

ADDRESS

TO

THE JURY, AT KINGSTON ASSIZES,

IN THE CASE OF

THE KING *v.* ROBERT GOURLAY,

FOR

LIBEL:

WITH

A REPORT OF THE TRIAL,

&c. &c.

Printed at the GAZETTE OFFICE—Kingston.

.....
August, 1818.

TO THE FRIENDS OF ENQUIRY.

KINGSTON, 20th August, 1818.

GENTLEMEN,

To you I dedicate this Address,—to you who have confided in me,—who have honoured me. It records the confirmation of our most valuable right as British subjects ; and, surely, you will continue to act upon it with sincerity and vigour,—surely, all will now join us in calling for enquiry into the state of this Province, which may be productive of infinite good, and never can do harm. Our new Governors must wish enquiry of all things. It will rid them of unpleasant feelings : it will make clear the course on which they are entering ; and facilitate the performance of all their duties.

Gentlemen, God has been with us. May he ever be so !

ROBERT GOURLAY.

PRELIMINARY NOTE, &c.

THE subject of the following Address, and the manner in which it has been brought forward to notice, will, I am convinced, induce serious reflections, and make a lasting impression on the public mind.

The right of free petitioning, has, for years, engaged my own special attention :—it is a subject which I have again and again agitated, at home, by my writings ; and, the more it is considered, the more important will it appear.

From the moment of my arrest, I looked forward to the trial, now over, as an occasion, almost enviable, for displaying, to full effect, this invaluable privilege, and, for having a clear and strong sense, of the liberty of exercising it, stamped on the minds of the people of Upper Canada.

I had resolved to do my best in preparing for the trial, so that every particular, and every view of the subject, should be exhibited. For this purpose, I had resolved on going to New York, to have access to law books, &c. not, here, to be found ; and, from thence, meant to have brought a short-hand writer, that every word spoken on the trial, might have been handed down to posterity. The unexpected appointment, of the assizes, nearly a month earlier than usual, balked these purposes :—it left me only time to cross the lake from Niagara ; and, still more luckless, a bilious disorder held me feeble and feverish, almost to the hour of my appearance in court. Considering the greatness of the subject, I am truly sorry that I have not been able to do it justice. My Address is far from being equal to my wishes : it is much inferior to what it might have been made, under other circumstances ; but, I trust, these explanations will find for it some excuse.

A copy of the warrant of my arrest is subjoined, in lieu of the indictment, refused ; and I trust, recording the names of the worthy men who were empannelled as Jurors, will make others zealous for maintaining, unimpaired, the blessings of our glorious constitution, should any attempt, be ever again made, to deprive us of them. R. G.

N. B. *The following note refers to what is said in the middle of the 21st page. Owing to the hurry of printing, some typographical errors will be found in some copies which are not in others.*

† This act was passed, the year after the constitution was given to this Province. The right of Juries, therefore, is here, still, only an arbitrary right. It might be well, therefore, to have it made absolute by a provincial statute.

WARRANT :

THE KING v. ROBERT GOURLAY.

UPPER CANADA.

MIDLAND DISTRICT } **TO** Robert Young, high constable, or to any other constable in the Town of Kingston—Greeting.—
Whereas, information and complaint hath been made before me, (Thomas Markland, Esquire, one of His Majesty's Justices of the peace, in and for, the said District) on oath, that Robert Gourlay late of Kingston, in the said District, Gentleman, at Kingston, in the said District on or about the first day of June instant, unlawfully maliciously, and wickedly, did publish and utter, a false wicked, and seditious libel, styled "Principles and Proceedings of the Inhabitants of the District of Niagara, for addressing His Royal Highness the Prince Regent respecting claims of sufferers in war, lands to militia men, and the general benefit of Upper Canada, printed at the Niagara Spectator office, 1818; price, one shilling, Halifax," intending, thereby the peace and common tranquility of our lord the King, and this his Province of Upper Canada, to disquiet, molest, and disturb, and, to bring the Government of our said lord the King, in this his Province, into great hatred, contempt, and scandal, with all his faithful and liege subjects of the said Province.

These are, therefore, to charge and command you to apprehend and arrest the said Robert Gourlay, if he shall be found within your Bailiwick, and bring him before me, or some other of His Majesty's Justices of the Peace, to be dealt with as the law directs.

Given under my hand and seal, this eleventh day of June, one thousand eight hundred and eighteen, at Kingston, in the Midland District.

(Signed) THOMAS MARKLAND. J. P. (L.S.)

I do hereby certify that the above is a true copy of the original warrant.

(Signed) ROBERT YOUNG, High Constable.

JURORS EMPANNELLED ON THE TRIAL.

OLIVER THIBODO, Foreman,
SAMUEL MERRILL,
THOMAS SMITH,
JAMES MEAGHER,
LOOMIS NORTON,
JAMES McGEE,

ELIJAH TENNY,
ALEXANDER WATSON,
JOSEPH RANSIER,
JOHN DOWLING,
ANDREW DENIKE,
GEORGE OLIVER.

ADDRESS.

MY LORD !

GENTLEMEN OF THE JURY,

I stand before you, accused of “unlawfully, maliciously, and wickedly, publishing, a *false, wicked, and seditious* libel, styled *Principles and Proceedings of Inhabitants of the District of Niagara*, &c.—intending thereby, the peace and common tranquillity of our Lord the King and this his Province of Upper Canada, to disquiet, molest, and disturb, and to bring the Government of our Lord the King, in this his Province, into great hatred, contempt, and scandal, with all his faithful and liege subjects of the said Province.” These words I take from the warrant for my arrest, as a copy of the indictment has been refused* ; and it is impossible for me to know, accurately, the charges preferred, from a mere hearing of the indictment read before the court.

You have just heard, Gentlemen, this accusation supported and enforced by the trained arts and eloquence of a lawyer. Gentlemen, you see that I address you from a written paper, and in this, had I given the Solicitor General credit for eloquence. I must retract my compliment. Never till this day did I witness, before a court of justice, such weakness—such vulgarism—such illiberality. Gentlemen, the speech of this Solicitor General of Upper Canada needs no reply : it has not set forth a single argument : indeed scarcely two of its sentences hang together ; but I shall recall to your memory a few of the Solicitor’s pretty assertions and insinuations.

In the outset he told you that it was not his intention to *use infamous expressions, as the prisoner at the bar would do* ; and, immediately afterwards, he declared that you and the body of the people were dolts. It must rest with the people and you to determine if this is not *infamous*. He told you, in proof of the bad effects of my writings, that two persons were indicted for sedition at the present Assizes. Gentlemen, it is *infamous*, even to hint at such occurrences. Their bearing on my case is nothing ;—towards the parties indicted, it is base and malignant. Every man stands innocent in the eye of the law until he is proved guilty ; and no man, especially in the situation of a Solicitor General, has a right to prejudice and prejudice the cause of another.†

This Solicitor General, after eulogizing the liberty of the press,

* On application to the Court, after trial, a copy of the indictment was still refused !!

† Since the trial I have discovered that one of the persons indicted for sedition, was provoked by some false and abusive language of the accuser, to say “damn the parliament”—and this is the sedition!! In England a man would

has the assurance to tell you that I labour to obstruct it!—He has told you that all the seditious people of this Province come from home! He has compared my conduct to that of Wilcox; and expressed his expectation that my fate will be the same!—He has asked if you will join my banners in a time of peace to overturn the constitution!—He says that I have not courage to come before a Court of Justice; but that I take refuge behind a printer's desk, from whence I abuse the Government! Gentlemen, I have no patience for the whole of his stuff—it is *all infamous*. It is a disgrace to the British Government to have such a thing as this acting as Solicitor General:—it is lamentable and ruinous for the Province;—but let us proceed* Has the Solicitor General proved any one count, set forth in the indictment, but my having given the pamphlet, spoken of, for sale? Gentlemen, the whole burden of proof, as to what has been asserted, rests with him, and he should shew, not only this simple act to have been committed by me, but the criminality of the act, and my bad intention in performing it, before you can bring in a verdict of guilty.

Gentlemen of the Jury!—I acknowledge that I gave, for sale, the pamphlet entitled "*principles and proceedings of Inhabitants of the District of Niagara*." I acknowledge this, but flatly deny the charge of bad intention; and, I trust, you will readily and firmly determine, that I could not possibly bring the Government of our Lord the King, into great hatred, contempt, and scandal, with all his faithful and liege subjects of this Province.

Were it for myself, only, Gentlemen, that I had this day to contend, my care would be, comparatively, little. What is now to be contended for is not *my* honor and *my* right:—it is the honor and right of *thousands* of your fellow subjects. It will be proved to you, Gentlemen, by the clearest evidence, that I was not a prin-

be hissed out of society for entering a serious complaint against such a vague and unmeaning speech. A few years ago, an action was brought against an individual in Yorkshire, for some such foolish words, applied to the Prince Regent, but the Jury dismissed the charge with contempt. This indictment has evidently been brought forward for the express purpose of scandalizing my proceedings, and giving the Solicitor General an opportunity of exciting prejudices by his allusions, thus doubly *infamous*. The fellow, who has been made a tool of, to set himself up as public accuser, is, I understand, the same, who, under the signature OBSERVER, has of late exhibited so much trash against me in the Kingston Gazette. It is only sufficient to look this man in the face to read his character: it is a picture of dirt, depravity, and dejection. The man is much to be pitied. The other indictment, I understand, sprang from some hasty words uttered in a drunken party—and by a gentleman whose loyalty, during war, was conspicuous in his raising a troop of horse for defence of the Country. It is truly ridiculous to have such cases brought forward as proof of sedition,—especially in Upper Canada, where, of all places, sedition, has not even an excuse—where indeed it would be impossible to excite it.

* Since the trial I find by my notes, among many other ridiculous assertions of the solicitor General, that my advice to dissolve Parliament was given in order that I may get a seat. If the present assembly sits out its natural time, I may have a chance of being elected two years hence. If it is now dissolved I cannot possibly be chosen, being not yet resident in the country, and possessing only a tract of land in it, which yields nothing.

cial in publishing the pamphlet in question—that I have, in this, only acted as a servant ; and, that even my expenses in performing the service, were reimbursed by those who employed me. The true and acknowledged publishers of the pamphlet appear in its very front. They are well known, both to the public at large, and those who prosecute me. Why have not they been prosecuted? Gentlemen, should you condemn me, an infallible consequence must ensue, that those who employed me must also be condemned.

This consequence, Gentlemen of the Jury, must have been clearly perceived by my accuser, the Attorney General ; and, when all is deliberately considered, there will appear against himself a charge of a most serious kind—a charge, which cannot be repelled—which cannot be excused.

Gentlemen, I am not unacquainted with the law of libel :—I know that where there is libel, the lowest drudge employed to give it circulation is actionable ; but what is the practice ?—what is reason ?—I will ask the learned Judge, who is to deliver a charge to you on this question, most specially to speak to this :—nay, I will challenge his utmost research in the volumes of legal record, to produce to you a single precedent, wherein an accessory was brought to trial, while known—acknowledged principals, were left free and unchallenged. When the learned Judge can make out no case of the kind, I will ask him,—I will ask you,—I will ask this court, and all mankind, to weigh well that which now occupies attention. Gentlemen, if to crown all which is alleged in the obnoxious pamphlet against the administration of public affairs, in this Province (and it is only against the administration, not against the government that any thing is alleged) I had sought for something appropriate—something which might worthily finish the climax of public complaint, could any thing be found more to the purpose than this, that the Attorney General, in whom our gracious King reposes confidence, rigidly to hold the scales of justice—that the Attorney General, so confided in, should, with his eyes open, depart from practice and reason, and bring to trial a servant while his employers were to be found. Gentlemen, nothing but weakness or wickedness could set its face to such an undertaking ; and, whatever reprobation such conduct may meet with in this Province, at home, I am sure, it will no sooner be heard of than it will create the utmost horror and disgust in the public mind :—it will shew that party feeling,—nay, personal spite,—not justice—not necessity—not the true spirit of our laws, has urged on the Attorney General of Upper Canada, in his accusation of me :—and a more dreadful dereliction of duty,—a more barefaced desertion of principle, cannot be conceived.

Gentlemen, the Attorney General of this Province is but a strippling—the foster child of a certain clerico-political schoolmaster ; and, we cannot suppose him yet weaned from the influence of early established authority, to say nothing of those still more power-

ful influences to which virtue is exposed in such a nest of iniquity as the Capital of Upper Canada. It is well known how active the schoolmaster has been in trying to thwart my projects ; and how virulent his pupils in every quarter have become, because their master has not been able to compass his ends.—Witness the publication of the foolish Committee of Augusta, led on by one of these pupils,—witness the giving away of my property out of the post office of this place by another of these pupils,—witness the burning the papers and pamphlets, at Cornwall, by a whole squad of them. Such acts demonstrate a degree of phrenzy very extraordinary ; but, to be traced wholly to the same source ; and, mainly, from that source may we trace this prosecution against me, individually—the first prosecution of the kind that ever dishonored a servant of the Crown.—Gentlemen, when I am accused of wicked intentions, and not a single proof can be given of such intention,—nay, when there is not a single motive to be discovered which could tempt me to evil ; and, when a most glaring irregularity of procedure presents itself on the part of my accuser, who should not only be regular, but impartial and above all influences, I am entitled to bring forward a surmise which may throw light on motions and motives otherwise so unaccountable ;—but, Gentlemen, let us quit this theme, so sickening, and proceed to examine witnesses as to the fact already advanced, that I am only an accessory, not a principal, in publishing the pamphlet complained of,—a pamphlet, with which I have no more to do, as to its publication, than hundreds besides, nor any thing like so much as some others.

Call. JOHN CLARK, Esqr. *

What is your name ?—JOHN CLARK.

What is your age ?—30 YEARS.

Where do you reside, and how long have you resided in Upper Canada ?—TOWNSHIP OF LOUTH AND DISTRICT OF NIAGARA, I HAVE BEEN ALL MY LIFE IN UPPER CANADA.

Are you a Justice of the Peace ?—YES, I AM.

*Do you know this pamphlet, entitled “principles and proceedings,” &c.—*I HAVE SEEN IT.

Is this your name attached to the preliminary Address ?—IT IS.

Was your name placed there with your will and desire ? IT WAS.

Are you the same John Clark mentioned in the pamphlet—in the 9th page as Representative for Inhabitants of the Township of Louth,—in the 18th page as chairman of a meeting at St. Catharines, and in the 19th page as Representative for Niagara District and member of the Committee ?—YES, I AM.

* When this first witness was called, I asked the court, if I might examine witnesses, on one point after another, as I went on with my defence ; but this was refused, and the whole examination of witnesses was put off till I had done. I do not see good reason for this ; but such it seems is the practice of our courts. In this printed report, I think it is best to introduce the examinations and replies as it was intended before the trial to have them.

As member of this Committee, and by desire of your constituents, did you join in ordering this pamphlet to be printed and published?—YES.

Did you, in the same capacity, order payment to the Printer for the same?—YES.

In the same capacity, did you order sundry persons to carry the pamphlets into different Districts of the Province, for publication?—YES.

Did you so carry any of them yourself, and where?—YES, IN THE DISTRICT OF GORE.

Did you authorise me to do the like through the Midland, Johnstown, Eastern and Ottawa Districts?—YES.

Was I paid my expenses for doing so; and, did you authorise the same?—YES.

Do you know or conceive that some hundreds of people were ultimately concerned in publishing this pamphlet?—I DO.

Can you draw any line of distinction between my conduct in publishing the pamphlet, and that of any one employed by the Committee to do so?—NONE.

After having attached your name to the preliminary Address, and ordered its publication, did you shrink from any responsibility incurred?—NONE.

Do you think me equally responsible as to the printing and publishing the pamphlet as yourself, as one of the Committee?—I DO NOT.

*Do you know the Administrator and Attorney General, and are you known to them?—YES.**

Gentlemen, although the first glance at this Pamphlet must have made it manifest, that I was not its principal publisher, you must now be perfectly convinced of it—You must now see that I officiated in its circulation only as an agent, and as many others did,—indeed, that I was repaid all expences incurred in the employment. This will not only be proved, but the further fact, that the principal publishers are those whose names are distinctly set forth as introducing it to the public—and that they are real, acknowledged, and respectable men in the Province; well known both to the Administrator and Attorney General. Two of

* Robert Hamilton and William Kerr, Esquires, from Niagara District, had been served with subpoenas and were present, for examination, on the same points as those put to Mr. Clark; but, the Gentlemen of the Jury declared themselves satisfied with Mr. Clark's single evidence. I have since regretted that Messrs. H. and K. were not called, as a few additional questions, meant to be put to them, and which they could have answered fully and freely, would have thrown more light on the general subject. Some questions I shall here insert to support the text, as originally written, in the expectation, that such would be actually put and answered satisfactorily.

Mr. Kerr—Look on this manuscript writing and say if it is the original of the preliminary address published in this pamphlet?

Do you know Dr. Cyrus Sumner, and is this his signature?

Do you know Major William Robertson, and is this his signature?

them as Magistrates—and who never could have shrunk from accusation—far less from an accusation of libelling the Government—thereby intending mischief which never was in their thoughts—an imputation which they would have been instantly anxious to disprove and disclaim. There was not a man out of hundreds who was not as culpable as I was : there was not one of them whose prosecution would not have answered the purposes of the law, as well as me : there was none so obviously fit to be called upon as the principal publishers whose names were printed on the front of the pamphlets ; but prosecution was not the only thing sought for :—persecution, revenge, delay, terror, were all objects in view, when I was selected as a victim.

Gentlemen, I have already said that if you find me guilty, the most respectable men of the Province, must also be guilty, and not a few only, but hundreds of your fellow subjects—nay, thousands, altogether unconscious of crime, who have circulated the pamphlets, and rejoiced in the deed. Do not your hearts revolt within you at the idea of a single individual being selected out of a crowd to be made a sacrifice to malice and pique, for nothing else could have suggested my accusation?—an individual, not only so situated as to be peculiarly susceptible of injury by false implication, but cruelly disappointed by delay,—at a distance from his family. Was I a better offering to justice than any or all of the Gentlemen, who were principals in the publication? or, do my accusers think so little of the crime alleged, as to suppose the misery of a single agent, sufficient to atone for it?—Gentlemen, if there is crime it is a *great* crime, not a *little* one ; and, Gentlemen, since I am pitched upon as an offering for general transgression, it shall be shewn that the offering for the sins of Upper Canada is unspotted and pure—I shall again call in the same gentlemen who have attested my being a mere agent in this business, to prove by them who know me as well as any of the natives of this country, how my character stands in their opinion.

Call, MR. CLARK.

Do you know me ? YES.

How long have you known me ? SINCE LAST APRIL INTIMATELY.

In your conversations with me, did you ever mark any thing discreditible to my character ; or, indicative of disloyalty ? NEVER.

Do you think I would have circulated the pamphlet, entitled, "principles and proceedings, &c." if I had thought it contained any thing to disquiet, disturb, or molest the Government of our Lord the King, or, to bring his Government into great hatred, contempt and scandal, with all his faithful and liege subjects ? I DO NOT.

Gentlemen, in my native country, I should not have thought it necessary to call evidence as to my character. I am here comparatively a stranger ; and as a stranger,—as one who has exerted

himself to the utmost for the public good of this Province, whether I intended transporting my family, and the interests of which I was consequently anxious to advance, I have been most shamefully abused, and no where to such extreme as in Kingston.—Slander of ever kind and degree, has here been launched out against my character and proceedings, while not a single fact has been brought forward in justification for such audacity. One thing seems to be the grand stumbling block of my enemies :—they cannot think that any man could take so much trouble, as I do, without having wicked and sinister motives in view. What a horrible disgrace is this to humanity, that there should be wretches so illiberal—so damnably base, as to conceive evil of others, only because they themselves are distorted and blind !—but, so it has always been : remember the treatment of *Him*, who was the Divine pattern of virtue :—remember the persecutions of his followers :—remember the hard struggles of the Christian world.—Since I was last in this town, 6 or 7 weeks ago, the Kingston Gazette has teemed with the vilest scandal and defamation, and the very Editor himself, who had previously acknowledged that his publication of my writings had greatly extended the sale of his paper, no sooner saw my back turned, than he himself spit forth his venom, and, by some devilish instigation, sunk his own character and fortune, that mine might be laid low.—Gentlemen, does not all you witness indicate something very singular in the contention now going on ? I would not wish to be supposed superstitious ; but, it seems as if the powers of darkness were trembling for their reign, and making a last and desperate effort to keep to their hold. Gentlemen, beware ! have some of you not allowed base suspicions or low prejudices to gain entrance to your hearts, thrust upon you from all sides ?—for many have been the insidious arts which have laboured to seduce your charity.—These *have* influences against me.—*I know it* ; but, though the public should give way to evil impressions, forced upon them by deceitful arguments, and Brazen faced presumption, *I shall not give way*,—no, though I should again be attacked in your streets, by an armed ruffian, worked up to phrenzy by envy and by malice—a wolf in the lamb-like clothing of the *Compassionate Society* of Kingston,—certainly I shall neither shrink from my duty, nor yield up my honest opinion without reason, and conviction. . . . Remember this, Gentlemen, that if the raging spirit of the times, envy, and jealousy, and malice, commit me to your noisome jail, there must enter along with me, your country's reputation, and your country's freedom.

It so happens that there is one Gentleman residing here who has known me intimately from his youth,—who knows not only me, but my family ; and before closing this part of my defence, which relates solely to myself, I shall call him in evidence, as to my character.

Call, JAMES WILKIE, Esq :

What is your Name ? JAMES WILKIE.

Your age ? 34

Your place of residence ? POINT HENRY.

Your calling in life ? ORDNANCE STORE KEEPER.

Do you know me ? YES

How long have you known me ? As long as I can recollect.

Do you also know all my connections well ? YES, PERFECTLY.

Did my father possess a large landed property in the County of Fife ?
HE DID.

Did he bear a high character there, and were not all my connections respectable people ? VERY MUCH SO INDEED.

Did I, to your knowledge, ever conduct myself so as to do discredit to the character of my father and Family ? NO.

Had I been brought to trial in my native country, would public notoriety have upheld my character before the court, without the necessity of calling witnesses, specially, for the purpose ? I THINK IT WOULD.

Do you remember of my being Commandant of a Corps of Volunteers in Fifehire ? YES.

Were you, under my command, in that corps ? I WAS.

Did you ever hear of any stain on my conduct or principles, as a loyal subject, either as a civilian or, in his Majesty's service ? NO.

Do you think, that I should be at all likely, or disposed, to stir up sedition, or do any act with a malicious intention ? CERTAINLY NOT.

Do you know, that a very unexpected and extraordinary change of fortune has, within the last three years, reduced my family ? YES.

Did you ever hear that this change, of fortune was owing to any misconduct of mine ? NEVER.

Gentlemen ! having said all that I shall say in my own defence, I shall now enter upon the more important part of this prosecution—that part which concerns the rights of British subjects ; and, the determination of which may affect the fate and fortune of this Province for generations to come. The free right of petitioning the Throne, is the grand safeguard of British liberty ; and, thank God, the spirit of the people at home, has not yet allowed it to be tarnished. The present prosecution, gentlemen, is a thrust at that Right, and you have the sacred charge of parrying the thrust. When the learned Judge delivered his charge to the Grand Jury at the opening of this court, I was not a little surprised to hear him say, that he “ was not aware of any thing coming before them out of the common course.” Gentlemen, there never was before, to my knowledge, any question of half the importance to the public, as this, brought before any Court in Upper Canada : it is a question between a virtuous people and a wicked ministry ; and, if the people do not prevail, wicked ministers will more and more abound—more and more abuse the high trusts reposed in them by our King and constitution. Gentlemen, while you have such awful responsibility before you—no less than the decis-

ion of your country's freedom, I would be sorry to overburden your imaginations with the magnitude of the subject. By substantiating facts as we go along, your minds will be refreshed and your resolutions to perform your duty kept clear and decisive.

All human action, Gentlemen, must be mainly guided by circumstances; and, the circumstances which have created agitation in this Province, are striking. Such circumstances *did exist* in the Province, that, merely by my writing and publishing an Address to the Resident Land Owners of Upper Canada, dated 2d April last, I did prevail, on one township to meet and adopt measures proposed, and thence others met, till the people in every quarter, where the light of information reached, had met and given support to each other. Gentlemen, I know of no instance where a nation was moved so peaceably, so regularly, and so effectually for the purpose in view, as have been the people of Upper Canada, on this occasion: it is truly flattering to the spirit and good sense of the people; but, what I chiefly wish to impress upon your minds, is, that what has happened is a demonstration of a very strong existing *cause* for popular movement. — What had greatly tended to retard the improvement of this Province, was, that the people had hitherto been too indifferent to the course of public affairs: — they had suffered one encroachment of arbitrary power after another, till Rulers had become wanton in their neglect and abuse of duty. The war kindled up a certain kind and degree of spirit; but, this spirit was not calculated, immediately, to act with prudence and consideration. It lent to generosity. Under the influence of this spirit, and that, whose "right hand is full of bribes," the Parliament of Upper Canada gave away £3,000, to a man who had done worse than nothing for the Province, — who had thwarted its laws, and greatly reduced its credit and its property. — This man went home, and the people of the Province began to reflect. They had a resource in their Parliament; but their Parliament failed to yield them the expected comfort. Every branch of the Legislature seemed to be running faster than another astray; and, the last rising of Parliament discovered the country, as if bereft of its constitution: the Commons played the fool: the Legislative Council attempted to play the rogue; and the Royal presence disappeared. It was at this strange juncture that the people of Upper Canada, were moveable. — not by my superior art, but by the concurrence of circumstances. I take to myself the credit of drilling the Province into order; and of prevailing with the people to vent their feelings in constitutional — innocuous petitions. Without asking for any praise or trembling under the dread of punishment for what I have done, I know that to the latest hour of my life, pleasant reflections will console me, as to my conduct here: even already, much good has been effected; and, were I and all the machinery put in motion by my advice, to sink into the earth, still many benefits would remain.

Gentlemen! the recent popular movements in this Province have, under circumstances, been praiseworthy and moderate in the extreme.

Circumstances existed which would have justified the people in taking power into their own hands ; but they did the very opposite of this : they manifested a spirit of patience with those who had the administration of public affairs, and proceeded, in the most orderly and peaceable courses, to call in the highest authority to their assistance, only that fools and depredators might be checked in their career—and that the true intention of our constitution might be fulfilled.

Gentlemen, the meeting at St. Catharines, of the 4th of May, which adopted and ordered the address to be published which is said to contain a false, wicked and seditious libel, was composed of persons of the most respectable characters, and among them were *six magistrates*. They had been chosen by the people of the several townships peaceably and fairly ; and, they represented, on that day, about 940 respectable individuals, who had actually subscribed their names, and advanced money towards carrying measures into effect. To suppose such a body of men actuated by bad intentions, is an absurdity which you cannot be justified in admitting. Not one of the Gentlemen composing this meeting had been out of the country during the war ; and all had acquitted themselves well—but let us call evidence to prove the truth.

Mr. CLARK.

You have already told us that you were present at the meeting of Township Representatives at St. Catharines, did you know all the persons there present ?

MOST OF THEM, AND ALL THE JUSTICES.

Did you think any one of them had evil intention in his mind when the address to the Prince Regent was ordered to be published ?

I BELIEVE NOT.

What situation did you fill during the war ?

ASSISTANT ADJUTANT GENERAL OF THE NIAGARA FRONTIER,
WITH THE RANK OF CAPTAIN.

Now, Gentlemen, the character and respectability, not only of my witnesses, but that of all the Gentlemen concerned, in causing this pamphlet to be published, is fully established ; and the good intention, in publishing it, cannot be doubted. You may say what more is to be done ?—"we, twelve men of Kingston, never can think of condemning seventeen such characters, among whom are six magistrates, for publishing what they thought right, and acting in behalf of 940 of our fellow subjects."—Gentlemen, the occasion is great, and you must make improvement of it. It will not do every day for the loyal subjects of this Province to be barked at by ministerial curs, while in the course of exercising their most sacred, most essential, and unalienable right of freely petitioning the Throne : it will not do every day for such a person as myself, wishing to come out here as a settler, and, only requiring the way to be cleared that he might bring thousands after him :—it will not do for a person on such errands, and with such views, to be put

under arrest,—excessive bail demanded for his enlargement from jail,—and to be detained for months from returning to the bosom of his anxious family, only to answer to a vindictive suit.* Under such usages, the settlement of Canada will indeed move slowly on; under such usages little York may triumph in its slowness; but, *“the desert will not rejoice and blossom as the rose.”*

Gentlemen, there is not a syllable of libel in the Address to the Prince Regent, published by the Committee of Niagara—not a syllable—no, not a letter. It is worthy of the people who stood the brunt of war for three years:—it is a manly, a dutiful, and true declaration of their sentiments, and any thing less would have been cowardice and hypocrisy, under existing circumstances,—any thing short of it would have been a misgiving of the mutual affection which should always subsist between a virtuous people and a generous Prince.

Gentlemen, both the word libel and the law of libel have been often woefully misconstrued. They are liable to misconstruction, from the infinite variety of circumstances which affect them; and necessity may often interfere to render that not libel, which otherwise most assuredly would be so. I might, with much appearance of reason, say, that the indictment against me, openly read aloud in this Court, was a libel. It is untrue in many parts of it:—it scandalizes my character; and ascribes bad motives and intentions to my actions. The reading of this in open court, may make impressions on the minds of ignorant people; and their bad opinion of me, thus generated, may operate to my discredit and hurt in my worldly affairs. Notwithstanding all this I am allowed no redress, even after I am proved perfectly innocent of every criminal charge. It is necessary for the main ends of justice, that something should be sacrificed that more may be gained. The law warrants my temporary and partial suffering; but it is for the general good. In the words of the indictment, there is no malicious purpose against me; and as soon as I prove myself innocent, the whole fiction is let go for nothing, as the dead letter, in working an algebric question, is blotted out, when the solution is obtained. The simplest definition of libel, is, *the setting up of JUDGMENT unwarrantably, and making declarations thereupon to the prejudice of those who are not subject to be judged by such a tribunal.* Nothing is more necessary than laws to prevent liberties of this kind. If not checked, the natural arrogance and self sufficiency of the human mind would be continually using them for

* In the course of speaking, after this was read, I had occasion to say, that “it so happened that my stay in Canada did not much affect my private affairs, as these were in a train of settlement by my friends.” This the silly solicitor brought in as inconsistent with the above. Any one will see that the above is a *supposed* case independent of my real situation. In many respects the prosecution has been cruelly hard on me; but under every trial and disappointment in life, I indulge in the sentiment, that a good Providence will ultimately order all for the best.

malicious ends: society would be kept in continual broils, and the best established reputation and credit would be subject to constant alarm; but, Gentlemen, it is the very nature of a petition or address, such as that published by the Committee of Niagara, to *dispose* judgment: it leaves judgment to the legal and authorised tribunal, and humbly appeals to this tribunal in its prayer. On the same principle that the law admits of the advancement of strong assertions, in bills of indictment, it admits of them in a petition, or address, *to the proper authority*, nay, it has been admitted that even the publication of false and scandalous matter in a petition is not criminal: it must only not appear to be printed and published with a malicious intention.—This was determined so long back as the time of King Charles the 2d, in the case of *Lake versus King*. Lake was a man of excellent character, although King charged him in a petition to a Committee of Parliament with many great and horrible abuses in his office, such as extortion, oppression, &c. &c.

Saunders, in his Reports says, of this case, “*it was agreed, that the exhibiting of the petition to the committee of parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power, to examine, whether it be true or false.*” He further reports, that “*a member of parliament, said at the bar, that when it was a question in the House of Commons, whether it should be allowed to print and deliver copies of petitions and cases to members of parliament, it was resolved in the affirmative that it should be so allowed. And after this case had depended twelve terms, judgment was given for the defendant by HALE, chief justice.*”—Hawkins, in his pleas of the Crown, says, “*It hath been resolved, that no false or scandalous matter contained in a petition to a committee of parliament, or any other proceeding in a regular course of justice, will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecutions, in respect of their applications to a court of justice. And the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavoring to make themselves their own judges, and to oblige them to refer the decision of their grievances to those whom the law has appointed to determine them.*”

The same respectable author again says, “*that no writing whatsoever is to be esteemed a libel, unless it reflects upon some particular person; and, it seems that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law.*”

Gentlemen, a notorious case of this kind was lately tried in London, against Hone. This man published, about eighteen months

ago, a number of pamphlets, one of which appeared prophane in the extreme, containing ludicrous parodies on the apostles creed, Lord's prayer, &c. I, myself, called at Mr. Hone's shop, and expressed my regret that he should publish such things, tending only to hurt the feelings of religious people. He replied that he did it merely to vex the ministers of state; and he has since been acquitted. The maxims of England scarcely set any bounds to abusive language against ministers: nor does the licence seem to do the least harm.

So far from its being the intention of the Representatives of Niagara District to publish any thing false and scandalous, as it appears has been allowed with impunity, under circumstances far less imposing, and by persons of no comparative weight, they were particularly scrupulous that nothing should appear in their Address but what could positively be proved true; and on the 5th of May, when their Committee met to review and minutely examine every word of the address, the same rule was most scrupulously observed. So anxious indeed was the Committee to be free of all bias in their judgment, that I was requested to withdraw till sentence after sentence was weighed and approved of. This, Gentlemen, is important, not only as it proves that care was taken as to the truth; but the independence of the Committee, as to my directing or swaying their proceedings.—It is so important, that, with the leave of the Court, I shall again examine witnesses who were present.

MR. CLARK.

*When you were at St. Catherine's meeting on the 4th of May, was it not particularly questioned whether what was set forth in the Address, could be proved to be true?—*IT WAS.

*If any one allegation contained in the Address had been considered untrue, would you, or any one present in your opinion, have given his assent to its being published?—*NO. I THINK NOT.

*When you attended the Committee on the 5th May, was not the same principle acted upon?—*IT WAS.

*Did not the Committee review every sentence and word to ascertain the propriety of publishing the same?—*THEY DID.

*Did not the Committee require that I should retire, so as not to influence any person as to the wording of this Address?—*THEY DID.

*Did I not retire till every sentence was reviewed & considered?—*YES.

*Did I, or any one, controul the opinions or decisions as to the Address, either in the meeting of the 4th or 5th of May?—*NO.

Gentlemen, never did men act with greater caution, nor with better intentions, than they who authorised the publication of this pamphlet; and the cases in law above quoted, shew that they have acted quite within the bounds of law and practice in England. You may think that I am overburdening you with evidence, and insisting on many points which are clear. Perhaps all of you are already made up in your opinions, of the perfect absurdity, both of my being guilty, and of all these respectable people being guilty; but I do entreat

of you, still to listen patiently, till a subject so very important to you, and all of us, be completely understood : it will strengthen the law and practice of other times ; and posterity should have no doubt as to any particular. It may be said, perhaps, by my accusers that an Address to the Prince or Parliament only becomes one when presented. This you will clearly see to be a mere quibble ; and only gives occasion the more to eulogize the conduct of the Representatives of Niagara, in publishing their proposed address. They themselves had made up their minds as to the propriety of all which it contained ; but in the spirit of candour, and that all might give their opinion, they submitted it for a month to public inspection, for amendment and alteration. Some people did express their opinions on the subject, but at the month's end it was again taken into consideration, at a meeting held at St. Catharines. It then appeared that there was no sufficient reason given by any one for alteration ; and it was finally adopted by the Representatives, and copies sent into all the Townships for signatures, which were very numerous. It must be evident to all of you, that without the right of printing such a petition, the will of the people of this widely extended Province never could be ascertained ; and the boasted right of petitioning the Throne might as well not exist. To deprive the people of submitting a petition to general inspection, would indeed be taking away their bond of union ; and no doubt those in power most fervently wish such a bond to be taken away, that they may, here, at a distance from the supreme authority, riot in their selfish and arbitrary acts, without check or dread. Mr. Pitt's gagging bills, as they were called, went to this. They put an end to all concert and correspondence among the people — they loosened the bundle of rods and made the whole easily broken and destroyed. A Borough-mongering Parliament, thus weakened the people at home ; but surely you, the people of Upper Canada, will not assist in destroying yourselves, while you are really free ; nor would the Commons house of assembly, really and fairly chosen by the people of this Province, ever countenance statutes to introduce such tyranny. If the people of England highly appreciate their free right of petitioning, and of joining collectively to give respectability and force to their prayers, you may well conceive how much more necessary such free exercise is for you in this distant Colony, where ministers are continually passing the limits of discretion. You cannot agree upon any one point without publishing :—you cannot combine your wills without going to some expence, and having a correspondence throughout, to consult as to ends in view, and to collect money to carry all into effect.

Gentlemen, the readers of history know too well what has been the fate of Provinces in past times. Their inhabitants have uniformly been made the sport of oppression : they have uniformly been worse dealt with than those dwelling nearer to the seat of power ; but, Gentlemen, now that printing is invented,—now that mankind are getting as wise as their rulers, this evil may surely and easily be got

user; and it will be for those of this Province, I trust, to make good the point:—it will be for their honor to prove, that, distance from the Throne need not cool the rays of royal favour, nor loosen the bonds of a nation's greatness. It will be worthy of the British people to prove, that, the world can be girt by one uniform zone of liberty—of kindred rights, and kindred affections.

I have flatly denied that the address contains libel, and I have quoted the practice of the law, absolutely proving that there is no such thing as libel without malicious intention, particularly in a Petition, which does the opposite of setting up presumptuous judgment—which asserts, only that the truth of the assertion may be proved at the proper place of appeal—only at the tribunal competent for determining as to it.

The Petition of the Niagara Committee is now ordered to be sent home, actually to be presented to the Prince:—it is now on the way.—Pray what would be thought if I was lying in jail, while a Commission from the Prince, sent out to Upper Canada, should find all the allegations of the Address to be "*as true as words of holy writ.*"—Only think, Gentlemen, of such a situation of affairs—such incongruity—such madness, such injustice—that I should be suffering the pains of imprisonment while the whole Province was exulting in the general result produced by the constitutional and manly appeal to the Throne,—that I was in prison for advising the measures which had delivered this Province from being preyed upon by sharks, and held back in its prosperity. In such an event, where would my accusers and judges hide their heads? Would the gratification of personal spite?—would any promise or reward which had been offered or given, for the betrayal of trust, then avail?—would my enemies, and those of public liberty, then rejoice in their victory?—would this reflection even leave them at their dying hour, that they had stood in the way of reason, of justice, and of truth?—would they ever again feel satisfaction as men, when the fingers of all were pointed against them?—Gentlemen, did it never strike you that if my accusers were really innocent, they themselves would be anxious that enquiry should be made. All men of honor demand trial when imputation is thrown on their characters, and resistance to trial is the surest indication of guilty dread. None but villains and cowards fly from investigation.—Thousands of the people of this Province are agreed that much is wrong, & wish enquiry to be made. Enquiry has been repeatedly moved for in Parliament. A few people in York, the supposed delinquents, get alarmed when EFFECTIVE STEPS are taken to have the general will gratified, and the truth established. As a bar against their own conviction, they have recourse to judicial trial to intimidate and delay enquiry,—to throw odium on their accusers, and arrest the course of judgment. Never, Gentlemen, was such unblushing effrontery—never was it so clear that the allegations of the Niagara Address were true; till legal process went forth to put it down.

Gentlemen, this address has now been published and sold all over

the Province for three months, and before it was charged with libel, sent it home for reprinting and desired copies to be presented to Lord Bathurst and others. Does any one suppose that Lord Bathurst would take any unfair steps against ministers here, because he read a pamphlet in London, setting forth assertions against their conduct? certainly not: even were a Commission to go home to accuse the Ministers of Upper Canada, they would not be condemned till enquiry was made. The mere publication of an assertion is nothing, especially against people in power, or against Government. The Solicitor General has spoken as if it was a greater crime to libel Government than it is to libel a private individual. I say quite the reverse: libel can only injure the weak, and, the weaker the subject of libel is, the more severe ought the punishment to be. Government ought to be above the influence of libel:—if it cannot stand the pelting of words, how can we expect it to protect us against cannon balls?—Has the publication of the Niagara Petition here excited the slightest disturbance? has it produced the bad consequences blazoned forth in the indictment? has it brought the Government of our Lord the King into great—“*hatred, contempt, and, scandal with all his liege Subjects in this Province?*” You know that it has done no such thing—now that the matter has been fully put to the test such charges are ridiculous in the extreme.

It puts us in mind of a story told by Addison, in the Spectator.—An honest Frenchman travelling to Paris, run short of cash, and could not get on. As an expedient, he tied up three small parcels, filled with brick dust, and marked upon them, respectively,—*poison for the King—poison for the Queen—poison for the Dauphin*. These parcels he left exposed in his chamber, and they were no sooner discovered than he was seized, on the suspicion of treasonable intentions, and sent off to Paris, in high style, as a state prisoner. Arrived at his journey's end, he desired the King might examine the parcels to satisfy himself that they contained nothing but brick dust; and to be sure, the moment this was proved, the King, Queen and Dauphin had a hearty laugh at the facetious and ingenious contrivance to get speedily to town.—Let no one try such a trick in Upper Canada, for after there is proof of innocence, still crime will be the order of the day, and brick dust will be poison. The Committees of Niagara saw as little harm in their publishing the Address as the Frenchman did in his contrivance, and their conduct was still more innocent, for with them there was no trick. The result at this moment is as harmless as brick dust—not a single soul has been injured by it; and every man remains as loyal as before: one consequence is most evident:—the people in little York are alarmed, and so they may well be. My arrest for publishing the pamphlet made not the slightest impression among the people of the Province as to the act of publishing being crime; and the very man on whose oath I have been arraigned continues to sell the pamphlets complained of. As to this I have a witness if you require evidence; but it is sufficiently notorious.

It was thought that no Grand Jury could find a bill in this case, such was the feeling of the absurdity of accusation. That they have done so is not to be wondered at. They had no evidence on my part, and never could imagine that the Attorney General, could insist on making strong assertions as to *bad intentions*, without something to shew in proof. They did not think he could be vindictive, or partial, or trifling. On the boldness of assertion only, and out of respect to his professional character, must they have thought the question worthy of being put to proof. *You* have now proof on my side, I believe, as strong and clear as ever was produced in a Court of justice : on the part of my accuser *you* have none, but of the single act of publishing, in which I am guilty, only as thousands are guilty—as to all else *you* have none, for “ *assertion is not proof, nor accusation crime,*”

Gentlemen, I asked for a copy of the indictment, and it was refused. The practice of the Court, it seems, is to give or withhold this at pleasure till after the trial. Why should this power be arrogated? Is it fair and reasonable? no;—What says the highest authority concerning the practice of Lawyers? what do we read in the scriptures concerning them? *They have taken away the key of knowledge.*” Nothing can better exemplify this truth of old standing and sacred authority, than the denial to give a person arraigned, a copy of his indictment. The spirit and intention of the law is justice; and the law allows that if any single innuendo in an indictment can be proved not to be the true meaning of the publication charged, the whole accusation falls to the ground. What signifies this liberality to the accused if there is not a fair and sufficient opportunity granted him to investigate into the truth of an indictment—if it merely rests with the caprice of an accuser to give, or not, a copy of an indictment, for due inspection? I do not make these remarks on my own account. On this occasion I decline criticism of the indictment against me. It may, very possibly, contain some *slaw* or false assertion which could be caught hold of; but, I wish to take no mean advantage,—I wish it not to be said that we were afraid of trying the main question of *right*, to assert facts, in a Petition, and take legal measures to redress public evils. I wish to escape by no loop hole, while the door of justice cannot be shut without the grossest perversion of reason and conscience; I wish, Gentlemen, the most valuable privilege of British subjects confirmed by a verdict of the people. As to withholding the indictment, it must appear to every one illiberal; and I only notice it to shew how the practice of our Court often run counter to spirit of our laws. The law never could insult us with giving the power of setting aside every item of accusation, if one little innuendo proves incorrect, and mean to deny us fair opportunity of discovering whether there is any thing incorrect. We may always rely confidently in our laws—against arbitrary rules and practices, we cannot be too much upon our guard.

When arraigned before this Court, I took opportunity to express

— opinion as to a practice in this country of summoning jurors only from the Town of Kingston, instead of from the roll of the whole District. I did so with the sole view of protesting against a practice, not consistent with the spirit of our constitution ; and four days reflection has not convinced me that I was wrong, even though the learned judge said so. Let the principle be given up that jurors ought impartially to be taken out of the whole country : let the practice of taking them out of a small part of it, go unobserved or unobjectioned to, and, bye and bye, another practice may be established of taking them from a smaller and smaller part, till the limits of choice contain but twelve men, to be perpetual arbitrators in questions of law. Strange to say, because I remarked upon this improper practice, for the general protection of constitutional appointment,—for your own benefit, Gentlemen, I was no sooner out of court, than it was reported, from every quarter, that the individuals, to be empanelled for my trial, had taken offence ; and, would thereby be prejudiced against me. I heard also that malicious people were busy working up these prejudices to my disadvantage. You, Gentlemen, know best whether these things are true ; but the chance of justice here is little indeed if it hinges upon such trifles and mistakes. Thinking it impossible, I had no patience in hearing the reports ; and, at this moment I cannot suppose that my liberty, as well as that of all the people of this Province, is in the hands of any but honest men—nay, I hope gentlemen, you are not merely honest, but absolutely firm in your honesty. I am no flatterer, Gentlemen ; if I have gained the good opinion of any one, in this Province, it has not been by flattery ; for, I detest it. In no way do I wish to move the passions. Reason and justice are what I require,—not for myself so much, as for you and for all.—When I said that it could not be strictly admitted that I was now to be tried by God and my Country, I never meant to draw any line of distinction between people of the country and people of the Town. I meant that the principle of being tried by my country was vitiated, when only part of the country was searched for Jurors. I never intended to object to you, individually, as townsmen ;—no more than I wished to have a special jury, when I said, that, this unexpected and extraordinary early period at which the assizes were fixed, put it out of my power to have a special jury, if I had so desired. I was assured that the assizes would not be held till the first of September ; and, behold I had only time to pack up my bundle at Queens- ton, and be off for this place, after I saw the appointment advertised in the Upper Canada Gazette. I considered the notice too short as well as the season of wheat harvest improper, and by the expression of my opinion, I had hope of inducing better arrangement in future.

At the last Niagara assizes I was shocked with seeing a poor woman condemned to death without having a single word pled in defence. I published my remarks on the subject and the woman's counsel and other lawyers at Niagara expressed their satisfaction that I had done so—saying that the Judges of the Province had insisted on

a rule, which they thought arbitrary and improper, of not allowing counsel to plead in some cases. Gentlemen, arbitrary rules may be laid down in our courts; but a spirited people will struggle to resist them; and, it is by the declaration of opinion only, that such resistance can be made.—The learned Judge said, on my arraignment, from the Bench, that I had good abilities *if* I put them to good use. In my own defence, and in due respect for the judge, I now say, that, I think he was wrong in thus speaking: it was in some measure prejudging my cause, and creating a prejudice against me. I am more conscious of having done right, than His Lordship can be capable of judging of my abilities.

The rules of courts of law, Gentlemen, are seldom founded on parliamentary statutes. They are often the capricious and selfish decrees of men greedy of power; and however unreasonable—however baseless they may be, it is often difficult to get them changed for better. I could mention many instances where such rules now exist, completely subversive of justice. I shall particularize one which was happily overturned, because it will be in point to direct you in your present duty. It had been long insisted on that jurors should give their verdict, in cases of libel *only* as to the fact of publishing; and as to the law, they were governed by the judge. The present Lord Erskine gained immortal honor by overturning this rule, by the bold and persevering expression of his opinion; and, as it was of infinite consequence to the liberty of the press, Mr. Fox, and he, introduced a bill into Parliament, and had it enacted, that in cases of libel, jurors should be free to decide for themselves upon the whole matter in issue—both fact and law.†

It now only remains to be wondered at, how a free people could be so long subjected to the contrary of this, now confirmed, right.—Whoever will reflect on the nature of libel, will perceive that it is for infinitely varied by circumstances, that no positive rule could possibly determine the limits of judgment; and to leave this to the dictum of the bench, would be a dangerous sacrifice of liberty. It is now therefore the established and undeniable right of jurors, impanelled for the trial of libel, to give the verdict at their own discretion on the whole matter before them. The Judge may advise, but he cannot dictate as to the law. My fate, then, Gentlemen, and that of this great question, which concerns the invaluable right of free petitioning, rests entirely with yourselves; and as you decide, God and your consciences will decide for your future peace. Think not, for a moment, that this is a common case, whoever may tell you so, to throw you from your guard,—think not that it only concerns me. A verdict of acquittal will not only clear me of unwarrantable scandal and reproach:—it will establish for yourselves and fellow subjects, your most valuable constitutional privilege, now most wantonly and audaciously assailed. A verdict of condemnation on the contrary, must cast a stain on thousands; and as I said before, should you commit me to duress, your country's reputation and your country's freedom must also be imprisoned.

Extracted from the Kingston Gazette, August 18, 1818.

MR. GOURLAY'S TRIAL.

On Saturday, the 15th inst. the case of the *King v. Robert Gourlay*, for publishing a seditious Libel, was tried before the Court of Assizes; now sitting in this Town. The publication charged as libellous was the Niagara Petition to the Prince Regent. It being a cause of great expectation, the Court House was thronged beyond what was ever known on any former occasion. The solicitor general opened the prosecution, and produced Stephen Miles, Printer, as a witness, to prove the publication of the pamphlet, which not being precisely proved, was admitted by the defendant.—Mr. Gourlay entered into a very full defence, which, we understand, will probably be published. He called John Clark, Esq. of Niagara, to prove his character and conduct in that District, & that the Petition charged to be a libel, although written by the defendant, was examined, approved and published by a Committee of the Representatives of that District, with their names annexed to the publication. The defendant also called James Wilkie, Esq. Ordnance store-keeper, of Kingston, who testified that, from his earliest years, he had been well acquainted with Mr. Gourlay, having been brought up in the same neighbourhood, and served under his command as a commandant of volunteers in Essexshire; also that Mr. Gourlay's character in his native country was fair and irreproachable, and his family and connections, of the first respectability. The solicitor General replied at great length. Judge Campbell, who had exercised much patience and candour during the arguments, delivered a learned and able charge to the Jury, who withdrew, and in about half an hour returned into Court, with a verdict of *NOT GUILTY*. As soon as the verdict was delivered, an instantaneous and general burst of applause, which continued for some minutes, marked the state of the public feeling on this interesting subject.

Thus the verdict of a Jury, after a full and fair discussion in Court, has established the right of uniting in a Petition to the Prince Regent, and using the requisite means of forming such union; and has refuted the most extraordinary charge, that a large proportion of the loyal inhabitants of this Province have been guilty of a seditious Libel, by the circulating and adopting the Petition in question.

On Monday, the 17th inst. a number of Gentlemen gave Mr. Gourlay a Dinner at Moore's Coffee House. At seven o'clock, the company, consisting of between 30 and 40, sat down to a table furnished in Mr. Moore's best style. Mr. T. Dalton presided, assisted by Mr. S. Johns, as vice-president. After the cloth was removed,

Mr. Dalton addressed himself to the company nearly in these words.

GENTLEMEN, FELLOW COUNTRYMEN.

"It is peculiarly gratifying to me (as I am sure it is to every one present) to witness the universal joy that has been diffused by the firmness and integrity of a Canadian Jury, in protecting from the rude hand of spoilers, the best, the dearest, the hallowed right of every British subject; it is a sure pledge that English Liberty will be perpetuated in Upper Canada. We are met to express to each other, in social harmony, our unbounded satisfaction at the happy escape of Mr. Gourlay from the merciless fangs of low minded pride, bolstered and propped by a "little brief authority."—This event is of such immense importance to every man in the country who has any, the least, regard for the inestimable blessings of our glorious Constitution, that it would indeed be wonderful did not your hearts this day overflow with mirth and hilarity."

The following toasts were given from the Chair, and drank with shouts of applause. Between each toast an appropriate song was called for, and sung with true patriotic feeling, and mirthful glee.

The King!

His Royal Highness the Prince Regent, May his ears be opened to the Petitions of his loyal subjects, and his hands ready to redress their wrongs.

The Duke of Richmond, whose character in England and Ireland affords a happy preface of his government in this country.

His Excellency Sir Peregrine Maitland, Lieutenant Governor of this Province. May his administration justify the high expectations formed of it, by promoting an Enquiry into the state of the Province.

The Constitutional right of Petitioning, Disappointment and disgrace to those who would stifle it by criminal prosecutions.

Robert Gourlay, whose honorable acquittal we commemorate. May his slanderers, assailants, and prosecutors, blush for their abuse of him.

Mr. Gourlay rose, and addressed the company as follows :

GENTLEMEN,

"I am a poor public speaker, yet, were I really a good one, no language could express my feelings on this occasion. As it concerns myself, individually, I sincerely thank you for the honor done me: no traveller, "pelted by the pitiless storm," could ever have half the satisfaction from welcome to a hospitable retreat, as I now experience in your company;—but, Gentlemen, when I consider, that, with my deliverance, is connected that of the freedom of this country, and the most valuable public right of British subjects, I am most truly proud

of this occasion—I sympathize with you as fellow subjects—I rejoice with you as men ; and all personal suffering and abuse sinks into nothing :—under such circumstances, charity to my enemies becomes an easy virtue.

Gentlemen, whatever may have been thought, or whatever may have been said, I declare, upon my honor, that no expression ever dropped from my pen tainted with malice ; and in no instance have I been the first to attack. An enthusiastic regard for the cause which I espoused, while I was conscious of the best intentions, and had my eye fixed on the mighty good which might result, has often made me severe with those who opposed it,—perhaps imprudently severe, for, it is often the best policy to answer mean and base reflections with silence and contempt.—Gentlemen, I confess to you, that in one or two instances I have erred ; but error is human. Now, that the great objects in view are so well established, I shall be most happy to have done with petty warfare and party bickering : as soon as the ends of justice and the law are sufficiently satisfied, I shall be most ready and willing to exchange forgiveness with my enemies in every quarter.”

The Integrity of Judges and the Independence of Juries, equally entitled to respect !

The Liberty of the Press, the safeguard of civil liberty !

Impartiality, the first duty of a Magistrate, Reformation or removal from office to those who sacrifice it to personal or party feelings !

Our worthy visitors from other Districts

The following volunteers were given from various parts of the table.

A straight jacket, instead of a silk gown, for the advocate of the new doctrine, that the inhabitants of this Province may unite in a general Petition, but must not publicly propose or communicate a Petition to each other for the purpose of forming such union, on pain of prosecution for it as a Libel, whether true or false !

May the rights and privileges of a virtuous people ever be supported !

May those who have taken an active part in the measures adopted by the friends to enquiry never regret what they have done !

The finger of scorn, pointed at those, who, for want of rational arguments, attack their opponents, in the streets, with clubs and whips, and fists, and teeth, and nails !

The immortal Wellington, the glory of Great Britain, the pride of Ireland, and the admiration of the world !

May the matter contained in the pamphlet denounced as noxious by the Solicitor General, prove an antidote to corruption !

The evening was spent in social hilarity ; and before the company separated, this sentiment was drank ; “ Happy to meet, happy to part and happy to meet again.”

† This act was passed, the year after the constitution was given to this Province. The right of Juries, therefore, is here, still, only an arbitrary right. It might be well, therefore, to have it made absolute by a provincial statute.