

eloquent observations, the learned counsel concluded with a powerful appeal to the feelings of the Jury.

Some preliminary evidence was given, from which it appeared that Chrishall Wood was about 60 acres in extent; that the defendant, who is the present high sheriff of the county of Essex, was the owner of it; that there were three or four bars in the fence of the wood, which were moveable, for the purpose of admitting carts and timber carriages into it, to carry away fallen timber; that there were three notices stuck up in as many places on trees outside of the wood, with the words—"steel-traps and spring guns are positively set in this wood—John Wilkes," and that these notices were not very visible, and were nearly concealed by the leaves of the trees, in September, 1818. One witness stated that 20 years since he had gone through the wood, but he had not known of any foot-path in the wood since then.

Job Miller then deposed as follows: I reside at Elmdon; I know Chrishall Wood; I know the plaintiff's plot—he is a farmer's son, residing with his father, and is now about 31 years old; before this accident he was hale and hearty in health. On Saturday, the 12th of Sept. 1818, about three in the afternoon, the plaintiff and I went to gather nuts in Chrishall Wood; we got into the wood at one of the bars where carts go in; we had been in the woods about ten minutes, and when I was about a yard and a half from the plaintiff, he touched something, and a spring gun went off; he was wounded in the leg; he had a large hole made in his stocking, and he bled a great deal; I did not see the wire, but I saw the smoke of the gun, and heard the report; I saw the gun afterwards; it was a bell muzzled; the plaintiff held himself up against a tree until I got hold of him; I endeavored to get him home, and was assisted by a young man named George Bland. There is a cart-way at the place where we entered the wood. I remember a wicket having been there formerly. There are three shifting bars to the wood. The fences were then very much out of repair; children might get over them. There was no ditch between the fence and the wood. I don't know how long the plaintiff was confined to his bed, or when he was able to go to work.

Cross-examined. The place where the accident happened was nine or ten rods out of the cart-way. I have seen one board up, giving notice of spring guns in the wood. In the same week that the accident happened the defendant's gamekeeper told me that there were spring guns set in the wood. He told me it was dangerous going in there. I don't recollect telling the plaintiff that there were spring guns in the wood before he went in on the 12th September. I remember saying to him before we went in, "I won't go unless you go first." I told him he should go in first. I don't know how soon he went about his work.

Re-examined.—The gamekeeper only told me of spring guns being there. He told me that they were loaded night and day. I never saw more than one notice stuck up.

Mr. Baron Garrow here interposed, and said, he should rule that notice so stuck up would not be sufficient, and likened the case to the notice given by carriers of restricted liability, which was not sufficient unless personal. He observed, that at his own country residence he stuck up notice of spring guns, but he never set any in his grounds. "I speak daggers," said his Lordship, "but I use none."

Nathan Warren, the defendant's gamekeeper examined.—I have set eight or ten spring guns in Mr. Wilkes' wood at a time by his orders. There were as many so set in September 1818. There are four boards stuck up in conspicuous parts of the wood, giving notice of spring guns.—Cross-examined. I know Miller the last witness. I told him a few days before the accident happened, that there were spring guns set in the wood. There is no path through the wood.

Re-examined: There was a foot-path formerly, but that was stopped up by Mr. Wilkes's orders. The guns were placed so as to hit low; not higher than a man's legs. They had blunderbuss muzzles, and were loaded with No. 4 shot. If a man stooped low he might be wounded in the head and body. The guns are not set now.

George Bland corroborated the evidence of Miller as to the fact of the gun going off and wounding the plaintiff.

Cross-examined. I remember saying something to the plaintiff about notices being stuck up about spring-guns before he went into the wood. The plaintiff was attended by Mr. Fiske, a surgeon; he is a relation of the defendant.

Mrs. Hott examined: I am mother of the plaintiff; on the 12th of September he was brought home to me wounded in the leg; I attended him during his illness; he suffered great pain; he was confined to his bed a month and longer; it was nearly Christmas before he could go to work; there were 20 shots taken out of his leg; there are a great many shots in it now; the leg was greatly lacerated; his leg is now better than could be expected; he feels the effects of the injury more at one time than another.

Cross-examined: I told my son frequently not to go into the wood; I never heard the gamekeeper say that there were spring guns set there, but I heard it from others, and I had no other reason for telling my son not to go into the wood than that.

Mr. Lynn, the Surgeon, examined: I saw and examined the plaintiff's limb

yesterday. He appears to have been shot with small shot; The wounds are all healed. There are many shots in his leg still. I apprehend that part of the stocking, which is cotton, is still in the leg. He will not experience so much inconvenience from that, as he would have done from a woolen stocking, or cloth. In wet weather, or when he is ill, he is likely to be inconvenienced from the wound. I don't apprehend any danger from it; but the man appeared to me not to be in good health; he limps a little. I think he may feel the effects of the wound all his life.

The plaintiff's case being closed,

Mr. Marryatt addressed the Jury on the part of the defendant. As the learned Judge had intimated the opinion he should deliver upon the law of the case, he (Mr. Marryatt) should not address them with a single observation on that part of the case. His remarks should be confined solely to the facts. But there would be certain points still remaining to be considered, before the legal question could be fairly raised; and the first was, whether the plaintiff had not had full notice before he entered the wood, that spring guns were placed there. The second point they would have to consider, was, whether he went there in the exercise of any legal right of pathway; or whether he sustained the injury in consequence of taking upon himself to trespass there in gathering nuts. The defendant was by no means desirous that any man should not be fully compensated for an injury which he had committed, but having given public notice that spring guns were set in his grounds, and that notice having reached the plaintiff before he entered the wood, the question whether this man was not a trespasser, and whether he did not go to the mischief, instead of the mischief coming to him, was one of considerable importance in considering this case. The question which remained, would arise upon the result of their finding as to these two points. The learned Judge having stated what his direction in point of law should be, namely, that it was illegal to place these engines in a park or wood, especially where there is a foot-path—that made it of importance for the Jury to find whether in point of fact there was a foot-path in the defendant's wood, and whether the plaintiff was in pursuit of a legal right of path, or whether he did not go there for a different purpose, and whether he was not in fact a trespasser. If the plaintiff had a right of footpath, it was clear that he had no right to deviate from that footpath, and go into any part of the wood he thought proper. That there was in point of fact no footpath in this wood was clear from the evidence. It was in proof by one witness that 20 years since he had gone through the wood; but it did not appear that any body else had ever gone there for that purpose. On the contrary, the evidence was, that the footpath, if it had ever existed, had been shut up for a great number of years. It was well known, that when an enclosure of land takes place, there was a general power given by the forty-first of the King to stop up all unnecessary ways and paths. The footpath in Chrishall Wood had ceased about the date of that act, and had never since been used. According to the understanding of the plaintiff and his witness, no footpath had ever existed there at all; and if it had ever existed, it had been disused for a period of 12 or 20 years. No person had pretended to go there for a considerable length of time; but supposing a footpath to exist, was the plaintiff in the exercise of the right of footpath at the time the accident happened? According to the evidence, he was at the distance of 16 poles from the cart-way at the time of the accident. It was suggested, that the cart-ways in the wood were to be considered as giving the plaintiff a right to go in there; but nothing of that kind was to be deduced from the existence of the cart ways. If they existed, they were merely private ways for the benefit of the occupier of the land to enable him to carry away his timber when fallen. So much then as to the question of footpath. Then as to the second, had the plaintiff due notice of the guns being set in the wood? He lived near the spot; he set out to the wood with a companion who warned him of his danger, for it appeared that some conversation passed between them as to who should go in first, evidently shewing that both had full knowledge that mischief might be apprehended. The plaintiff's mother stated, that before he went into the wood, she cautioned him against the danger to which he was exposed.—From these circumstances it was necessarily to be inferred that the plaintiff was a trespasser, and that he went to the wood for a purpose, though not illegal, yet which exposed him to the consequences of his own rashness. If these facts were found, they must go with considerable weight, as to the question of damages, in addition to other circumstances in the case. The learned counsel contended that the question of notice in this case could not be likened to the subject of notice in the case of a carrier, because the fact of personal notice was here affirmed by all the evidence in the case. Supposing then the case to be now reduced to an inquisition of damages, the question was, whether the plaintiff, under these circumstances, was entitled to any considerable damages at the hands of the defendant. No man affected to state that the guns were placed in the defendant's wood in such a manner as would probably produce death, or that they were calculated to do any more injury than just to produce a little smarting

about the legs of a trespasser. The injury which the plaintiff had sustained, did not appear to be considerable. He was now able to go about his ordinary business, and all that the respectable surgeon examined stated, was, that in wet weather and illness he might be liable to a little inconvenience from it. It had been stated that 150 shots had penetrated the plaintiff's legs; but the evidence was, that only twenty were extracted, and that some few now remained. The jury had been called upon to make this case have the effect of an example, to repress the spirit of assassination and murder which seemed to exist in the country. What had such an observation to do with the present case? This was a civil action to recover damages for a civil injury; and the question of example was wholly out of the case. With these observations he left the case in the jury's hands, simply as a question of damages, being quite convinced that the circumstances of the case already pointed out would relieve the defendant from any pressure upon that subject.

The learned Judge in his charge to the jury, delivered his opinion upon the law of the case, in the manner already stated. He observed that they were to express their opinion upon the three propositions suggested to the learned counsel for the defendant; and in considering the question of damages, they were to lay out of their thoughts some of the topics which the plaintiff's counsel, in his eloquent address, had taken occasion to press upon their minds. This was a civil action; and what had been said about repressing the spirit of assassination which was stated to exist in the country, had nothing whatsoever to do with this case. It had been assumed, that such a spirit really did exist; but for his own part, he begged leave to doubt it. The case had been too highly wrought in this part of it: he would not believe that the character of the British nation was altered, or that we were become more men of blood than we used to be. He hoped such was not the present character of the British nation. If acts of violence had been committed by desperate men in some parts of the country, was the defendant—a man of character and of station—to suffer for such acts in an action brought against him for a civil injury? The Jury, probably, in considering the question of damages, would not treat it with a niggard hand; and he was sure the defendant would not himself wish it to be so treated. They were to give a full compensation in damages, but their judgment must be tempered with moderation and discretion.

The Jury found for the plaintiff—Damages Fifty Pounds, and specially declared their opinion to be, 1st. That there was no footpath in the spot in question. 2d. That the plaintiff had notice of the spring guns being set in the defendant's grounds at the time of the accident; and 3d. That at the time of the accident, he was not in the exercise of any right of footpath.

Liberty was then given to the defendant to move to enter a nonsuit upon the general question of law, or to turn it into a special verdict; if the plaintiff thought proper. The court was excessively crowded during the whole of the trial, and almost all the magistracy of the county were present.

FOREIGN NEWS.

From the Newburyport Herald, Oct. 12.

Capt. Cook, of the brig Syren, who lately arrived at Boston from Mocha, has, since our last, politely handed us the following memorandum, not before published:

"On, or about the 10th of February, we received intelligence at Mocha, of 18 Daous of Jewaffee, of Wahabee pirates, watering at Macullah bay; thence they proceeded to Barbon, which place they sacked, and took every thing afloat in harbor. They then crossed over to Aden, where by their captures, their force had increased to 26 sail of large Daous: here they watered and obtained provisions on or about the 1st of April. I came through the Straights of Babelmandel on the 11th of April, in company with ship Emily, Robert Hancock, of Baltimore, under convoy of two English E. I. company's cruisers, the Teignmouth, capt. Hall, and Nautilus, capt. Faithful, it being their intention to go into Aden and attack the Wahabees; but on our arrival off the harbor, we found that they had put to sea on the 11th—About 25 leagues from Aden, the convoy being joined by his B. M. sloop of war Bacchus, sent for the pirates, they all three ran away from us in pursuit of them, to the northward and eastward, supposing that they had retreated homeward to Ras-el kimah, in the Persian Gulf; but most probably, they had gone to cruise off Cape Guarkafin, to intercept the Daous from Zanzibar towards Muscat and the Red Sea, they having been very successful on that station during the last year. It was said that the English were fitting out an expedition at Bombay against Ras-el kimah to destroy that nest of pirates, who have with impunity, so long infested the commerce of the Arabian Sea.

On or about the 15th of February, 1819, the Turks had taken possession of the territories formerly usurped by the Xeriff Habmoud, viz: Lobeia, Hodeida, Beethleackih, &c.—Two Turkish gun brigs arrived at Mocha on the 25th March, ostensibly for the purpose of going to Aden to attack the pirates, but they proceeded no farther than Mocha. Although their intents are apparently pacific, it appears highly probable that they will take

possession of the city of Mocha. The Imam of Sana had increased the standing force there, by two or three hundred soldiers, to guard the city against surprise or stratagem.

Translated from French Papers received at the Office of the New York Columbian.

It appears from the various sources of information, such as the seizure of papers and the arrest of professors and students suspected of disaffection, that there exists in Germany three secret confederations, viz:—The first, that of the imperialists, who wish to re-establish the ancient Germanic Empire; the second, that of the Royalists, who wish to divide Germany into two great kingdoms, that of the south, or Austria, (or according to others Bavaria) and that of the north or Prussia; the third, and most numerous, is that of the Republicans, who imagine they can unite all Germany in a federal system, similar to that of the United States of America. The project of a republican constitution had been found amongst the papers of a student at the University of Grefen in the Grand Duchy of Hesse. The following is the entire of the plan which has been found at the houses of several of the conspirators:

"Germany was to be divided into twenty Circles; each of the Circles to send two deputies to Frankfort, there to form a constituent assembly of 40 persons.

"The first act which should emanate from this assembly was to be the dissolution of the Germanic Diet and the forfeiture of their thrones by the sovereigns, who who were to be released from their obligations towards the people. After this act the assembly was to nominate a supreme chief for each of the 20 circles. These after their nomination, were to employ themselves, each, in forming an Electoral College, in order to proceed to the nomination of a German King; but royalty was not to be hereditary. The ancient princes were to be eligible, but in the elections were not to be entitled to or enjoy any pre-eminence over other citizens. Germany was to form a republic, one and indivisible. They were also to occupy themselves, without delay, in the formation of organic laws, the establishment of a Chamber of representatives, with a chamber of senators declined to assist the king with their counsels.

"The fundamental laws were to preserve individual liberty, the illimitable freedom of the press, the publicity of all proceedings in courts of justice, the establishment of trial by jury, the annihilation of all privileges, of all monopolies, the abolition of the corvee, and the redemption of tithes.

"The regular army was to be replaced by an organized militia; the commune were to be emancipated and placed on the same footing with those of England and America, and the freedom of commerce and industry was to be proclaimed for all Germany.

"It is sufficient to read this project to be convinced of its absurdity; notwithstanding it has occasioned several arrests, which we have witnessed for a long time, and continue to this moment more than ever."

From the Philadelphia Gazette.

HURRICANE AT ST. BARTS.

On the 20th Sept. at 8 P. M. the weather appeared threatening, and about 12 o'clock the wind shifted to the north and continued to increase from that quarter till ten the next morning, when it hauled more to the west, its violence still increasing. At this time, 1 o'clock, P. M. the 21st, we are shut up with candles burning. The last opportunity of observing the harbor, there were but two vessels afloat. The Barometer continues to fall.—3 P. M. All nature appears at war with man; we cannot see the distance of 20 yards. We can scarce hear each other speak in the house.—The gale has certainly reached its utmost height. The rain or scud resembles a vivid blaze of lightning. If the whole world were on fire the scene could not be more awfully sublime than at present. The torrents from the hills are like rivers. God only knows where it will end, should the flow continue—every house must be washed away. The wretched inhabitants are seeking safety in flight.

9 P. M. Little did I think when I penned the foregoing, that we should so soon share the fate of these poor wretches. The violence of the storm forced us to remove. The first place of security we fixed upon was the jail.—I was nominated to obtain possession and have the doors opened to receive the family. In attempting to reach it, I was thrown down twice and carried as far as the Chapel. However a momentary ill fortunately enabled me to gain the place, with no other damage than the loss of hat and coat.

In this place the tremendous fury of the wind had worked a perfect destruction of every door and window in this noble edifice.

On returning to the family I found them in the utmost consternation, every moment expecting the dining room which overhangs the house to fall in ruins. To gain the cellar was our only resort, and after much difficulty fifteen souls were collected there.

Sept. 22d, the scene that presented itself this morning was truly awful. All the shipping formed one mass of ruins at the head of the bay. To distinguish even the remnants would be impossible. I can only say, all are destroyed.

Full one half of the town is completely demolished. Places, where yesterday buildings were standing, are now a barren waste. There is scarcely a dwelling that escaped destruction or damage.

Thus far I can write with some com-

parative composure; but to witness what follows is agonizing in the extreme. The hand of death has shortened the trials of many a poor sufferer. Every hour we hear new tales of horror—Mr. P's. fine house in the country was torn to pieces, and the fragments found some hundred yards from the spot where it formerly stood. His lovely daughter was killed. Several bodies have been found so lacerated as not to be known. Houses and families have been swept away together.

At the commencement of the gale there were thirty sail of vessels aloft, chiefly Americans. The largest vessel in the harbor, a Portuguese ship, is not to be seen.

The Governor has issued a proclamation offering relief to the distressed and destitute.

Extract of a letter from Captain Barnes, of the schooner Oscar, dated,

"St. Barts, Sept. 27.

"We obtained a new anchor and cable sufficient for a vessel of 150 tons (the Oscar is only 65 tons,) but before 12 o'clock on the 21st we went on shore, as many had done before, and the remainder soon followed. We saved some of the cargo and had it stored, but such was the violence of the gale, that the store, together with the merchant's house, was washed away. I have lost the vessel's papers, &c. and in fact every thing except what I stood in. To describe the horrors of the 21st, is beyond my power—an eye witness can only imagine, and to me it seems a dream. Ships of between 300 and 400 tons are now on dry land; hundreds of buildings blown to atoms, and the sea is now flowing where many floors stood before the gale. Fortunately there were only twenty-one lives lost; but many were injured, myself among the number, by the falling of a house. I lay under the ruins some minutes, when I fortunately got assistance—am getting better. By accounts from the neighboring Islands they have suffered as much as at this. Every estate, except two, in St. Martin, are in ruins, and returns are received of 146 souls being lost, and many missing."

Kingston, (Jam.) Aug. 25.

Private letters received from Panama state, that about three weeks since a plot was discovered to have been formed by the British prisoners, made at the recapture of Porto Bello, the object of which was, to obtain possession of a battery and powder magazine, near the city, and then to bombard the place. In the mean time a part of them were to take possession of the Spanish brig Venturosa, lying in the harbor of Panama, and it was intended that the whole of them should proceed in her, and join Lord Cochrane in the South Seas. Two of the ringleaders were shot by order of General Hero, who shortly afterwards issued an order for all foreigners to depart from Panama within ten days.

It was reported at Panama, that Lord Cochrane had taken Petit Callao, in the harbor of which port, a vessel was at anchor, haing on board 10,000 dollars. It was further stated that his lordship had actually passed Guayquik on his way to Chili.

Advices from Lima to the 8th June, have reached this city. By them we learn that lord Cochrane had captured the American sloop Montezum, belonging to Baltimore on her way into Roadstead of Callao she had on board a cargo valued at 80,000 dollars. His Lordship had also taken from a port in Peru 20,000 dollars.

The report of a rich prize with two millions said to have been captured by lord Cochrane, is ascertained to be without foundation.

The government of Lima had dispatched a fast sailing schooner to cruise off Valdivia, to apprise any Spanish Squadron of the movements of Lord Cochrane, and she had passed in safety his fleet. Subsequent to this, his lordship had raised the blockade of Callao.—His reception at Valparaiso, it was supposed, would not be very flattering, as previous to his leaving Callao, he declared he would destroy the marine force at that place.

Six Field officers and 37 of inferior rank, who had been made prisoners by the Infurgent Chief St. Martin, were put to death by his orders, in the village of St. Louis.

We have seen letters from Madrid (says Relf's Philadelphia Gazette) which state that our minister, Mr. Forsythe, in his communications with that court on the subject of the Florida Treaty, had assumed an attitude of the most vigorous character. It is probable, that his dispatches will not be published until the meeting of Congress. In the meantime, the President has full power to make every arrangement to meet any future contingency, which may be expected to grow out of the rejection of the Treaty, by the Spanish government.

An English morning paper contains the following article:—

Letters from Madrid state, that the British and Russian ministers resident at the court of Spain, officially advised and urged the ratification of the Florida treaty.

Upon which another morning paper makes the following remark:

This is the age of boasting and quizzing—but the best hoax of all is that another letter equally authentic as the letter alluded to, and from the same quarter, says that the British minister urged the cession in earnest, but with a condition that Cuba and St. Blas should be ceded to Great Britain, and a liberty of deposit at Vera Cruz or Nautta while Russia also required the same position of St. Blas, in California, and one of the Philippines.