

THE SENTINEL.

AND NEW BRUNSWICK GENERAL ADVERTISER.

VOL. III.

FREDERICTON, SATURDAY, FEBRUARY 1, 1840.

No. 5.

THE SENTINEL.

IS PUBLISHED EVERY SATURDAY MORNING

By Edmund Ward.

Office—Phoenix or Tank House—Fredericton

AND CONTAINS,

The Decisions of the Executive, and Notices of

Sales of Crown Lands.

During the sitting of the Legislature THE SENTINEL is published twice each week, and in it are inserted

The Debates of the House of Assembly.

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NOVA SCOTIA.

TRIAL FOR MURDER.

In the Supreme Court, 20th January 1840.

The Queen vs. Smith Clarke and John Elixon.

The case was opened by the Attorney General, in an able speech, in which he briefly narrated the facts, and then explained the law on the subject. He then proceeded to call the witnesses for the prosecution whose testimony we lay before our readers nearly at length.

William Spicer examined by the Solicitor General.—I am a soldier of the 23d Fusiliers; I was acquainted with Bossom; I saw him last on the morning of the 8th August, between 6 and 7 o'clock; he was coming from the north, as he approached the barracks, he went on the opposite side of the street; I saw Clarke on that occasion; I heard no words passing between them; my notice was first attracted by seeing Bossom come along with his hands in his pockets; he was on Clarke's side of the street; he went up to Clarke and Elixon's shop door; he first passed the door, and then returned, I did not hear anything said between Clarke and Bossom; I was seven or 8 yards to the south of the shop, did not see anything further, until I saw Bossom stagger into the street off the path, he then stood still, and Clarke discharged a pistol at him; he held the pistol in his right hand, I cannot say if he had another; I did not see one. The ball entered Bossom's right eye, and he fell. The distance between them when he fell, was 7 or 8 yards; Clarke was taken to the North Barrack guard room; can't say if Bossom was alive, but thought not; the body was taken away by his father.

Cross-examined by Mr. Uniacke.—I was on duty on the morning of the 8th, not as sentinel, I did not see Bossom go to Clarke's window, as I was facing Pallister's; saw the pistol fired, but did not hear words or threats of any kind. Bossom was not in the shop, I saw him go to the door, he did not enter, but attempted to do so.—I think Bossom was shoved from the door, he did not attempt to approach it again, immediately after, the pistol was fired, and deceased fell; I saw nothing in Clarke's hand, he stood in his door; when Bossom went to the door, it was open; I did not see Clarke change the pistols; when I entered the shop, I was surprised to see two pistols there; when first I saw the above, I thought it was a joke or a row; did not see Bossom run at Clarke, there was not time for it. To satisfy myself I asked Clarke if he fired the pistol, but was sure before; when I saw the pistols, there was a bruised cap on the one not discharged; when a pistol is discharged, the cap is destroyed.

James M'Leod, examined by the Solicitor General, I am a soldier of the 8th; I know Bossom, I saw him last alive on the 8th August, about 20 minutes past six in the morning. He was coming from Dutch Town. He was walking smart towards the south, with his hands in his pockets. As he drew near Clarke's he left the middle of the street, and took the side path. As Bossom passed Clarke's south window, I heard a tap, Bossom faced the window and stood there a few seconds, he then returned and went to the door, I heard words pass and Bossom went backwards from the door, I then saw Clarke at the door with two pistols in his hand, in a threatening posture. He said, "I will shoot you," Bossom said, "shoot puppy," and some other words. "Clarke then said, "I will shoot you, you bugger," and snapped one pistol which did not go off; Bossom then retired a few paces, and Clarke fired a second pistol and Bossom fell, I ordered the sentry to take Clarke into custody, as I saw the man was killed. Bossom was alive an hour after, but was insensible, I saw him at half past ten, when he was dead; I cannot say if the tap on the window was on the outside or inside, but think it was on the inside. I could not see into the window; Bossom's hands were in his pockets at the time of the tap, he then came to the door, put his foot upon the threshold, and his hands upon the door post, words were spoken, but I cannot say by whom;

Bossom paused, both his hands I think were in his pockets, I am sure one was. When Clarke first appeared he said, "I'll fight you, I'll shoot you." Bossom did not say anything before he snapped the first pistol, the words and the presenting the pistol were simultaneous. After the first pistol Bossom went back two or three paces, and said, "shoot puppy." Clarke replied, what I have said before he was changing the pistols while he spoke, and immediately after fired, both were aimed at Bossom, the first at about five yards distance, at the second seven or eight; Bossom did not speak after he was shot, but fell instantly. Clarke stood a minute, and then went into his shop, he spoke, but I did not hear what he said. I saw the pistols in Spicer's hands, I knew Clarke by sight, knew Bossom for nine or ten years.

Cross-examined by Mr. Uniacke.—It was about 20 minutes past six, when I saw Bossom, he was apparently coming from Dutch Town, when near the shop, he took the side path. The tap at the window first took my notice, cannot say it was from the inside; Bossom was walking quick, after he passed the shop, he turned and faced the window, and then went back to the door; I heard high words, but can't say what they were, I was more than half way across the street; Bossom retreated from the door to the edge of the side path with his face to the door, I saw Clarke inside of the door, with pistols in his hands; the pistol was snapped at Bossom as he went from the door, both were snapped with great rapidity, although they were two distinct actions; I thought it was fun, as I saw them playing tricks continually. Bossom was a smart man, and well proportioned, though not athletic. Cannot say if he dared Clarke to fight, Clarke never left the door; Bossom never attempted to return; after he left the door, he fell, with his head southwardly and his feet to the door; he fell on his back; I did not hear Bossom went armed. I was a color sergeant at the time of my examination at the coroner's inquest.

Morris Grady examined by Solicitor General.—I was on duty on the 8th August at North Barrack gate, saw Bossom first a little below Pattersons, he came on the foot-path to Clarke's door, and said, "Come out, you pair of puppies, and fight." Clarke was inside the counter, and said, "Bossom, go away;" there was then a tap on the window, I cannot say whether on the inside or outside, Bossom then came to the door, and Clarke appeared with pistols, Bossom said, "Are you going to shoot me?" Clarke replied, "Yes," and snapped a pistol at him. He then appeared as if he intended to go in, when Bossom, staggering back, said, "You puppy, you could not do it." Clarke replied, "Damn you, I will shoot you." When Clarke came to the door, Bossom did not retreat, but said, "are you going to shoot me." Between the snapping of the pistols there was very little time. Bossom's left hand was in his pocket, the right one was out; I saw the body after he fell, he was not dead, he died in 3 or 4 hours. After the wound, he tried to raise his right hand—knew Clarke, he is the prisoner at the bar.

Cross examined by Mr. Uniacke.—I was close to the gate when it occurred, the whole width of the street was between us, I saw Clarke writing in his shop; Bossom was the first aggressor, in the provocation came from him. After Clarke told Bossom to go away, he remained at his desk until the tap at the window; Bossom went to the door and stood there, and appeared to dare Clarke to come out, Clarke did not shove Bossom from the door, Bossom did not appear in a passion, after snapping the first pistol Clarke was retiring, when he was provoked to return, Clarke was not in passion until first pistol was fired; Clarke after shooting Bossom, said, "There, you bugger, there's fighting for you," he had laid the pistols on the table, Sergeant McClerk was near me at the time, I was a corporal at the time of the examination before the coroner.

Daniel Murphy examined by the Solicitor General.—I was on duty at the North Barrack gate, as sentry, saw Bossom coming from the north, he was in the middle of the street, and did not leave it until near Clarke's door, when he took the side-path, he passed the door and went to the window, I heard a tap which I believe was on the outside, after the tap Bossom came in front of the door, where he challenged Clarke to fight, Clarke said he would fight him, and went inside and brought the pistols, he had one in each hand, Bossom then went from the door, and Clarke snapped a pistol at him, which did not go off, he then laid it on the counter and took up a second; Bossom said, "You have not game to shoot me;" Bossom retreated a pace or two, and shook his hand at Clarke; the second pistol was fired immediately after; the ball entered the right eye, and Bossom fell; I took Clarke prisoner by command of the sergeant, he said he was guilty, and went quietly; I saw the body at the inquest; there was not time to load the pistols, after the time Bossom first appeared and they were fired.

Cross examined by Mr. Uniacke.—Bossom looked in as he passed Clarke's door, he went to the window and tapped at it but said nothing, he then went to the door, where he stood and challenged Clarke to come out—I thought they were playing, as they appeared to be in joke—Clarke said "go away you have no business here"—Bossom dared him to come out, but a few seconds elapsed, between Clarke's putting down the first pistol, and his coming with the second, Bossom then dared Clarke to shoot him.

Cross examined by Mr. Smith, for Elixon.—Bossom came to the window, Clarke did not speak to him—I cannot say Clarke did not load the pistols then, but I think he had not time.

Charles Gibbs, examined by the Solicitor General, I am going on fourteen years of age, I attended the shop of Clarke and Elixon, I remember the first of August, was in the shop at six o'clock—never saw Bossom before on that morning, he came to the window and knocked, it was the south window—Mr. Clarke was in the shop at the desk near the window, his left side to it, when the tap was given, I was behind the counter, opposite the door, did not see Bossom pass the door—after the tap he called Mr. Clarke a puppy, and asked him what he was writing, Clarke then ran into his bedroom and brought one or two pistols, he was absent but a minute or two, about long enough to get the pistols. He went to the door at once and said he would fix him—I heard the pistol go off, and then saw Bossom lying in the street about four yards from the door. Clarke did not go out of the door, he snapped one pistol which did not go off, he then pulled a second one which went off—his feet were towards the barracks—had not seen the pistols since Clarke bought them about three weeks before, I left the shop about nine

heard them go off, and do not know who was in the yard at the time, the Drum Major came in and said he had been firing for a bottle of ale, Clarke was behind the counter, I do not know where Elixon was.

Cross-examined by Mr. Uniacke; I was shop-boy—I slept at home. Bossom had on a white hunting coat, he appeared very angry, Clarke appeared angry also; Bossom dared Clarke to shoot him; Clarke went to the door, did not hear him say to Bossom to go away, I did not see more than one pistol, I will swear the pistol snapped, all was the work of a moment. Bossom had either been drinking, or was in a furious passion. I cannot say if Bossom was dead, as I did not go out; never heard the pistols fired but the one;—the figure on the fence was not that of a man, but a bull's eye.

Thomas Sterling, M. D. I examined Bossom on the 8th August, when I saw him he was alive, he continued so about three hours, he had a wound thro' his right eye, from a ball having passed thro' it.—The wound was a mortal one.

George Lamburn, I belong to the 8th Regt. I was near North Barrack gate on the 8th Aug. saw Bossom come along, when near Clarke's he went on the side-path to his window, took his hand from his coat and tapped on the window—he said something I did not hear, nor did I hear the answer from within. Bossom then went from the window to the door; Clarke came to the door with pistols, he snapped one, but it did not go off, Bossom staggered off a few paces and said, he could not do it, Clarke then fired and he fell; he did not say anything when he snapped the pistol, he had two in his hand; Bossom did not appear to be angry, I thought it only a lark, Bossom died of the wound.

Cross-examined by Mr. Uniacke.—I do not know on what terms Clarke and Bossom were; I did not know either party, I saw Bossom tap on the window. When Bossom went to the door, high words took place, I cannot say he raised his hand, nor can I say I heard him challenge Clarke to fight; I saw no shove by Clarke; it could not have taken place, or I would have seen it; Bossom did not seem excited.

Thomas Brewer, examined by the Solicitor General.—I was in Clarke and Elixon's shop, on the night of the 7th August, at 11 o'clock; early in the evening, old Mr. Bossom requested me to go to his son's shop with him, as he heard there had been a row there; I went, Sam Lawrence went with us; when we went to young Bossom's, his father told him to shut the shop, and come home with him, as his mother was uneasy about him; he shut the shop and we went out, at Kent's corner, young Bossom slipped from my arm and went toward Clarke and Elixon's store; I told his father, and he followed him, we found him by the door, his father called him, and he went away. When I went to Clarke's, I entered the parlour through the passage, on entering the room I saw a sergeant there, some powder was on the table, and I remarked that it was dangerous, I told them I saw a person outside, who appeared to be watching, Clarke then took pistols from the closet and loaded them; the pistols were loaded in my presence. Elixon took up one of them, Clarke said if Bossom came near the door, he should have the contents; Elixon said if he did not do it, he would. The figures in the yard had a form; there were two of them; had often heard Elixon say, if Clarke did not fight Bossom, he would. Being asked whose side I was on, I replied, that I run with the hare and held with the hounds; Elixon said I was Bossom's friend, when I received a blow from Edwards with his fist, on my left ear, which knocked me down; after I was knocked down, I was kicked on either side; Clarke appeared displeased at the way I was used, and checked Elixon for it; ten days before this, Clarke and Elixon took me into the yard, and shewed me a mark on the fence, which they said was Bossom's head; they said they had fine dueling pistols; I had often heard shots, but did not know who fired them; I live three doors off.

Cross examined by Mr. Uniacke.—I know prisoners and Bossom? did not know much of Bossom; would not have gone to Bossom's if I had not been requested; it was a little after ten when they went; shops were open; his father said your mother is uneasy, you had better sleep at home to-night, did not see Bossom at his father's house that night. When I left Bossom's I went to my own house; afterwards I went out with the dogs as far as the parade, and on my return I went to Clarke's as I heard a noise; I heard it said, "I'll have a shot to night," did not know from whence it came; it was between 11 and 12 when I went to Clarke's, I went thro' the passage door into the parlour, and found sergeant Bannister, Percus, Clarke, Edwards, Elixon, and a servant; did not see a man of the sappers there; never saw Edwards before I brought him to the police office next day, when he told me his name; Clarke and Bannister went out through the passage door; I was in the shop about 5 minutes during the evening, but not after I had been in the parlour. Went to bed about one o'clock; Bannister had his hand to his eye, he had received a blow in it from a two pound weight; I do not think I told Clarke Bossom was at the door, I might have done so; I did not hear a row in the street that night; I did not encourage the loading the pistols, Elixon took up one of them, Clarke had some balls, Edwards had two; there were caps on the table, I cannot say how many; I will not say I did not go the door with Clarke; never conversed on the subject with any body; when shown the target I did not see any shot in it, but saw marks in it; there were two heads marked, they had noses to them. Never said my testimony would hang Clarke and Elixon; do not positively deny that I offered to bet that I would hang Clarke by my testimony.

Cross examined by Mr. Smith, for Elixon.—Cannot tell the quantity of powder on the table; cannot say if there was any when I left; do not know how long I was in the room; Percus remained in the room all the time I was there; the others were going in and out; saw Clarke load the pistols, he took the powder from the table; saw one of the pistols answered to put the ball in it; Clarke had it; did not see it put together. Percus and Bannister were in the room the greater part of the time; Elixon came in as Clarke said he would shoot Bossom if he came near his house; after Clarke loaded the pistols, he went towards the bed with them; do not remember conversing with John Smith, the painter, on the subject; did not say Elixon had told lies of me and I would fix him.

James Bossom, examined by the Solicitor General; I am the father of the deceased; I took charge of his papers an hour and a half after his decease, among them was the paper now produced.

General.—I am a serjeant of the 37th; I was examined before a coroner's inquest; I identified a letter, the one now produced; think it was Elixon's writing; (the letter was read, it was a challenge from Elixon to Bossom, to meet him within four miles of Halifax.)

John H. Pallister, examined by the Solicitor General.—On the evening previous to Bossom's death, I was at Clarke's; Clarke, two servants, Bannister, one of the 8th band, and Elixon were there; Bannister and the two servants went to beat Bossom; Bannister said if I would go, he'd let me see him knock Bossom's teeth down his throat; I afterwards told George Bossom to go and warn his brother.

Cross examined by Mr. Uniacke.—Clarke remained behind and appeared to disapprove of the fighting, and advised Bannister not to go; understood they had quarrelled before; think Clarke was frightened of Bossom; Bossom said he heard Clarke carried pistols, and he would keep a dirk by him; Clarke said he would shoot Bossom; I do not know that he avoided him; I only served him with bread; Bossom told me he had pulled Clarke's nose.

William Percus, examined by the Solicitor General, I was at Clarke's on the night before Bossom was shot; I was at Clarke's before the row; I remained there for some time, and was there when Bannister and Elixon went out and returned; they did not return together; I saw pistols produced after Elixon returned.

Cross examined by Mr. Uniacke.—I went there about a quarter before 9; I went into the back room through the passage; Bannister, Mr. Pallister, and two other men, servants, I believe, were there; Elixon was not there; he afterwards looked in, and Bannister went out with him; a sapper came in, Brewer also came in after Elixon and Bannister had gone out; Brewer mentioned that some person had been at the window; Clarke observed if he had caps he would load his pistols; Brewer was in the shop and has not made a correct statement in this particular. Brewer and Elixon had high words; Brewer did not ask me on which side I was; Clarke was sober; he brought the powder out after Elixon came in; to my knowledge Brewer was not knocked down.

Cross-examined by Mr. Smith, for Elixon.—I was in the room when the pistols were brought out; I saw one bullet in Elixon's hands; I did not see the pistols loaded, although I saw the powder on the table; did not hear Elixon say "If you don't, I will," when I went into the shop, I left Elixon and Brewer there; Clarke and Elixon were handling the pistols together; I did not see the pistols unscrewed, if they had been, I should have seen it; I only saw one cap, Elixon had it, he put it on the pistol, and then took it off; he did not say what he would do with it.

James Walker was called, but did not prove anything.

The prosecution closed here.

Mr. Uniacke requested that the prisoner Elixon might be discharged, as nothing had been proved against him in order that Clarke might have the benefit of his testimony; this the court refused doing, as it was not warranted by law. Mr. Uniacke then, in behalf of Clarke, addressed the jury in a lengthy and ingenious speech, in which, having commented upon the testimony given, on the part of the prosecution, he read several recent cases, in which acts, similar to the present had been held to be manslaughter, and concluded his speech by commenting upon the defence of the prisoner, which consisted of provocations of the highest character.

Mr. Smith addressed the jury for Elixon.—He stated to them that no part of the evidence had gone to show any thing criminal on his (Elixon's) part, and asked the jury for his acquittal.

The following witnesses were then called for the defence.

Joseph Owens.—I am acquainted with the hand-writing of Bossom; I believe the letter produced is his hand-writing. (A letter from Bossom in reply to a challenge from Clarke, couched in very insulting language, and filled with the most opprobrious epithets.) On the evening of the 7th August, I went to Bossom's shop, I heard a row there, and did not go in; I went with Bannister to Clarke and Elixon's; Brewer was there, he was telling Clarke there was somebody skulking under the window.—Clarke then loaded the pistols. If Brewer stated he was not in the shop, he stated what was not true; he spoke to me three times there; he appeared to be exasperating Clarke and Elixon to load the pistols, no threats were used on either side.

Cross examined.—I do not know that sergeant Bannister was at Bossom's that evening; I did not hear Elixon say he had been at Bossom's.

Letter here read from Bossom to Clarke.

John Miggins.—I am a fisherman, from Herring Cove, Brewer offered to bet me the best beaver hat in the town, that Clarke would hang, he said, "the bugger deserves hanging; I'll hang him myself, I am the chiefest evidence." When Brewer denied this to-day, he said what was not true.

Betsy Davis, examined.—I live over Clarke and Elixon's shop; on the evening of the 7th Aug. I heard a great hammering on the shutters about half past eleven; Mr. Clarke got up and opened the window, and told them to go away and not insult him any more. I heard a loud talking the next morning about six o'clock, I did not hear the words.

John Stuart, I live opposite the North Barracks; on the 8th August, I lived next to Clarke and Elixon's, I did not know of any quarrel between Bossom and Clarke.

Sergeant Kenilia, I know the prisoner Clarke, I was present once when Bossom pulled his nose, it was about 3 weeks before Bossom was shot—he pulled his nose violently, and what he had drawn from his nose, he threw in his face, Clarke was then standing at his own door.

Thomas Smith, Thomas Keating, Thomas Watson, James Lightizer, and Thomas Bannister, were called, but did not appear.

Owen O'Donohoe, called to prove that two of Clarke's witnesses had deserted.

Henry Bowes, I am acquainted with the prisoners at the bar, Bossom told me he had pulled Clarke's nose and would pull it again—this was a few days before the death of Bossom.

William Patterson, I live a few doors north of Clarke and Elixon's; on the morning of the 8th of August I was standing outside my own door, the first thing that attracted my attention, was Bossom, crying out "shoot you puppy shoot," I heard the pistol immediately and he fell with the words in his mouth—Clarke is a peaceable man.

David Rugg, I have known Clarke since a boy, he was hasty in his temper but kind hearted. Mr. Uniacke rested his defence here.

Mr. Smith for Elixon, called Charles Gibbs, who proved Elixon's sorrow on the morning in question, J. Leander Starr, Esq. proved the general good character of Clarke, Elixon's defence rested here.

The Attorney General, closed the case on the part of the crown.

The Chief Justice, then charged the Jury in his usually clear and impressive manner, stating to them, that as there was no evidence against Elixon, they should acquit him, but that they must find Clarke guilty of murder. Had Clarke killed Bossom when he pulled his nose, it would have made a difference, for then the passions were in such a state as to deprive a man of his reason, the law steps in and excuses the offence, but the provocation must take place at the time—"I must say that Bossom treated Clarke most shamefully and outrageously—but three days had elapsed since the last provocation proved." The Jury retired for half an hour, and then brought in the following verdict.

Elixon, NOT GUILTY.

Clarke, GUILTY, with a strong recommendation to MERCY.

Supreme Court, 23d January, 1840.

The Queen vs. Smith D. Clarke.

The prisoner having been brought to the bar, was asked by the Chief Justice, if he could shew any reason why sentence of death should not be passed on him; and being told that, if he had any thing to say, that now was the time to do it. He, in a tremulous but distinct voice, delivered the following address to the Court:—

I can only say that, on the morning I shot Bossom, I had no intention of doing so, I did not expect to see him that morning. Having risen early, I had intended to go over to Sergeant Bannisters, but seeing Bossom coming from the North, I went back to my shop, as I did not wish to meet him. I felt no feeling of malice towards him, and had no idea of injuring him; but abuse, insult and fear made me do it. When Bossom came along that morning, he stopped at my door, and called me puppy, whelp, and challenged me and Elixon to come out and fight him; to this I made no reply; he then went to the window and gave three taps upon it, and called me a puppy, a villain, &c.—I then sprang to the door, whether I went over the counter or not I cannot say, my passion deprived me of reason. I, however, must have gone to my bed room, when I came to the door, I said, Bossom, go away; he was then in the middle of the street, and made a run towards me; what next followed I have no recollection of until I found myself standing in the shop with the pistols in my hands. I then went to the door, and saw Bossom lying in the gutter, and the sentry standing by him. The sentry came to me and said I was his prisoner. I gave myself quietly up to him, and he shortly after gave me in custody to the master of the band of the Inconstant, who placed me in the guard room. Elixon shortly after came over and asked me what I had done, I replied I did not know. The rest, my lord, is known to you. I would further observe that this statement is true, and that the soldiers examined here cannot say it is not, without perjuring themselves.

Mr. Uniacke then made some legal objections to the Grand Jury, which he stated was not properly constituted. These were overruled.

The Chief Justice, in passing sentence, remarked upon the heinousness of the offence, that twelve of his fellow townsmen, after a most careful investigation of the case, had pronounced the prisoner guilty, and although they had recommended him to mercy, the sentence of the law must be pronounced, as it did not lie in the breasts of the Court to consider that recommendation. That it must be referred to other and higher authorities, whose decision he could not anticipate. He hoped that the long period the prisoner had spent in prison, had been devoted to religious purposes. That whether his period of life were short or long; whether he would shortly be hurried from existence, or spared to mix with his fellow men, he hoped that he would not forget the awful lesson he had been taught at the expense of a soul sent unprepared into the presence of its Maker. He concluded by passing the awful sentence of the law.—You, Smith Douglas Clarke, will be sent from hence to the place from whence you came, from thence to the place of execution, where you will be hanged by the neck till you are dead, and may the God, whose mercy is ever extended to the penitent, have mercy on your soul.

SPIRIT OF THE LONDON PRESS.

THE GUILDHALL BANQUET—COURTESY IN THE CITY.

Morning Chronicle.—Indecent exhibitions are promptly checked by the good feeling of the majority. Those who witness such exhibitions, and take no pains to check them, thereby prove either that they derive inward satisfaction from them, or are without the manly feeling which ought to prompt them in such a case. No man, possessed of the least sense of propriety, would hesitate to say that, to invite her Majesty's ministers to a civic festival, in order to insult them, is base and despicable in the extreme. The citizens ought to have considered the insult offered to themselves. If they did not participate in the insult, they disgraced themselves by sitting tamely by while others were behaving disgustingly towards their guests. Would any gentleman in private life, who had invited to his table guests of different political opinions, suffer any of them to be insulted while at his board, without promptly interfering? But where is the difference? The dinner at Guildhall was not a political one, and the ministers, being the guests of the corporation, were entitled to a hospitable reception. That reception they did not meet with, and the corporation of London cannot wipe away the disgrace which that reception attaches to them. Any minister of the crown who hereafter accepts of an invitation to a City entertainment, deserves to be insulted. They who know not what the laws of hospitality demand, or are without the spirit to act on their knowledge, are not entitled to the courtesy implied in the acceptance of an invitation from them.