

To the Upper Canadian Friends to Inquiry.

MONTREAL, 14th SEPTEMBER, 1818.

GENTLEMEN, I take the first leisure, since my trial at Brockville, to put on record a few particulars connected with that affair. It will be remembered that I was bound over to appear at the Johnstown Assizes, under bail of £500, being arrested upon a warrant, of which the following is a copy—

Johnstown Personally appeared District before me, John McDonnell, Esquire, one of His Majesty's Justices of the Peace in and for said District, Richard D. Fraser, and upon oath, saith, that he believes Robert Gourlay to be a seditious person.

These are therefore, in His Majesty's name, to command you forthwith to apprehend the said Robert Gourlay, and bring him before me, or some other of His Majesty's Justices of the Peace, in and for said District, then and there to be further dealt with according to law.

Given under my hand and seal, at Johnstown, this 25th day of June, 1818.

(Signed) JOHN McDONNELL, J. P. [L. S.]

To my Constable in said District,

A true copy, JOHN McDONNELL.

No man of sense will look for a moment on the above warrant, without being ready to declare it illegal: but what should be thought, when it is told that John McDonnell, who issued it, had good occasion to know that the allegation upon oath of R. D. Fraser had not the slightest excuse?—what should be thought, when it is told, that John McDonnell at once witnessed the riotous conduct of R. D. Fraser, and my extreme forbearance—my peaceable and temperate conduct throughout. Gentlemen, you should pause and reflect upon this. It is a poor boast that we live under the British Constitution, if our liberty is thus wantonly to be abridged by the caprice of wicked and foolish magistracy. You should reflect whether I, or any man who has experienced such things in Upper Canada, can go home to England and honestly recommend this Province as a desirable place of residence:—it is a location which should come home at once to your business and bosom.

On looking back to my narrative, addressed to the worthy Inhabitants of Niagara District, under date 29th June, it will be found, that after giving bail I procured a warrant to arrest Duncan Fraser, and bring him to account for his riotous conduct. It now appears that though Duncan Fraser, backed by his friends, could have the brutal courage to attack an unarmed individual with a bludgeon, he wanted the best kind of courage,—that of an honest man. Before the constable reached him with the warrant, which would have secured his appearance at Brockville assizes, where I should have been present to accuse him, he had the cunning to contrive with his brother Magistrate that he should be bound over to the Quarter Sessions, to plead guilty before his worshipful friends: and, hence, to be sure, a most shameful train of proceedings went forward. Several of the people who had rushed in to keep the peace when they saw Fraser attack me, at Johnstown, were indicted. Among these a young man of the name of Grant had been most active. Before using the least violence, he had received a severe blow from Fraser over the back part of the hand, and was consequently provoked to strike again. In the midst of the fray John McDonnell interfered, and, seizing Grant by the breast, pushed him violently back to the wall, when Grant returned his rudeness, also, with a blow. This, according to the best information I could obtain, was the true state of the case proved before the Magistrates in session; but, what were their decrees?—Grant, who had, like a good subject, endeavored to keep the peace, and acted violently, only after he had been violently assaulted, was fined £5 and condemned, besides, to a month's imprisonment; while they let off Fraser, who, being a Magistrate, was specially bound to keep the peace,—who had first struck me, and then the person who endeavored to keep the peace;—him, they let off for forty shillings!!! At the Assizes Fraser and McDonnell were on the Grand Jury, and they, with their friends, formed the majority. Having attended there, to do honor to my bail, I stood up as soon as the court was fairly constituted to protest against the illegal warrant, and obtain my discharge. This, however, the Judge would not grant, saying, that I must abide my trial. On the second

day a presentment was made from the Grand Jury to the court that I was a seditious person. On the fourth day, finding no indictment brought against me on this presentment, I addressed the Judge, and appealed to him, as to the extreme injustice of having my character aspersed by a presentment, while no trial was afforded me, by which I could remove the scandal. I spoke pretty strongly as to the conduct of the jury, as well I might, and, the same day, an indictment was brought in;—but for what? not for sedition, but for libel against the Government, and Commons house of Assembly, contained in the very pamphlet for the publication of which I had been arrested by order of the Attorney General and tried at Kingston. Next day, Saturday, afternoon, I was arraigned. I then asked the Judge if upon this arraignment for libel, the bail required for my appearance to answer the charge of sedition, for which I was arrested, and on which the presentment was made to the court, was discharged: His Lordship said it was!—I then asked if fresh bail was required, to free me from imprisonment, till my trial came on: His Lordship said, none was required. The trial should have proceeded immediately with my consent; but I had assured some country people that it would not come on before Monday. The acting Attorney General was asked if he would fix upon that day. He would fix upon no particular day, he said, and, perhaps might not bring on the trial at all!!!

On Monday, 31st August, it was brought on. The indictment, for libel, set out with a fierce preamble, discharging allegations, against me, of "diffusing discontents and jealousies, raising tumults," &c. no doubt, to stir up prejudices in the court, and support the proceedings of Fraser, McDonnell & Co. The words charged, as libelous, were contained in three passages of my address of the 2d April, viz. 1st "I had little hope of satisfaction from the sitting of Parliament, after perusing the Administrator's speech from the Throne; and this little was entirely extinguished with the disgusting reply made to that speech by your Representatives"—2d. "It has been my lot to rest here nearly two months viewing at a distance the scene of folly and confusion of this Province in its progress, and all the blessings of social compact are running to waste. For three years the laws have been thwarted by executive power;—for three sessions have your legislators sat in assembly, and given sanction to the monstrous—the hideous abuse." Mr. Jonas Jones, lawyer of Brockville, and Member of Parliament for the County of Grenville, opened the pleadings. He began by saying that this prosecution was brought on, not on the part of the Crown or Government, but of a person who thought himself aggrieved: he then said, it was on the part of the District of Johnstown: then, again, that he was employed by an individual: and, lastly, told us, that, it lay between the King and Mr. Gourlay. Thus, the lawyer completely outwitted the simple question as to who was the Prosecutor; and, at this hour, I do not know, for, on desiring, after the trial to be informed, Mr. Jones refused to tell, and the Judge would give me no satisfaction.

Mr. Jones's speech contained no argument. It made a dead point at the assertion as to the Commons taking no notice of "the monstrous—the hideous abuse"!!! and gaining breath by his rest, the orator asked, with an air of authority; "has not this publication been the cause of breaches of the peace?"—He then told the Jury that "libel was the malicious defamation of characters," and that the words, here set forth, tended to expose to ridicule, the members of Assembly; but seemingly doubtful as to this crime, said, that His Lordship would tell them whether it was libel or not: further, quoth the member of parliament, this publication charges members of parliament with making a "disgusting reply," and then, bringing the matter home to the personal feelings of the Jury, asked, whether such language did not only degrade the members of parliament, but the people who elected them!—the people of the District of Johnstown!!! Finally, he apprised the Jury, that, it might be said that I had already been acquitted as to this publication; but, that I had not yet been tried, for the words, now charged, were not the same as those on which I had been indicted at Kingston; besides, I had published the pamphlet in another District; and, "Gentlemen, what have you to do with another jury?"—Did I say that the speech of Mr. Jones contained no argument? I must retract: it does contain argument; and, many inferences may be deduced therefrom.

When Mr. Jones had done talking, the poor persecuted pamphlet was pro-

duced. I had given this copy, it appeared, to some person on the 10th June; but neither wanting to know who this person was, nor to waste time, I bade them proceed, as, no doubt, I had many of these. To prove the inuendoes was the next step; and for this purpose a wise man of the law was set up as Sir Oracle, to determine the truth of these; but, again, I cut matters short, by declaring that, "I" meant, I, Robert Gourlay.—"Parliament" the Parliament of Upper Canada, and "Administrator," the Administrator of the same Province. Having had but half a day, without interruption, after my arraignment, to prepare for defence, this was employed in writing a few sheets to introduce the jury to the circumstances connected with my coming to Canada,—my principles, and the events which had given rise to the publication—all of which are well known to those who read the Niagara Spectator and Kingston Gazette; but few in the Johnstown District have had the opportunity. As to reasoning on the question, I left, what was to be said, to the suggestions of the moment, and, to speak the truth, had scarcely patience for reasoning on the subject. I told the jury that there was nothing in mere words to constitute libel:—that, in the eye of the law, there was no more libel in the words quoted than in those of the Lord's prayer:—that libel must be inferred from evil intentions and injurious consequences, the very reverse of the intentions and consequences of my address of the 2d of April:—that the address had found enemies, as, what good thing did not?—but, that the general feeling was strongly in its favour, and that it had gained me public thanks from every part of the Province, where the light of information reached. I asked, if a malicious production was ever rewarded? I defied my accusers to produce the slightest proof of its being the cause of tumults; and offered to bring evidence, to show, that disorderly and riotous conduct had only been displayed by people now setting on the grand jury. As to the sense which this very grand jury held with regard to the effect of mere words I had to quote an extraordinary instance. I knew it to be a fact, and no one present would dare to contradict it, that, since this grand jury had been appointed, a most respectable person had thought it his duty to present to them, that, the Rev. John Bethune, of Augusta, had instigated another person to wring my nose and pluck certain pamphlets out of my hands at the first meeting called by me in that Township, offering at same time to protect the person if he would do so. This presentment, the grand jury waved, saying, that the instigation had not taken effect. With this fact, uncontradicted, I appealed to the court, how this jury could refuse such a presentment so well grounded, and come forward, wantonly and maliciously, to asperse my character through the medium of a presentment which had not the shadow of a foundation.

As to libelling the Commons house of parliament, it was a thing which would absolutely be laughed at in England:—that, there, we were allowed to go almost any length in lashing the proceedings of the lower house:—that its members were mere ephemeral beings,—the servants of the people; and, being prone to betray their trust, it was a rule founded in right reason, that great liberties should be allowed in keeping them, by exposure, to the strict performance of their duty:—that I had known instances of individuals being summoned to the bar of parliament, and even imprisoned for attacking the characters of individual members during session; but knew not, if an instance could be quoted of prosecution against the free expression of opinion as to the general conduct of the House. Mr. Jones had told the Court, that the Assembly had a judicial as well as a legislative authority:—he had even hinted that I might yet be summoned to its bar to answer for my publications. I ridiculed such presumption by referring to the absurd proceedings against Mr. Durand, wherein I believed this Mr. Jones had been a chief actor. He and his coadjutors had disgraced the Assembly of this Province by assuming judicial authority in that instance,—by taking cognizance of matters out of session, and which never could interrupt the proceedings of the House. The judicial authority of the House of Commons goes no further than to this, of checking immediate interruption, as the authority of a Judge may directly imprison a disturber of the court in which he presides. The House of Commons of England never would mean itself by noticing election placards. All sorts of stuff was allowed to fly about, at will, during the times of parliamentary election, and were considered as little affecting the characters either of the assailant or the assailed:

—that such productions as that which had led to the expulsion of Mr Durand, and the consideration of which had wasted a very considerable portion of the first session of the present parliament, might be picked up, by the dozen, in any rotten borough of England, during a general election; and, that the Constituents of Mr. Durand had done right in again returning him, as their representative, had it only been to mark their disapprobation of the absurd, mean, and tyrannical disposition of the assembly, on that occasion.

Having done with my defence, I wished to call witnesses, who had observed my conduct, and the effect of reading the pamphlet, at all the meetings held in the District of Johnstown. This, however, the Judge would not allow; and, I am thus left without a remedy, of having it recorded, in a court of Justice, that I was a seditious person, and, that the publication of the pamphlet, in question, had "raised tumults and diffused discontents and jealousies." The record will not, I trust, have the full effect, for which it has been mainly intended,—that of palliating the offences, against the law, and decency, of Messrs. Fraser and McDonnell. Personal protection is the first object of law, and wrongous imprisonment the most flagrant abuse of it.

The reply was made by Mr. Henry Boulton, Solicitor General of Upper Canada, and on this occasion, acting attorney General. The crowd, who witnessed this silly lad's conduct at Kingston, need only be told, that here it was, but, an excuse of the same. At Kingston, he let out his spleen against the Convention of friends to enquiry, by saying that "they were as contemptible at York as they were at home." He now condescended to animadvert and run down individual characters; and, because, in answer to the attempt of Mr. Jones to stir up the feelings of the jury against those who would speak freely of the conduct of members of Assembly, by making it appear that they, the people of the country, were thereby degraded, I had said that many of the members of assembly were friends to our cause, and never put a bad construction on the publication now charged as libellous.—because, in proof of this, and of the respectability of our supporters, I had said that the chairman of our very first meeting was a member of Parliament, and had honestly declared that he would allow, do what, at the time, seemed best for the interests of the country,—because I had said that the chairman of the convention has been two years speaker of the Assembly, therefore, Mr. Boulton thought fit to run down and ridicule two as honest men as the Province holds in its bounds.—Mr. Secord, and Colonel Beafely,—finishing with a eulogium in favor of his own family and connections, the conduct of whom he defied any one to impeach. It will be remembered by those who witnessed my trial at Kingston, that, provoked by his personal abuse of myself, and, in the face of a vain paucity on the virtues of official characters at York, I said, that I could impeach his own father, with neglect of duty,—no less than the nonprosecution of murder, while he was Attorney General; and, I repeat, that a flagrant case of the kind exists, which would warrant such impeachment. It was a brother of this Mr. Boulton who first spread the report, in the steam boat, in which I pulled last November, from York to Niagara, that Doctor Strachan was raising opposition to the success of my first address to the Resident Land owners of Upper Canada, and accusing me of presumption for having published that address; and, I am now informed that it was this Mr. Boulton, Solicitor General of Upper Canada, and one of his brothers who composed the disgraceful and bill, printed at York, and circulated there, on the second day of the meeting of the Convention,—a production which was indignantly refused a place in the Montreal Herald; but which obtained one in the Upper Canada Phoenix,*—a production which will paint the character of its author in colours far more expressive than any language of mine can display. Let our new Governors look upon this production, and it will prove the best mirror in which they can see the true characters of some now holding the first official situations in Upper Canada.

Gentlemen! for nearly three months I have been harassed, and all my plans deranged by arrests, and law prosecutions:—for nearly three months the chain of communication has been broken off between my family and me. I am now hurrying to New York, to receive accounts of my private affairs, which, in the expectation of going home, I ordered to be sent to me, there, six months ago. My first duty is due to my family. If that calls me to England, I must go; if it admits of my return to Upper Canada, I shall immediately return. I am most anxious to return, for these times are big with the fate of this Province, and great changes must be made, or, a Province of England, it cannot long re-

main. If I come back, I trust I shall now be free from the illiberal attacks of little, ignorant, men. Had I not been personally assailed, never should I have stooped to personality. It never could give me pleasure; but without the use of it my writings never would have aroused the people of Upper Canada, while I was beaten down, on all sides, by open exposure. Let it be remembered, that, in this, I have only acted up to the motto of my country "Nemo me impune lacessit."

ROBERT GOURLAY.

* We think Mr. Gourlay lies under a mistake, as we do not recollect of seeing the hand-bill production, here alluded to, published in any paper. Besides, had it been the case, the Editor never would have made the following remarks, which we copy from the Phoenix of the 18th August and 1st September, viz:—

"About three weeks ago, a placard was sent to this office from York, under cover, for which we had to pay one shilling and four pence H. C. postage—This was a mean, low, selfish species of robbery, and every way worthy of some of the York wits. This miserable production was printed at the Government press—and is remarkable for nothing but giving rise to a severe retort. We do not presume to say that the Editor of the York Gazette was privy to this transaction—we hope he was not—but that the placard was printed in the Gazette office we have not the least doubt—the Types speak for themselves."

"We congratulate the public in general and Mr. Gourlay in particular, on the issue of his trial at Kingston. Every thing great and good (politically speaking) depend on the virtue of Juria.—May they remain inflexibly virtuous, and the Press will be free."

FOR THE KINGSTON GAZETTE.

"I told you, when you set the Stone a rolling, it would roll upon yourself." The words of the old poet are verified in these latter days.

The recent political prosecutions in this Province have, so far, produced the effect predicted. The folly and wickedness, displayed in those party proceedings, are so generally perceived, and so indignantly frowned upon, that it has become a question of more than ordinary curiosity, where this ridiculous system of persecution originated, whether in the Councils of York, of Kingston, or Brockville. We have seen the puppets acting in their several characters. The Punch of the Show has played his part in open view; but who is the magician, that sits behind the scene, and pulls the wires? To him, whoever he is, the laughter-loving Public are principally indebted, for all this tragi-comic farce and amusement, if amusement it may be called. For, as the Frogs, in the fable, said to the boys who pelted them with stones, "Though this may be sport to you, it is death to us!" So the People of this Province may say to the boys who are pelting them with indictments, presentments, and warrants, and to the old boy who sets them on; these repeated attacks upon the right of Petitioning & the freedom of the Press, altho' boyish and ridiculous in their management, are yet too serious, in their nature, to be puffed off with a transient Laugh. Their authors and actors, as well as the intended victims, should be noted down, and held in lasting remembrance.

VOX POPULI.

From the N. Y. Spectator, of Sept. 8.

Short arrival from England.

The ship Magna, Captain Ogden, arrived this morning in the remarkably short passage of 23 days from Liverpool, and only 17 from land to land. Capt. O. is the bearer of dispatches for the Secretary of State.

By this arrival London dates are received to the 6th of August, and Liverpool to the 8th. Our latest Lloyd's List is of the 4th.

On the 4th of August, an Order in Council for proroguing Parliament to the 2d of October was published in the Official Gazette.—One of the London papers of the 5th says—There is not, we believe, at present any intention of assembling Parliament, for the despatch of business until after Christmas.

The report of the 5th respecting the Queen's health, stated that she had passed "a pretty good night, and is better to day." No expectation, however, was entertained of her recovery.

The Duke of Wellington arrived at Dover on the 1st of August, and at London on the 2d. On the same day, he had a long interview with the Prince Regent, and another on the 3d. It is understood, that he will soon return to the continent.

A letter from Captain Jackson, of the whaling Ship John, who had arrived from Greenland at Greenwich, in speaking of the Arctic expedition, says—"I can say little of the discovery ships, except