used in Bopeep's communication in No. 53, of the new La Prairie Steam-boat having been set up "in opposition to the old concern," I must disclaim, on my own part, any wish or intention of entering into any *puffing* disputes between two rival concerns; nor did I look upon that expression in the light it appears to my new correspondent, or I should have altered it; as I have done some in the present letter. I hold competition to be in general highly beneficial to the public, but I do not think it right in one party to attempt to injure the other by abuse.— Nor can I in future admit any thing that alludes to similar rival establishments, with a view to recommend the one and depreciate the other.

L. L. M.

"No fault or crime in himself hinders him from searching into and pointing out the faults of others."\*

Montreal, 10th July.

MR. MACCULLOH,

I deem it no small recommendation of your miscellany that it has maintained its character for candour, decorum, and impartiality, in an age when prejudice has usurped the seat of reason and experience. Permit me therefore to say a few

\*My correspondent does not name any author from whom this passage is taken, but as he has marked it as a quotation, I presume it is one, and have printed it accordingly.



words in answer to a communication in one of your late numbers, signed Bopeep. I should not have troubled you on this subject, had not the very fluent author of that piece said what is diametrically opposite to the truth. Should my accusation prove ill-founded, let it "pass by him as the wind which he respects not." If its foundation is good, I am not conscious how an atonement can be made

In the first place he wishes to inform the public that the new Steam-boat La Prairie has commenced running between this city and the place of which she bears the name, "*in opposition to the old concern*". It was not the intention of the proprietors of the new boat to build her for that purpose, but for the very laudable one of preventing imposition, which many, who have done business with the old boat, had too much experience of. It would be well for this gentleman could he take the advice he so freely lavishes upon his "sapheaded neighbour, Mr. Nabson", as he feels pleased to term him, that is to endeavour to avoid meddling with other people's concerns. Next he presumes to offer his advice to a respectable magistrate in the fulfilment of his duty, in which he has displayed his ignorance, but, Mr. Macculloh, your judicious observations on that head is sufficient. He also cautions Mr. New-York against promenading with the merry-andrews of that place; now, sir, I strongly suspect that this great character, Bopeep, is one of those himself, as, if I am not mistaken, he has been distinguished heretofore in the village of La Prairie, by a french nickname, of nearly the same import.

Your's &c.

A FRIEND TO CANDOUR.

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*La Prairie, 18th July.*

MR. L. L. MACCULLOH,

Dr. Dearmud is very much exasperated that

you have told the world his tale of woe and disappointment, "me !!!" said he, "un medicin, a doctore to be imposé so much upon me. I am a jantiman of qualite and capacity ; my talens must not be prostitué enecrivant in de Cribleur. Af Bo-peep, peep any more times in ma prescription-book I will give him a magnifique reponse in de Courant ; for ma brain possess too much talens to write in de *Cribbleur*. But I never kill a chien, nor man eider, only one poor follin, he was sick dat he could not tell a me what taste was de medicine. But datis notteen, af I get put in de *Cribbleur* once more, I will write a remonstrance to Mons. De Maccullotte, to Bopeep, and every body in de world. I will teach dem to distingue true merit, for I am a diseuple of Galen, a son of Aesculape, and af I only know the anatomie of de head and body, I would be a Hypocrate!" If the doctor could prevail on any of his enemies to take a dose of his nostrum he would be sweetly revenged indeed. I am credibly informed he was called for late last night to attend upon a verry sick—*grumphia*, but it was too late, the thread of life was spun, and the doctor had the mortification of parting with his only patient.

The propensity for backbiting and babbling which actuates the narrow soul of Sir Simpleton Sneak is really astonishing, but the pleasure he takes in hearing himself speak is still more so.—His insignificance has been the reason of my not introducing him sooner to your notice, nor should I now, were it not for his continual prayers to get a seat in your easy and convenient carriage as far as Public Ridicule, a place as much famed for the reformation of folly, as the air of the Rapids is for its salubrious and bracing quality. If you are any ways crowded, you may, *sans ceremonie*, put him along with the baggage, as there

is no danger of spoiling or soiling such a lump of unpolished imperfection. I hope he will have a pleasant jaunt; and have no doubt he may amuse some of his fellow-travellers, as he has a most delightful way of embellishing a story, being what Foote calls an agreeable novelist, and possessing so much of the traveller's talent that he might almost raise a blush on the face of Baron Munchausen.

## EPIGRAM.

Says Jamie to Sawney, ken ye what the fowk say,  
Muckle Lammocks has tent a' his senses to-day.  
Pooh, nonsense,—says Sawney,—it must be a jest,  
Hoo, mon, cude he lose what he never possesst.  
From your Excellency's BOPEEP.

*Buckram-lane, July, 1822.*

FRIEND LEWIS,

I send you the copy of a letter which I picked up a few days ago in one of my rambles through Mount Royal; and which, from its contents, I guess was intended for a particular friend of your's; but as there was no regular superscription, I am in hopes of seeing it shortly in the Scribbler, as by that means, it may probably reach its destination. Your's in good faith,

PLUTO.

MR. TOMMY CHANGELING,

My worthy good sir, pray be not offended,  
For tho' I'm a cur, I never intended  
In writing you squibs, by your own dear request,  
To be pinch'd in the ribs or mock'd with a jest.  
Or what's worse to be passed by *sub silentio*  
Notwithstanding the good things I sent 't ye—O!  
You invite correspondents, then turn your back to 'em,  
And brazenly bid 'em kiss what you dare n't shew 'em.  
"If you tread on a worm,  
He will certainly squirm;  
If you strike a jack-ass,  
He will kick as you pass;"  
If you slight correspondents and tell them not why,  
They will shortly grow careless, and bye and bye shy.

So I'll finish ; you see that I write in a passion,  
 For to disappoint authors it seems is your fashion ;  
 But pray, when a blockhead to you writes again,  
 By saying he is one, put him out of his pain.

AURELIA CARELESS.

*Chambly, 15th July, 1822.*

MR. SCRIBBLER,

Walking near the barracks in Montreal a few days since, I picked up a piece of paper, which, on examination, I found to contain the following eclogue. If you think it worthy of gracing the pages of the Scribbler, it is much at your service.

I am, Sir, your very obedient servant,  
 PETER PINDAR, JUN.

OGGY and SPOGGY.

*An Eclogue.*

Scene. A wood near the Papineau Road.

OGGY.

Bless me ! how happy is my widow'd lot,  
 To meet my Spoggy in this lonely spot.

SPOGGY.

Ten fold more happy is my single fate,  
 To meet my Oggy here thus tête à tête.

OGGY and SPOGGY.

Then since we both so very happy be,  
 Let's squat us down beneath this great oak tree:  
 In strains alternate, let us chaunt our loves,  
 Billing and cooing like two turtle-doves.  
 Hot is the day, and pleasant is the shade ;  
 Woman's for man, and man for woman made.

OGGY.

Twice two long years have joyless pass'd away,  
 Since my dear lord was laid in kindred clay.  
 Tears until now in torrents I had shed,  
 But Heaven, in mercy, thee, my Spoggy sped,  
 To soothe my griefs and renovate my joys,  
 By amorous comforts, and love's sweetest toys.

SPOGGY.

Sweet are my Oggy's accents to my ear.  
 And sweet the voice that gives her praise to hear,  
 Were they but utter'd in my native tongue,  
 They'd be the sweetest that were ever sung.

When first from Germany's dear land I went,  
 Poor as a church-rat, but on glory bent,  
 An ensign's coat was all I could obtain,  
 Tho' small the pay, to take it I was fain ;  
 Lieutenant's rank then graced my sounding name,  
 And then I felt my tender Oggy's flame.  
 What tho' half-pay must be my destined lot !  
 Half-pay so hostile to the boiling pot——

OGGY.

Fear not, my Spoggy, much I can not give,  
 Yet on half-pay we may contrive to live.  
 My sister drives her dappled nags, 'tis true,  
 But that vile trader who'd compare to you.  
 One tender pledge remains of my first love,  
 And should my second more prolific prove,  
 Why then to dad we must apply for aid,  
 He will assist us, for *his* fortune's made.

SPOGGY.

Strong is the winning language of the heart.—  
 But it is late, and we, I fear, must part.  
 Besides I feel the moisture of the grass  
 Exhale, and wetting all,—but let that pass—  
 Rise then, my Oggy, let us homeward press,  
 For I must dine at regimental mess.

OGGY.

But, Spoggy, let me beg before you dine.  
 You'll change those spotted pantaloons of thine ;  
 Behind they're speckled woefully with green,  
 And may tell tales where both of us have been.  
 Thanks to my stars, my gown is jetty black,  
 And may defy of maidens old, the clack.

SPOGGY.

Sad is the hap you now to me impart,  
 It wounds me sorely in the tenderest part.  
 Tomorrow on parade, how then appear,  
 Alas ! these trowsers are my only pair.

OGGY.

Hush'd be thy fears ! this very afternoon,  
 My maid shall wash thy only pantaloon.

Here the manuscript breaks off, but no doubt the  
 promise was faithfully performed. P. P. Jun.

Quebec, 13th July.

MR. MACCULLOH,

As you are a professed manufacturer of caps,

and as it is natural to suppose, from the numbers you dispose of, that it is impossible you can manufacture them all yourself, I take the liberty of enclosing two of my making, as a specimen how you can be served, should you think proper to order a few more of them. They are cheap, and as light as vanity ; are very convenient, and suitable for the present warm weather, as they are of medium stuff and colour, not in danger of reflecting or absorbing too much of light or heat, and so, neither apt to dazzle the eyes of the persons who view them, or to penetrate the pericrania of the gentlemen they may fit. They can be made to three different sizes ; which numbers, the contractors for military accoutrements say, will fit all mankind ; but I think you will find that two sizes will answer your purpose fully as well, as there is nearly one third of the race whom no cap of my manufacture would fit. I have folded them up in a sheet of *foolscap*, as quite a consistent mode of package. I hope they will come safe to hand.

Yours to command,  
KILMARNOCK.

Not an hundred miles from the good city of Quebec, a certain teacher, young in years, but *venerable* in all the learning of the *west*, and who is also a poet of some taste, called on my friend Esculapius, and shewed him in manuscript the following epigrammatic verses ;

“Two Harveys had a mutual wish  
To please in separate stations ;  
The one invented sauce for fish,  
The other meditations.

Each has its pungent powers applied  
To aid the dead and dying ;  
This relishes a *soal* when fried,  
That saves a *soul* from frying.

He told him the verses were a happy thought of

his own, and begged to have his opinion of the propriety of sending them to the *Quebec Mercury* for publication. My friend thought highly of the equivoque of the lines, and, as was expected, highly complimented the author. The verses were accordingly sent, and appeared in the next paper. A few days after, Esculapius, in looking over a volume of anecdotes, jests, scraps, etc. read the same words, the production of an English gentleman, nearly ten years since. When he next saw the teacher, he taxed him with plagiarism. The son of Birch stormed, and said it was impossible, offering to take any bet that my friend could not produce the verses in print. A few bottles of wine were wagered on the subject, the time appointed, and a few friends invited to partake of the wine and the fun, without being informed of the subject of the wager. Among the rest was a young gentleman in sacred orders. After a few glasses of the juice of the grape had circulated, the circumstances of the bet were partly stated to the company, together with the names of the parties. The son of the church turned to Monsieur Ferula with an indignant frown, and asked him, how he could have the assurance to state that the verses in question were a production of his own, when he knew that he (the clergyman) had given him the manuscript to carry to the printer for insertion? The teacher blushed and stammered; and after the heat was a little over, Esculapius read the lines from the book of scraps, and convincing the company that he had gained the wager, completely mortified both poetasters, and "killed two dogs with one stone."

K.

*Quebec, July 1822.*

L. L. MACCULLOH, Esq.

However anxious any man may be to acquire

professional celebrity, and however entitled he may be to the claim of discovery, yet the good of mankind requires that, previous to its receiving general sanction, a fair investigation should be resorted to, touching its real utility, and it is much to be wished, (as a celebrated friend observes) when any important discovery takes place that, in investigating its merits or in canvassing its defects no acrimony should prevail between the disputants; whilst neither a blind partiality for old systems, nor a jealousy at the adoption of a new discovery, ought to withhold the tribute due to merit.

Twenty three years have now elapsed since the world was put in possession of the inestimable discovery of vaccination, and the mind, warm in unabating and neverceasing gratitude towards its author, can not but bestow everlasting benedictions on the accurate and indefatigable Jenner, a name that will be endeared to all posterity, and must be recorded high in the list of distinguished benefactors of mankind.

I fear, dear sir, that I have been too serious for the subject of this communication, and that, as yet, I have more disappointed your readers than amused or instructed them; yet I can not forbear figuring to myself the smiles of pleasure that will appear in their faces when I congratulate them & the world on the important discovery of inoculating for the measles, which has been made by a physician of this city, who has long been celebrated for curing his patients by destroying even the power of feeling pain or sickness. How the discovery originated has not yet very clearly appeared, but this member of the faculty, with his usual avidity to gratify his appetite for dross, is about petitioning parliament for a remuneration as the first discoverer that *hogs were affected with the measles*. The idea, however, (with due deference to



the learned gentleman) seems to have been borrowed from Dr. Ollapod, in the Poor Gentleman, where he attributes the death of alderman Swallow to an indigestion, as the fatal consequence of having eaten sixteen pounds of *measly pork*. His claim will likewise embrace the discovery of a process similar to the Jennerian system, and as he is remarkable for the number of hogs he fattens, he will have ample opportunities of making a series of accurate experiments, so as to be able to transmit with ease, at some future day, the measly lymph from the hog to the human subject. We are now on tiptoe expectation for a grand treatise about to emanate from this great literary *Justass*, entitled "An enquiry into the history of the hog-pock, hog-measles, &c. with a view to check, supercede, and extinguish, the human measles;" which will naturally excite a great degree of interest among all classes, but particularly among the faculty.

This measly-hog-speculator has lately (the world is informed) discovered that hydrophobia virus can be communicated by inoculation, and even by immediate contact.\* This experiment, it is said, he tried on himself: whether any, or what species of madness has been communicated to his system by it, your uninoculated readers will be able to judge.

THOM.

\*A writer in the Quebec Mercury, who signs himself V. (and who is, I am informed a very young man) likewise maintains this doctrine. Of the communicability of the virus by inoculation, there can be little doubt; but as to contact being sufficient, the two cases he adduces are wholly inconclusive, as in both there is not only a possibility, but a great probability, that the poison was insinuated through the excoriation of the hands of the one, and a scratch or cut made by the other whilst he was skinning the dead fox. For the rest V. appears to have, with rather laudable zeal, stood forth as a knight errant against quacks and empirics, those desolators of the human race.

L. L. M.

INSPECTOR is thankfully acknowledged, the materials he furnishes will work up in good style. M. C's piece next week; and, if there is room NICODEMUS WATCH'EM; nor shall LUNY M'TWOLTER be forgotten.—PERICLES, HOMUNCULUS, A SUBSCRIBER, and others are tumbled over to Mr. Dicky Gossip, the editor of the Domestic Intelligencer, for his next number. PHILLO's prose and R. T's poetry are inadmissible.