

THE SCRIBBLER.

Vol. IV | MONTREAL, THURSDAY, 18th MARCH 1824. [No. 117.]

Legis virtus est, imperare, vetare, permittere, punire.
MODESTINUS—Digest.

It belongs to the province of Law, to command, to prohibit, to permit, and to punish.

Pugiles castibus contusi ne ingemiscunt quidem.
CICERO.

Truly pugilists who are beaten are not allowed to complain.

O mihi felicem terque quaterque diem.
TIBULLUS.

O happy day, three times, nay four times, finished.

I publish the following communication as I have received it, and will make a few remarks on the two trials to which it alludes, and the transactions from which they originated, in a subsequent part of the Scribbler.

Montreal, 2d March, 1824.

*Nil erit ulterius, quod nostris moribus addat
Posteritas.*
JUVENAL.

Heaven grant it may be so;
For on my soul, "me thinks," we're bad enough.

These ejaculations are the natural consequences of having witnessed, the "ingress, progress, and egress," of two very extraordinary transactions, that occupied the attention of the present Court of Criminal Jurisdiction, which should not be at-

lowed, to go to rest, within the four walls of a Judicial Chamber.

One of the first maxims in English jurisprudence is, the punishment of criminals, not so much for the crimes committed, as to deter others from committing them; which is not only a sufficient justification for offering these observations to the public, but seems to inculcate the necessity of doing so.

The first that commands my attention, is, the merciless seizure of an individual, *in the city of Montreal*, by a band of desperate ruffians, and dragging him from his apartment in a stormy night; wantonly abusing, and forcibly carrying him from the country; merely for to obtain a few paltry shillings, as a reward for the violence.

The presiding judge, much to his honour, remarked, that an action, so atrocious in its nature, as this was, seldom called for the interference of that court; that a man, on setting his foot upon the soil of this country, must be protected by its laws; and in every situation, and under all circumstances, dealt with only as the laws of the country shall prescribe. If transactions, of such a description as this, were, for a moment, to be tolerated, no man, however innocent, or whatever his situation, but might be torn from his home, his family, and his friends, and placed in a situation beyond the reach of assistance. No one could possibly foresee the crimes that must inevitably proceed from transactions of such a character. Should the life of an individual be taken, by any number, however great, combined for such a purpose, in furtherance of their design, the whole would be guilty of the murder, and liable to suffer an ignominious death upon the gallows. And, on the contrary, should a man in his defence, kill

217

any number, who were making such an attack, the law must justify him.

The other transaction which now claims my attention, seems not less momentous and important to society, nor a single shade less in criminality, (though, in this instance, the guilt was not on the side of the prosecuted,) its execution easily effected, and apparently, with little or no inconvenience, or danger.

This was a case, where six individuals, most of them of great respectability, integrity and honour, were put upon their trials, *on three bills of indictment*, for a riot, exciting a riot, and an attack on the house of a Mr. Holt, and finally, encouraging and assisting a mob in the destruction of the aforesaid house and furniture.

These proceedings are well known to have arisen at the concluding scenes of what is termed a Charrivarri, and the latter, or closing one, in consequence of the assemblage having been, maliciously, fired upon from the house. These individuals, after suffering the perplexing tortures of "the law's delay, the insolence of office, and the spurns that patient merit of the unworthy takes," for nearly nine tedious months, during which, had not their respectability and situation in society enabled them to procure bail, they must have been incarcerated, among the vilest criminals, in a noisome prison, *merely for being suspected* by those who had so wantonly outraged every human feeling, and perhaps, if the truth were known, *not even suspected*.

Yet, under such circumstances, they were put upon their trials. They could not know, *what might be proved against them*—at least, what attempts there might be made to prove them guilty!

Yet, calm and serene, they took their seats, conscious of rectitude, no pale and trembling fears, ominous of suspicion, even for an instant, usurped their tranquil features—a little flushed by honest indignation, cheerful innocence seemed sporting on their brows—"Then to myself I said," if that be vice, she must have borrowed virtue's livery; and I was not mistaken, for, after the examination of almost an innumerable number of witnesses, who had been summoned to give evidence, only because it was suspected, that they *might know* something to criminate the defendants, and, after all the ingenuity of the Attorney-General had been exhausted, in putting question on question, in a thousand different ways, not even a *suspicion* was produced. Then on came the family phalans, *joined but by one auxiliar*, (though hundreds might have pointed out the real actors,) and, thinking it imprudent to attack a body so formidable, they bent their whole force against a single individual;—and, there being policy in all things, for they were determined to have, at *least*, one conviction, and that they might be more likely to be accredited, they fixed upon a night, when no impropriety had been committed, and swore, forcibly and pointedly enough, if they could have been believed, to have convicted any man. But all human affairs, very often take a turn, much to the confusion of the puppets

"Who strut, and fret, their hour upon the stage,
And then are heard no more."

Thus ended a mighty effort, to cover iniquity by villainy.

Mr. O'Sullivan, as counsel for the defendants, arose, and observed to the court, that, as not the

slightest evidence had been adduced, against five of the individuals, there could be no necessity for entering on their defence; the court being of the same opinion directed the jury to return a verdict of acquittal.

Mr. O'Sullivan then addressed the jury, on the part of the defendant, (Knower,) in a speech that would have done honour to any age or nation. After expatiating some time on the innocent amusement of Charivarying, which he allowed might be carried to an unjustifiable excess, and no man deprecated an excess, in any thing, more than himself, he begged to say that all classes had, at times, joined in the diversion; every house had been open to them; and he challenged all who heard him, to produce a single instance of a departure from amusement except when outrageously treated by the party charivaried.

He observed that he was well aware, that he might leave his client in their hands without the least defence, the proof, that is the no proof, that had been brought against him, did not deserve, and in his opinion could not obtain, within the breasts of such men as he knew them to be, the slightest consideration; but as an imputation had been attempted to be cast upon his client's character, he should not be doing his duty, as he had it in his power, if he did not disperse the poisonous vapours, emitted alone from the guilty, to blast the reputation of an inoffensive and innocent individual. And, though not the shadow of an evidence had been offered, except on the first indictment, when nothing like a riot appeared to have been committed, he would go through his evidence for the three nights; and prove, by the most unequivocal and unquestionable testimony, that during any of the three nights, his client could not

possibly have been connected with the rioters, which must, in the eyes of every beholder, leave him as undefiled as the parchment which he then held in his hand was, previous to its receiving the foul aspersions of his notorious accusers.

And never fell there from the lips of truth herself, an accusation less equivocal, or more to the purpose, than this. That this prosecution was a monster, a *Lusus Naturæ* of iniquity, conceived in *infamy*, brought forth by *malignancy*, and nursed by *perjury*; and now exhibited in its enormous and deformed magnitude, to hide a transaction as base, scandalous and flagitious, as human depravity could possibly be guilty of.

It is almost impossible to give, even a faint idea of his address; each succeeding sentence, attracted such attention, that to catch the present, with a preparation for the future, one seemed to lose the past, and, of course, could grasp but very little. After having commanded, for a considerable length of time, the admiration and approbation of a crowded court, by his flashing wit and cutting sarcasm; which at times appeared to make the prosecutors wince, and must have wrung their hearts—

“ If they were made of penetrable stuff,
 “ If damnaed custom had not brazed them so,
 “ That they were proof and bulwark against sense” —

He then produced his evidence, and, if before there could have been a doubt, it vanished like the morning mist before the God of day!

The Attorney-General then addressed the Jury, much in his usual way; except a large addition of exertion. Said something about the *respectability* and *intelligence* of his witnesses, and concluded by informing them that, the acquittal of the defen-

dant, would be a tacit verdict of *wilful perjury* against his witnesses.

The presiding Judge then charged the Jury at an uncommon length, (considering the case,) during which he did not let fall one solitary tear of pity, one single sigh for the viciousness of human frailties, nor one consoling expression, or the least compassionate surprise, or sorrow, for the unfortunate individuals who had suffered so much inconvenience, losses and vexation, without even being charged with the semblance of an impropriety.

“Can such things be, and pass us like a summer’s cloud,
Without our special wonder.”

In less than three minutes, the Jury returned a verdict of acquittal, thus rendering on their *oaths*, according to the Attorney-General’s construction, (for which thousands will thank him, and believe it too,) a tacit verdict of wilful perjury against his witnesses—*that is the phalanx*.

I will now say, in the language of the Judge in the preceding case, “If transactions of such a description as this, are, for a moment, to be tolerated, no man, however innocent, or whatever his situation, but may be torn from his home, his family, and his friends,” and placed in a situation not altogether pleasant, *for who is there*, that as much could not be proved against, at any time.

And now, if I may be allowed the privilege, I would ask the magistrate, who signed the warrant, why these persons were arrested? I would also ask, the Grand Inquest of the Country, the noble bulwark of British (not *brutish*) liberty, the what evidence they found their indictments? was it because the prosecutors promised, *on the trial*, to bring positive proof, which then might be im-

politic? It, on that consideration, they found the bill, I need not remind them of their oaths, or their duty; but will, in the language of the immortal Shakespeare, say, thus much, before I go, "O shame! shame! where is thy blush"—when rank

" Offences gilded hand may shove by justice

" And oft 'tis seen, the wicked prize itself

" Buys out the law. But 'tis not so above:

" There is no shuffling there, the action lies

" In his true nature; and we ourselves compell'd,

" Even to the truth and forehead of our faults,

" To give in evidence.

" SÜETONIUS."

Both the above cases have before attracted my particular attention. That of Johnson, I first brought before the public in No. 43, of the Free Press, and, if I were not the cause of, certainly I take credit to myself for having contributed towards, its investigation. The abuse of conveying persons over the lines from Canada to the States, and *vice versa*, has been carried to a crying extent, and requires not only the strong hand of the law to put it down, but also the interference of the respective governments. In a recent occurrence at Stanstead, when a man, who was attacked in his own house, with the intention of being carried off into the State of New-Hampshire, for the alleged crime of having debauched his wife's sister and taken her into Canada, most justifiably killed one or more of his assailants, is shewn the lawless defiance which the marauders who practice such enormities, hurl at a foreign government, and the laws of nations, along with the direful and disastrous consequences. That man, I believe, is now in prison at Montreal, upon a charge of murder, but there can not be the slightest doubt, but that

It, in the language of the judge at Ogilvie's trial, "Johnson, in defending himself against these men, had killed any one of them, a jury must have acquitted him, and if they had taken his life in prosecuting their unlawful designs, they must have been hung by the laws of their country," so must that man also be acquitted without hesitation.

Before concluding my remarks on this case, I fulfil my promise to **THE SCOTCHMEN**, by quoting from their letter, as nearly as its wretched composition will permit, the substance of what they urge, which is first, that :

Upon the death of Hart, the late high constable, a warm contest ensued for his situation, between Mr. Ogilvie and Mr. Ball, both bailiffs ; that Mr. O. having formerly been Hart's clerk, and having a classical education, having studied five years under celebrated professors in the university of Edinburgh, the magistrates unanimously decided in favour of Mr. O."

I apprehend the classical education of Mr. O. had very little weight with our brutes of police-magistrates, but rather his having studied under that celebrated professor of ruffianism, Hart ; for the magistrates, in appointing Hart himself, betrayed their gross ignorance of the station and duties of a high constable. To repeat what I have said in another place ; (*Free Press*, No. 46,) "the office is not that of a chief of the subordinate police, but one of some parade and dignity, one that may, in some cases, be assimilated to that of a deputy-sheriff ; much more a civil office than a criminal one ; and very improper to be placed in the hands of any one who has ever been a police-officer, or indeed in any subordinate situation of the law ; but one that should be bestowed upon some gentleman of dignified deportment, correct principles, and firm conduct, to keep in order, not the persons who are objects of legal pursuit, but

those encharged as constables and bailiffs, and prevent them from abusing the power put into their hands. The high constable is rather a censor and controuler over them than an active officer of the police," in which duty he has never the least business personally to meddle. But this is all heathen Greek to the poor old women that sit on our police-bench. To proceed therefore with the Scotchmen. They say:

That when Mr. Calvin May's warrant was put into Ogilvie's hands, Ogilvie consulted John Delisle, Esq. the clerk of the peace, confidentially, who told him to keep the warrant by him after he should have made the arrest, as it would protect him, being granted by one of his Majesty's justices of the peace.

If that were the case, John Delisle, Esq. clerk of the peace, must have been either wretchedly ignorant of his duty, or knavishly inclined to involve Ogilvie in difficulty. But the truth is, all these worthies of the police have so long had their own arbitrary way, that they never think of the legality or propriety of what they do, provided it puts money in their pocket, or pleases the vile aristocracy of Montreal.

After very shortly stating the circumstances of the arrest, which was not, they say, effected without "some trouble, Johnson being a strong man and a professed pugilist;" and adding that "the quarter-sessions being sitting, Ogilvie could not go with Johnson himself, but gave the warrant to one of the constables, who, by the bye, was the constable who arrested him, O. never having put his hand on him, and, *it is said*, Johnson was taken to the States;" they thus proceed:

J. Delisle, Esq. clerk of the peace whom Ogilvie had all along taken for his friend, it appears, had a scapegoat of a son that he could make nothing of in his own office, after having got him into the prothonotary's office, he was turned out there,

next, he was in the sheriff's office, where he shared the same fate: the next was a trial of him on a farm and potash work; this also ended in smoke, and now he must be provided for at the expense of the public.

They then attribute to Mr. Delisle the communication to the governor-in-chief of the illegal arrest of Johnson, whilst it is notorious that, immediately after it had been taken notice of in the Free Press, a few independent and liberal-minded citizens of Montreal, at the head of whom I believe I may be allowed to mention, James Brown, Esq. memorialized Lord Dalhousie on the subject, taking it up both in a national point of view, and as Englishmen, jealous of any infraction of the liberty of the subject. Upon this representation, it was, that Ogilvie was suspended from his office of high constable.

The Scotchmen further state, in their own words, spelling, and punctuation;

Two men are sent out toward the lines by the C.. of the B but of all the mass of witness he brings forwards not one can be Braught to say one word Conserving the affair only Turnbull and his son in whose house he was arested the Majestreet who Granted the warant Comes forward he says he granted the warant to bring Johnston before him Judge Read then gives him a repremand he tells him he had no right to grant such warant as the ofence was Comitted in the states and that this warant was illegal and that inconsequence the Constable is Culpable at Least the High Constable the two Constable whose names are Lafrine and Shiller they are not prosecuted as they were acting under the orders of ogilvie my God what strange Doctrine is this was not. O. acting under the orders of A Majestreet his Superior and as his Causal showed from three of our Best English Authers.*

Why my good men, the very circumstances you allege must necessarily condemn Ogilvie. He acted upon a warrant which if he had, not the

* I have given the above verbatim and literatim, as a specimen of the letter from which it is extracted. The other parts quoted I have translated into readable English.

classical education you talk of, but any education at all, he must have known was utterly illegal, and one which he was not bound to obey, whilst the two subordinate officers whom you mention, necessarily comparatively ignorant and probably never having seen the warrant, could know no more of the matter than any bystander who might, if the warrant had been legal, have been called upon in the King's name, to assist in taking a felon.

The reprimand which the judge gave to Mr. May, was most justly merited. To the illegality of his conduct I strongly called the public attention in the Free Press; as well as upon himself to contradict me, if my statement was incorrect. He has proved himself so unfit for the station of magistrate, that all I will add is, that if the governor did not withdraw his commission *instantly*, his excellency deserves to lose his own commission *instantly* too.

The pretended warrant, which was of course exhibited on the trial, purports to be granted upon the oath of Luther Hunt, a deputy sheriff in the *State of Vermont*, that a horse and chaise had been stolen at Portland, in the *State of Maine*, from one Jonathan McKenny, who had cause to suspect Johnson of the theft! Calvin May must have known that this was a *false oath*, for Hunt, in *Vermont*, could not know either what had been done in *Maine*, or what passed in the mind of another man, in another place: any man, swearing to facts *beyond his own knowledge*, is notoriously perjured, even if he believes those facts to be true; and then to clap the climax, this Calvin May, directs Johnson to be apprehended, and brought before him, or some other of *His Majesty's Justices*, to answer to a complaint for an offence said to have been

committed in a foreign country! Such are the magistrates to whom one of the most important branches of British Jurisprudence, which more particularly than any other affects the personal freedom of Englishmen, is committed in Canada. But Calvin May is not a solitary instance: numberless are the illegal acts that are committed, either thro' design, or from ignorance, (both crimes in a magistrate,) by the men to whom government grant commissions. I have by me several warrants, that exemplify this, of which when time and space may serve I will publish a few.

With regard to the authorities produced by the counsel for the defendant, he, of course, did his duty in urging all he could in his behalf; but they all, (as detailed in the account of the trial given in the Canadian Times of 5th instant,) appear either inconclusive or to militate against the prisoner; excepting the opinion expressed in 3d Hawkins, p. 176, that

"perhaps it is the better opinion at this day, that any constable, or even private person, to whom a warrant shall be directed from a justice of peace to arrest any particular person for felony, or any other misdemeanour *within his jurisdiction*, may lawfully execute it whether the person mentioned in it be in truth guilty or innocent, and whether he were before indicted of the same offence or not, and whether any felony were in truth committed or not. For however the justice himself may be punishable for granting such a warrant without sufficient grounds, it is reasonable that he alone should be answerable for it, and not the officer, who is not to examine or dispute the reasonableness of his proceeding."

But the warrant, upon the face of it, was for a felony said to have been committed, *not within the jurisdiction* of the justice granting it, and upon an evidently *false and illegal oath*, so that those who run might read that it was, as the judge observed, nothing better than a blank piece of paper. Be.

sides, in Mr. Grant's next quotation from Blackstone,

"A warrant *properly penned*, even though the magistrate should exceed his jurisdiction, will, by statute 24 Geo. II. c. 44, at all events indemnify the officer who executes the same ministerially."

Consequently the officer is erected into a judge of the *proper penning* of a warrant, and therefore is not indemnified for executing one that is improperly penned, as any schoolboy could perceive Calvin May's was.

But the fact was, in the words of Mr. Delisle's evidence, that "Ogilvie said there was a *job* in which there was *something to be made*:" so the legality of the warrant was a matter of no consequence.

To return, however, to the Scotchmen, they, or *he* goes on:

"I need not inform you what a Canadian jury is ——"

No, indeed you need not, I know and have found them, most honourable, unbiassed, impartial, and discerning: not swayed by popular prejudice, great men's frowns, nor more by the judge's charge, than the due respect, and weight, which the opinions declared from the Bench ought always to command ——

"they without ten minutes consideration ——"

I should not have taken five——

"brought in their verdict as the judge gave them. This was all the judge, and the clerk of the peace wanted, in order that his son might remain high constable in Ogilvie's place; whose duty he had done since the other was suspended. This amiable young man, with a family, is thrown out of a situation, to make room, as I have been informed, for a young debauchee, who has nothing to recommend him, but his father being clerk of the peace."

The epistle concludes with an assurance that by inserting it, an order for a few more copies of the Scribbler from Ogilvie's countrymen. shall be

given in recompence of my trouble ; and by way of postscript has a N. B.

“ Those are Facks and facks are Chiels that winna Ding and downa be disputed.”

I beg to assure the SCOTCHMEN that, however much I wish to see the circulation of the Scribbler extended, it is not in the way of a bribe that I desire it.

I have probably dwelt too long on this matter ; but one cause has been the conduct ascribed to the clerk of the peace, which (knowing the gentleman,) I should hold to be entirely misrepresented by the Scotchmen, were there not some ground to suppose, from the extreme leniency of the sentence passed on Ogilvie, (a paltry fine of ten pounds, and a short imprisonment of one month,) that his removal was more the object of the prosecution, than “ the punishment of criminals, not so much for the crimes committed, as to deter others from committing them ;” and how, the presiding judge, characterising the offence as “ so atrocious in its nature, as seldom called for the interference of that court,” could reconcile the very inadequate punishment inflicted with that declaration, remains in his own breast.

But this prosecution does little towards the grand, and national, question arising from the infamous transaction in which it originated. It remains to be seen, whether my lord Dalhousie, and the British government, have interfered, or will interfere, to demand Johnson's release, and rehabilitation into the very spot and situation from which he was so unlawfully taken. He is now in prison in the State of Maine : his guilt or innocence have nothing to do with the question. Unless he be given up, *nothing whatever may be said to have been done.* But this is altogether more a

subject for the Free Press, which I am happy to say will now be resumed in a short time, than for the Scribbler.

The length of my remarks on Ogilvie's trial, prevent me from entering upon the more interesting one of Mr. Knower, which I must therefore postpone, from the press of other matter, till the next number, which will be the first of Vol. V.

L. L. M.

BY AUTHORITY.

TRIAL OF THE EDITOR OF THE QUEBEC MERCURY,

Continued from last number.

The Court being resumed, the counsel assigned to the defendant, in contumacy, began the defence as usual, by premising, the shortness of time he had had to prepare himself for so important an argument, the want of being able to communicate with his client, and his own incompetency to so arduous a task, with other excuses and words of course, which are, not improperly, used on such occasions.

He would urge the acquittal of his client, upon two grounds:

First: however strange it might appear to the court, upon that of the absolute meritoriousness of that conduct which was here sought to be visited by reprimand and punishment: and, secondly, if he should fail in so doing, by asserting its perfect veniality and excusableness.

It will not be denied that gymnastic exercises have, in all ages, been held to be, not only allowable, but laudable; the various species of personal combat, from the sanguinary gladiator, to the harmless wrestler, which prevailed amongst the

sports of ancient nations, and particularly in the enlightened republics of Greece, and of Rome, are well known to every classical scholar: and he would contend that the English practice of boxing, was an exact counterpart of the Roman *Certatio pugilationis* mentioned by Cicero, and others. From its high antiquity, the custom deserved respect; and as an exercise, exciting the development of personal strength and dexterity in the combatants, it deserved encouragement. It was not of that bloody and murderous description, which, either the fights of gladiators, or the combats of wild beasts, in which the Roman populace delighted, exhibited; but might be entitled a kind of mimic warfare, enuring those who might be subjected to receive hard blows, both to endure them and to return them; yet without much, if at all, endangering human life, or soiling the national ground with the blood of its citizens. In England particularly, not characterised as Italy, Spain, and Portugal were, by the stiletto of the assassin; nor, like Holland and Germany, by the knife of the vindictive peasant: nor, like France by the instantly drawn rapier; nor like Virginia by the long thumb nail and brutal gouge; but where each man, rising in his native strength, careless of other weapons, or other advantages than God had given him, resented personally with his fists, in a manly, fair, and, open way, the wrongs or insults he might have received—in such a country, pugilism,—for he would give it that name, in despite of the obloquy attempted to be thrown on it by the public accuser—was not only proper, but absolutely necessary. Where every man was, or might be, an aggressor; it behoved every man to be able also to stand on his defence. This art of self-defence was only to be

acquired by practice, and the encouragement and frequentation of boxing-matches, by persons of the highest rank, nay of all ranks, shewed that they were the only proper schools in which that art could be learnt. He might adduce numerous instances of gentlemen who, having fortunately acquired it, were enabled to resent injuries, and thrash their antagonists soundly, so as to avoid the circuitous and troublesome redress, which an appeal to the law must necessarily occasion. But his whole audience he was sure would allow the force of that observation: and no man who heard him, but would, if he saw a fist held up at his face, double his again, and return, if not anticipate, the blow. Such was the nature of Englishmen, and such he trusted it would always remain. From these premises, the natural conclusion was that, if the practice itself be not only defensible but praiseworthy, those who encourage, or extend it, (which certainly editors of papers, who insert accounts of the battles fought by celebrated pugilists, did,) were equally not only excusable, but to be praised for the support they gave to that truly manly and English art of boxing; and this, if admitted, must ensure an immediate and honourable acquittal to his client.

Should he, however, not succeed in convincing the court of his first proposition, he was sure no man of the present race, with whom interest and the profits of trade weighed down every other consideration, but must join with him in considering the conduct of the Editor of the Quebec Mercury, as excusable, and so far to be allowed as it tended to promote the sale of his paper. It needed no illustration of his to maintain the necessary subserviency of editors of public papers to public taste, and whether it was by giving an ac-

count of a bullfight in Spain, of a new opera in Paris, of a boxing match in England, or of a party at Count Old Joseph's in Montreal, the Censor-general would himself he was sure, admit, that to consult the taste of the readers of periodical publications was as necessary for their existence, as any other essential attribute. Editors necessarily had to admit into their columns a multiplicity of matter for which they were no more answerable than the mere cook is for the quality of the viands he served up at table: that is the province of the master of the feast, and it is in the culinary part only that the cook was to exercise his discretion. If the guests desired horseflesh, all he had to do was to make it suitable for their palates, with as great a variety as his art could bestow; and would to heaven, editors had all the same consummate art which was celebrated in a cook of a French general at the siege of Milan in Italy, who, said his panegyrist, was absolutely a divinity, a genius of the highest order, for though he had nothing but a half stinking hind leg of a horse, and a pair of jack-boots, to operate upon, served up a dinner at the general's table consisting of sixteen covered dishes, all different from each other, and all of excellent flavour. Besides the necessity of conformity to the public taste, editors had likewise to look to example, and if they found papers of known celebrity and extensive circulation constantly and complacently introducing *fancy*-articles, they were doing nothing than what was perfectly justifiable in copying them. In this case, the Mercury was not only countenanced by the pattern given it, by almost every London paper, but particularly by the frequent and detailed accounts of pugilistic contests, which the learned editor of the New York Albi-

on, gave with such a *gout* as would make an epicure in such matters, (to follow up the imagery before introduced,) smack his lips; it is true that the learned gentleman being now invested with the dignity of editor of the official Gazette at Quebec, had not so many opportunities of rioting in what appeared to be a favourite treat to his sensitive faculties; and perhaps it was a charitable, or at least a generous, part in the editor of the *Mercury* to dish up for his amusement and edification as a reader, what it was now rarely, if at all, in his power to enjoy as an *archimagirist*;—gentlemen might smile at his dwelling so much upon a fancied analogy between editors & cooks; but he could quote, that faithful delineator of mankind, Juvenal, to countenance him, where he tells us

Finxerunt pariter librarius, archimagiri.

which he would paraphrase

The truth's disguised by authors in their books,
As much as beef and mutton are by cooks.

With regard to what the public accuser had said about the offence committed against statute law, by promoting boxing matches, he respectfully, but firmly, denied the jurisdiction of this tribunal in such matters. This was a *Censura morum*, a censorship of manners, and ought to leave the laws to protect, and interpret themselves.

As to the accusation of the abuse of the English language, and particularly in the misapplication of the word "Fancy," he confessed he could not defend it in any way; unless upon the ground of being a mere copyist. However, if he succeeded in repelling the graver parts of the in-

dictment, this minor count would of itself fall to the ground. He regretted that the impossibility of communicating with his client, by reason of his alledged contumacy, but which might be nothing more than want of leisure or forgetfulness, prevented him from saying any thing as to the imputation of plagiarism.

Apologising then for the length of time he had occupied the court, and returning his thanks for their patient attention; he should sit down, convinced that he left his client's case in the hands of a judge, who would decide according to the merits of it and would

“ Nothing extenuate, nor aught set down in malice.”

The defence having been protracted to so late an hour, and other business calling for the attention of the judge, he directed the accuser general to announce to the public, that his reply to the learned counsel, who had just sat down, was,

(To be continued in next number.)

FOR THE SCRIBBLER.

TO DELIA.

As those who calmly life's sad burthen bear,
 In certain hopes the joys of Heaven to share,
 Whose wearied spirits faintly undergo
 Th' unnumbered griefs of various ills below,
 Cheered with the prospect of a distant joy,
 A future bliss no time can e'er destroy:
 So I in sorrow, melancholy rove,
 Torn by the heartfelt pangs of absent love.
 But Hope! blest comforter of human woes,
 The calm composer of disturbed repose,
 Its balmy influence o'er my fancy spreads,
 And round my heart its soothing comfort sheds,
 My drooping mind, with flattering prospects cheers,

Dispels my sorrows, and removes my fears;
 Tells me that fate, tho' adverse now, contains
 A sure reward for all my present pains;
 Charmed with the promised bliss, love, hope, and joy
 My bosom warm, and all my griefs destroy.
 Say then, my Delia, must this happy scene
 Prove the fond fancy of a baseless dream?
 Say, am I doomed this pictured bliss to find
 The airdrawn vision of a lovesick mind?
 Must all my hopes of happiness prove vain,
 And all my fancied pleasures end in pain?
 Or will my Delia kindly ease this smart,
 Confirm my hopes, and bless me with her heart?
 Didst thou but know the tortures I endure;
 Which thou first caused, and only thou canst cure;
 Sure they'd thy breast with soft compassion move,
 And claim thy pity, tho' denied thy love!
 Oft as the beauties of thy form I trace,
 And mark each feature of that heavenly face;
 Oft when thy beaming smiles my heart have charmed,
 And thy bright eyes my melting soul have warmed,
 With doubtful joy and eager hope I've strove
 To tell my sufferings and declare my love!
 But when I try my wishes to reveal,
 And tell thee all I ask, or all I feel,
 My faltering tongue denies the aid I seek;
 My heart's so full, I wish, but can not speak;
 Oh, had kind fortune fixed my happier lot,
 In the calm bosom of some humble cot,
 Far from the busy world's tumultuous strife,
 To pass the remnant of my future life,
 And, to complete my bliss, would Heaven bestow
 My only source of happiness below,
 Would but my Delia to my hopes incline,
 Confess she loves, and own she's wholly mine;
 All other joys (if joys there are beside)
 Mankind for me, might 'mongst themselves divide.

DAMON.

FOR THE SCRIBBLER.

TO PSYCHE,

'There is a bliss so dear in loving,
 A pang so keen that bliss removing,—
 So sweet a bliss, once lost to me,
 Lost to myself I would surely be.
 Then, why not bask in thy sparkling eyes,
 Thoughtless of Time, as he swiftly flies?
 So light he flies, so airy his speed,
 'Twere folly, my love, his wings to heed;—
 Then deeply drink, as he wafts us on,
 Deep, deep, of the bliss——'t will soon be gone.

The charm of witchery's in thine eye,
 The spell of magic in every sigh,
 Sighs that thy bosom can not conceal,
 Sighs that my breast must ever feel.
 Often my heart I chide for doubting,
 And bite my lips for their dubious pouting;
 Yet hearts *without doubting*, are insincere,
 And the silent lips express no fear.

O, think me not so light as I seem,
 For saying I court my nightly dream;
 As dreams should never be prized by me,
 Were it not oftener to meet with thee.
 When night ushers in her murky hour,
 Away flies fancy to Psyche's bower,
 To bask in thy smile of love sincere,
 Or mix regret with thy pearly tear.—
 Sometimes I meet thee in fairy smiles,
 Deeply to quaff of the lover's wiles;
 Then again, so gloomy—sad—deprest—
 That Love appears to have flown thy breast;
 And Hate to have left a poison there
 To mar the delight I sigh'd to share.
 But, cheerly or sad, 't is bliss to meet—
 And pleasure or pain, with thee, is sweet.

O, make me thy *friend*—for I'll ne'er be less,
 Or sink to the gloom of nothingness!

Thy friend!—'t is cold and void of feeling
 Like a vain dream from memory stealing—
 It leaves not a trace of what should be,
 But the maddening thought of losing thee.—
 Psyche! that maddening thought remove,
 And make me ever thy only love.

LOXIAS.

Montreal, Feb. 1824.

 DOMESTIC INTELLIGENCER, No. XXXIV.

Mr. Macculloh has transmitted to us for publication the following remonstrance relative to an article which appeared in our 32d No. Following the laudable example set us by the Inspector-general, we wish to make all haste to rectify every misrepresentation that may have found a place in our pages, both with the view of the preservation of our character of impartiality, as with that of rendering our correspondents cautious in favouring us with their own inventions, instead of *matters* of fact. The immediate publication of a refutation or denial of any thing that may have appeared contrary to the truth, must, we should suppose, operate to make people write as they ought to speak, that is, think twice before they attempt either.

Montreal, 10th March.

SIR,

I observed in the last number of the Scribbler, an article relating to me, signed a **MATTER OF FACT**. Knowing that you never intended the Scribbler as a vehicle for falsehood, but, on the contrary, as a scourge, under the mask of ridicule, for folly and vice; I feel persuaded that you will not consider me impertinent in taking the liberty of contradicting the story related in that article, as far as regards myself. It is true, I was a spectator of an occurrence, or accident, of the description alluded to, which happened to a young gentleman, who so far from being a prince, was only a miller. That it was worthy

of a place in the Scribbler, I admit, and probably I might myself have been the recorder of it, had not the gentleman been a friend of mine, which induced me to remain silent. But, the story, if told at all, should have been told as it actually happened, and not, from, probably motives of personal pique, been transferred from one party to another, to render that other ridiculous. It is not, perhaps, impossible for me to guess either the man or his motive; but I shall content myself with appealing to your love of justice and of truth, which will no doubt induce you to rectify the error, and give a severe reprimand to the author of this mean effort to raise a laugh at the expense of

ONE OF THE PRINCES OF GREECE.

Excuse me for adopting the cognomen you have given me. It is one so honourable in itself, that though I have nothing in common with it than the mere accident of my name, I feel much more flattered than displeased with it.

The colonel's old *harrier*, of which he brags so much, was most confoundedly thrown out, and came to fault, at a late great turn-out. From the dulness of his sense, he kept smelling about, but always missed the right scent. Even the whipper-in, with all his care, did not succeed in keeping him to it. Some of the youngest pups shewed more game. This made him look foolish, and baulked the expectation of the amateurs, for much was expected from his high origin, the breed being handed down from no less a personage than the famed *Gingling Geordie*, gold-finder to his majesty, king James II. as recorded by the Great Un- known, in the *Fortunes of Nigel*: hence his appellation in the pack is GEE-GEE!

The peculiar grace with which Mr. Blanderbusset addresses a lady in the public street, is not equalled by any gentleman of his "figure, weight, and size," in this part of the country, more particularly when that lady happens to be not "a man of wax," nor "virgin wax," yet wax of some sort.

Dr. Well-burn-it, it is said, is about to introduce into Cana-

da, the old Spanish custom of duennas and confinement for the fair sex! The object of his attentions and affections, Miss Dale, has been placed so much under the surveillance of her mamma, that, along with the professional dictation of the doctor, in the administration of his prescriptions, it occasions her nearly entire withdrawal from other society.

Gentlemen who borrow dresses from ladies to perform at amateur theatres should take more care of them, nor let them either be soiled by grease, or torn to rags.

Mesdames Nul and Languish present their compliments to the Griffins of Griffinville, male and female, and request that when they next call with a subscription paper for the Orphan's Asylum, they will have the goodness either to be at home, or appoint a day when they are to be met with. "Give them a dressing," says our correspondent, "for there are three families living in one house to save expenses; and there are two or three more, whose names we will not give at present, that are as bad as the Griffins."

DEAR DICKY,

Were I deputy-crier to Norman Broadback & Co. I would endeavour to call without coughing like a tippler choking with a bottle of porter. I would also strive to keep myself from spending more than seven nights in the week at the cake-establishment at the New Market.

MONITOR.

EXPECTED NUPTIALS, AND AMATORY INTELLIGENCE.

The earl of Stair is assiduous in his attention to Miss Annie Changeling. It is expected his lordship will succeed, if it be only from the compassionate disposition of the young lady; for he is in ten thousand fidgets if she happens to look any how but in a cross way at another: and as looking cross, every body knows, is not in her nature, she can't help taking pity upon her noble lover: rumour, indeed, assures that love-tokens have passed between them, and that in return for a silver quizzing glass he has presented to her, she has given him a gold ring, and has promised him a "a better thing."

Sir William, brother to the Knight of the Telescope, is expected to lead to the hymeneal altar, the beautiful Miss MacFergus, sister to Sir Archibald MacFergus. The mar-

riage would have taken place earlier, only for the cold weather, for the gentleman, being rather in the Autumn of life, it is said, will require the heat of summer to be able to raise the steam, so as to set the matrimonial engine at work.

Lawyer Boldfairy of Mount Royal, has aspired to the hand of Miss Deleeney of Herbertstown: the lady receiving his addresses rather coolly, he applied to the old gentleman, who with great sangfroid, sent him to Dr. Mercury for a certificate of being sound wind and limb before he gave him his daughter. Tho' Mr. Boldfairy may now be said, in consequence of the doctor's prescriptions, to be in a fair way to resemble the prisoners delivered from Barbaroso's den by the knight of the Burning Pestle, (vide Fletcher's play of that name) he yet entertains hopes of obtaining the lady, when the work of his sal-vation is over.

There is a report that Mr. Cards-are-all is about to receive the hand of Miss Knightrider: it is thought that the young lady's mamma is particularly desirous of the match.

What does Captain Lowland do so often under the spreading Oak at the Old Market? The reason why the woodyard is not opened in time is said to be because he lies so long abed in a morning where he should not be; on which some people cry out SHAME.

They write from South Cumberland that an indictment has been preferred, in the Court appointed there by the Censor-general, for the trial of small causes *contra bonos mores* without his immediate jurisdiction, against one Mr. Narrow-soul, for seal-breaking and forgery. Mr. Narrow-soul, is one who, like the King of France is nominally most *christian*, and keeps a *register*, tho' not of his good deeds. It appears that in the course of his *type-ical* profession he lately had a young man, in his employment, to whom a friend wrote making an enquiry of a particular nature. Mr. Narrow-soul having got the letter, opened it—*premier delit*, as the French lawyers say; secreted it—*second delit*; and then, as a *delit le plus grave*, sate down to answer it in the name of the young man, and actually wrote and signed a letter purporting to be from him to his correspondent, which consequently was a forgery from beginning to end. The letter was produced in court, and caused much laughter from its bad spelling and illiterate construction: it was proved to be both the composition and handwriting of Mr. Narrow-soul, and the young man came forward and testified that he neither wrote it, or gave authority for writing it, nor had ever received the letter to which it purported to be an answer, and that moreover it must have

tended to have entirely broken up his friendship with the person who had addressed him, had not the discovery been made that it was a forgery. Mr. Narrow-soul, was found guilty and sentenced to be pilloried in the Scribbler.

POET'S CORNER.

While Madam fast asleep was laid,
The husband he would kiss the maid.
Who, nothing loth, laid on her back,
And gave her master smack for smack.
The sport being o'er, says mistress Jane,
"With me your pleasure now you've ta'en,
"Pray tell me, since your wife's at rest;
"Madam or me, who kisses best?"
"'Tis you, for certain," said her master,
"You kiss far sweeter, and much faster."
"That must be true," says Jane, "for Joe,
"Dick, Tom, and all men, tell me so."

MAURICE MASK.

*Printed and published by DICKY GOSSIP,
At the sign of the Tea-Table.*

The following letter must have been delayed on the road, or would have sooner made its appearance.

Mount Royal, 29th February, 1824.

MR. L. L. MACCULLOH,

"I love to write, to speak myself, as plain
As honest Skippen or downright Montaigne."—POPE.

To prove which I will give you a short account of a visit I made, on business, to the place you call South Cumberland, where I remained four or five days. Englishman like, being fond of my belly, I told the driver of the stage, I wished to be set down at the inn where I could get the best dinners: he accordingly carried me to the sign of

the (somebody in a naval uniform,) kept by a Mr. Folket, or some such name, and in justice I must say, that his table was at all times extremely well furnished, and his attention to the guests unremitting. I must not omit to mention the treat I had of some fine fresh trout, which was quite a luxury to me: but the excellence of the table there consists in the variety of the cookery and mode of serving up, an Englishman, a Frenchman, and an American, are always sure to find dishes dressed to their peculiar national tastes and customs.

On the evening of the 24th, I, together with some other gentleman from this place, were invited to attend the assembly. The room was spacious and handsomely decorated. Dancing began at an early hour. The ladies, generally speaking, were not extremely beautiful, but quite easy in their manners, very sociable, and elegantly drest. I could not but think of the difference that exists between this place and that, as to the managers. Here, all is bustle and confusion when the numbers are called; there, every thing goes on with an ease which is truly admirable; and I could wish that some of the managers of our Mount Royal assemblies, would take a copy from the manner in which the ceremonies are conducted at South Cumberland.

I was much surprised to perceive that every shop in the place, (for I can not reconcile it to myself to call a *shop* by any other name than a *shop*, tho' they are every where here dignified with that of *store*.) dealt out whiskey, rum, brandy, &c. by the small measure, and even by the single glass, the cost of which is only three cents; a custom, which is not only pernicious to the morals and health of a great portion of the community, but must injure the licensed tavern-keepers.

and may perhaps be one cause of the careless treatment which travellers meet with at some of the inns. During my stay I was invited to take dinner with a friend at his hotel, opposite a great building; but, gracious heavens! what a difference between that and the one where I put up, in the viands, in the attendance, and in every thing! At the centre of the table sat an elderly female, who, my friend told me, was the mistress of the house,—(a strange place, thought I, then for her to sit in;) with looks as cross as the devil himself. While at our meal, up she gets, taking with her a *short cow-hide whip* that lay beside her,—(seemly appendage to a dinner-table!)—when shortly after issued from the kitchen, sounds of the lash, and the cries of an unfortunate female slave. Not being used to such work, I desired my friend to excuse me, alleging that I had to make a call about that time.

I say, Mr. Mac, you must excuse this hasty scrawl; remember it is Sunday, and I must repair to Forster's head-quarters, to set my head to rights. You shall hear shortly from me again.

Your's, &c.

HERACLITUS.

TO SUBSCRIBERS AND THE PUBLIC.

At the conclusion of my fourth volume, which the present number completes, I beg to offer my customary acknowledgements to my subscribers and correspondents. The interruption that took place in the publication of the *Scribbler*, for full three months, unavoidable as it was on my part, under the circumstances that existed at the time, has been of great injury to me, not merely in the loss of the entire of my subscriptions for that period, but by indisposing a great number of my subscribers towards the work, and confusing others, who, when called upon for payment, at the commencement of the quarter which is

now finished, seemed to think they were required to pay for the time during which it was suspended: a delusion so absurd and unaccountable that I should not have noticed it, had I not found it to be most strangely very general. I do not reckon my quarters by *dates*, but by the *numbers* of the Scribbler: attention to that circumstance will explain and familiarize the matter to them. I dwell on this as a preliminary to the call that will be immediately made for payment of the next quarter, (which will constitute the first half of the fifth volume,) *in advance*. This I respectfully trust will be punctually and cheerfully attended to: without it, the work must languish, (and in fact it has been chiefly from the defalcation in my expected receipts from my subscribers, that it has so much languished of late;) and above all, I earnestly entreat and recommend that *arrears* be paid up. With a forbearance, *for which I do not take credit to myself*, I have refrained for too long a time from publishing a BLACK LIST; and to grant defaulters all possible indulgence, I will not publish one till No. 119 makes its appearance, which will give them nearly three weeks to remit in. To those who have not paid up, I shall discontinue sending the Scribbler till they do. Subscribers residing in Montreal will be called upon in the usual way. Those at Quebec, to whom I do not write special dunning letters, will be pleased to keep the money till called for, in the same way, and by the same person, as in July and August last; as payment to no other person can be acknowledged. Subscribers in all other places, will do well to pay the amounts they owe forthwith, either to such agents as have letters of authority to receive the same, dated since April last, or to remit by post, directed to "S. H. Wilcocke, Post-Office, Montreal."

Notwithstanding the *very low* rate at which the Scribbler is sold, considering the nature of the work; (for no one ought to expect to buy gold at the price of silver, and those who will have rare dishes must pay for the cookery;) I shall continue it for another volume, on the same terms as the last.

I have finally to express my great regret that I have not yet been able to fulfil my promise of printing the title page, preface, and index to the third volume. The yet infant state of my printing establishment has not yet ad-

mitted of it. I will make no more promises, but hope, at no very distant period, to surprise my subscribers unexpectedly with those necessary appendages both to the last and the present volume. It will indeed not be till then that I can with propriety join in Tibullus's exclamation, employed as a motto to this number :

O mihi felicem terque quaterque diem.

L. L. M.

Mr. L. L. Macculloh, presents his compliments to sundry of his correspondents, and requests they will in future abstain from subscribing themselves, "A Subscriber," "A Constant Reader," or "A Friend to the Scribbler," which, as he has so many of each, causes both trouble and confusion in his correspondence. He may be perhaps excused the remark that real subscribers, real readers, and real friends, would probably not frequently adopt such signatures, as they would feel that saying so, would not, nor ought not, to make any difference, as to the adoption or rejection of their pieces.

TO CORRESPONDENTS.

Reports of interesting trials in the courts of Montreal and Quebec, both in civil and criminal cases. will be highly welcome; and I repeat the offer before made, of sending the Scribbler, gratis, to any student-at-law, or other qualified person who will transmit to me regular reports of such proceedings. I have determined on rejecting S. CREDITOR, default in money-matters alone being scarcely within the purview of my work. BILLY BUTTON-SHOE has been accidentally shut out: the letter he was told I was to receive has not been sent. A FRIEND & SUBSCRIBER TO THE SCRIBBLER at Quebec will be partly availed of. AN ORTHODOX CHURCHMAN in my next. Also SCRUTATOR in part. TELL-TRUTH will be availed of; one of his small pieces has been inserted before. The account of the theatrical rumpus and college-riot, from my *Twirling-town* friend will be given in next number.

L. L. M.

(Continuation of Review, postponed.)