

# THE GLEANER.

And Northumberland, Kent, Gloucester, and Restigouche Schediasma.

Volume XII.]

Nec araneorum sane textus ideo melior, quia ex se fila gignunt, nec noster vilior quia ex alienis libamus ut apes.

Number 12.

Miramichi, Tuesday Morning, December 1, 1840.

BRITISH AND NORTH AMERICAN  
**ROYAL MAIL**  
STEAM SHIPS of 1200 Tons, and 440  
Horse Power.  
Under Contract with the 'Lords of the Admiralty.'

FOR LIVERPOOL, G. B.  
BRITANNIA, Capt. Henry Woodruff.  
ACADIA, do. Robert Miller,  
CALEDONIA, do. Richard Cleland,  
COLUMBIA, do.

The above Vessels will be despatched from  
Halifax for Liverpool:  
Eighteen Hundred and Forty.  
October 3rd December 3rd  
October 15th 1841.  
November 3rd January 3rd.

Passage, including Provisions, Wine, &c.  
To LIVERPOOL, 25 Sovereigns—\$125.  
To BOSTON, \$20.

These vessels will leave Boston for Halifax  
and Liverpool on the First of each month, and  
on the 16th of the month of October and  
November; and will leave Halifax for Boston  
immediately after their arrival from Liverpool.  
For Passage, apply to  
S. CUNARD & Co.  
Halifax, 2nd November, 1840.

## CARD.

Mr. P. TAYLOR, of Miramichi, having  
appeared before the Board of Examiners, at  
the Royal College of Surgeons, London, and  
being found duly qualified to practise the various  
branches of his profession, was admitted a  
Member of the College on the 24th August,  
1838.

Mr. P. Taylor, Member of the Royal College  
of Surgeons, London, and formerly House  
Surgeon to the Royal Waterloo Infirmary, &c.  
begs leave to inform the Inhabitants of Miramichi  
and its vicinities, that he has now arrived in  
Chatham, and will on Thursday, the 27th  
October, commence practising the various  
branches of his profession, and may be con-  
sulted at his father's, Mr. George Taylor, Sen.,  
or in his consulting Rooms, in the building  
formerly occupied by James H. Peters, Esq.,  
opposite the residence of the Hon. J. Cunard.  
Mr. T. will endeavor to arrange his time so  
that he may be seen at his father's from 9 to  
10, and in his Rooms from 10 to 12 in the  
forenoon.

Mr. Taylor has had extensive opportunities  
of observing diseases of the Eye and Ear, and  
in addition to the usual certificates, submits to  
the inspection of his friends and the public  
generally, the following:—

(Copy),  
I have much pleasure in stating that Mr.  
Peter Taylor, has evinced great zeal in the  
acquisition of professional knowledge, and that  
the extent of his general information, joined  
to the propriety of his conduct, eminently qual-  
ify him to discharge the important duties  
which devolve on a Medical and Surgical  
practitioner.  
R. D. GRAINGER,  
Lecturer on Anatomy & Physiology.  
London, February 27, 1839.

(Copy),  
Wherever Mr P. Taylor commences the  
practice of his Profession, my best wishes will  
attend him, as I am convinced from the  
talent and abilities which he displayed at his  
examination for the Diploma of the College,  
he will deserve all the success he may obtain.  
ASTLEY COOPER,  
Sergeant Surgeon to the Queen.  
London, February, 1839.

## NOTICE.

The Subscribers having entered into Co-  
Partnership, their Business of Attorneys, Soli-  
citors, &c., will in future be conducted under  
the firm of HARDING & JOHNSON, at their  
Offices in Newcastle and Chatham.  
C. A. HARDING,  
J. M. JOHNSON, JUN.  
Miramichi, 20th June, 1840.

## AT PRIVATE SALE.

20 tons of HAY, delivered at the Subscriber  
Barn Also, at his Store.  
150 boxes of Mould Candles, & a few boxes  
do. with Waxed Wicks.  
OLIVE OIL in jars of two gallons each.  
Neats Foot Oil in bottles.  
Liquid Blacking in corks.  
WM. LETSON.  
Chatham, Feb 10th, 1840.

MAGISTRATES' and LAWYERS'  
Blank's for Sale at this Office.

## THE GLEANER.

From the Saint John Chronicle.  
**THE LIBEL CASE.**

The following is the Address of JOHN A.  
STREET, Esq. to the Jury, in the above  
case.

He said that he felt that his learned Friends  
and himself had undertaken a very responsi-  
ble, important, and arduous duty, in conducting  
the Defence on the present Prosecution, not  
only as respects the Defendant but the Public,  
so much so that he regretted so far as he in-  
dividually was concerned, that it had not fallen  
upon the shoulders of some person much more  
capable of doing justice to the cause than him-  
self; but as the lot had fallen to him, he  
should endeavour to discharge his duty to his  
client fearlessly and independently. It was  
important and responsible as regards the De-  
fendant, inasmuch as upon the Verdict of the  
Jury that day depended the liberty and per-  
haps the future prospects of the Defendant.  
It was important as respects the Public inas-  
much as the great bulwark of English Liberty,  
that great censorial power of the people—that  
great check to the improper exercise of power  
on the part of the officials of the country—that  
had done so much both in this and the  
Mother Country towards establishing and up-  
holding the rights of the people, the Liberty of  
the Press was involved. The duty was ardu-  
ous, inasmuch as they were in conducting the  
Defence opposed to all the combined influence  
of the Executive and Legislative powers of the  
country, and was strikingly evinced by the ar-  
ray of legal learning and talent ranged on the  
side of the Prosecution—that was the Attorney  
and Solicitor General, and three Queen's  
Council, all lending their combined efforts in  
support of the Prosecution, all of whom were  
members of the Legislature, and had as his  
learned friend Mr. Hazen had truly stated in  
the opening, taken a part in moving the Ad-  
dress to His Excellency for the Prosecution.  
The Attorney and Solicitor General he believed  
much against their inclination, and although  
they were anxious to retire from the debate,  
like His Honor the Chief Justice, yet so ex-  
cited were the Council they would not allow  
them, and he believed the Council were almost  
inclined to bring the Chief Justice himself from  
Solomon's Porch, to take part in the Address;  
from these circumstances the Jury would readily  
perceive the disadvantages under which  
the Defendant laboured, and it would prob-  
ably bring to their recollection most forcibly  
that beautiful story in the Holy Writ of David  
and Goliath. There was the array of Queen's  
Council already described, dressed off in full  
armour with all the Executive and Legislative  
influence of the Province combined for their  
shield, and the long roll of parchment for their  
sword, opposed to the small and juvenile De-  
fendant, with nothing but a good conscience  
for his sling and a good cause for his pebble,  
and boldly standing forward in battle array to  
meet this mighty Host, and God grant (said  
Mr. Street) that for the Defendant's sake, for  
your sake, and for the Country's sake, that  
the result of the conflict may be similar. This  
prosecution was instituted for a Libel or alleged  
Libel on His Excellency Sir John Harvey, as  
Lieutenant Governor of the Province. He  
would direct the attention of the Jury to certain  
remarks which had fallen from the learned  
Attorney General, to many of them he would  
most cordially subscribe. He had said that  
it was found (as the law stood since the act  
passed relative to the duty of jurors in cases of  
Libel) necessary that the Jury should be satis-  
fied that the publication complained of was of  
a nature likely to produce public mischief, and  
that this should be set forth in the information.  
They must then not only be of opinion that  
the averments were substantially true, but that  
the publication in which they were called upon  
to judge was pernicious in its tendency and  
likely to lead to mischief. The learned gen-  
tleman here referred to certain allegations in  
the information, and remarked that the Crown  
had abandoned the charge against the Defend-  
ant as far as the authorship of the article al-  
luded to, and that he was now before the Court  
as the mere publisher; and that the Jury could  
not find him guilty of the charge of publishing  
a Libel unless they were thoroughly satisfied  
that his intentions were malicious, and that the  
paper he had published would be attended with  
results mischievous to the community and the  
public good of the country. His learned friend  
the Attorney General had stated that the pro-  
ceeding by Information was the most dignified  
and the most correct course for the Crown to  
pursue on this occasion; but he would quote  
authority to show that it was most arbitrary,  
and gave the Crown great advantages which no  
other mode of proceeding would give them—

Formerly a party must apply for leave to file  
information, and the Court would allow oppor-  
tunity for contradicting the charge; or he might  
go before the Grand Jury, and they must pro-  
nounce it a Libel, before he could be called  
upon to answer. It was only in cases where  
government were concerned, that the Attorney  
General was justified in resorting to this arbi-  
trary mode of proceeding; and Blackstone had  
declared that it was only in cases of great mis-  
chief resulting from delay, that that officer  
could resort to prosecutions of this nature. By  
a statute of William and Mary subjects were  
prohibited from filing informations; nor could  
it be done except in cases of misdemeanour, or  
below the dignity of felony. The Attorney  
General under this mode of proceeding could  
call a defendant into court, or drop the pro-  
secution if he thought proper; and the defendant  
must pay all his costs. The learned gen-  
tleman here read several authorities, to show the  
injustice and hardship of proceeding by infor-  
mation, which he said was exemplified in the  
present case; as instead of bringing the defend-  
ant to Fredericton, and his being put to great  
inconvenience, the trial should have taken place  
at St. John. The Jury would observe the text  
is great public mischief; and the Attorney  
General fearful that this would operate on the  
minds of the Jury, had charged the defendant  
in the information with endeavouring to bring  
Sir John Harvey into great contempt and  
hatred. Now it would be necessary to prove,  
before the prosecution could be sustained,—  
first, the publication; secondly, the truth of the  
introductory averments, the innuendos; and  
thirdly, malice on the part of the defendant.  
The learned gentleman here read authorities  
to prove, that malice was essential to consti-  
tute crime—and of this the Jury were the  
judges; who must be satisfied it existed before  
they could convict; and also of the truth of  
the averments.—Then as respects the liberty  
of the press, the Attorney General had said  
much, and must know a great deal; and he  
would call his attention to the law on that  
subject, where the liberty of the press is con-  
strued to mean, the right of every man to re-  
present grievances, when he does so on candid  
and fair grounds; and which cannot be ques-  
tioned. The law which the learned Attorney  
General had read was good,—they only differ-  
ed as to its application. He, Mr. S., viewed  
it as liberty given to animadvert upon public  
measures, so long as a party was not actuated  
by improper motives; and he quoted Starkie  
on Libels to prove that it was right to discuss  
the conduct of government, provided the object  
was not to gratify private revenge or work  
public mischief; for if a person is actuated by  
correct motives, the law says it is no libel.  
And De Lolme, altho' a foreigner, in his ex-  
cellent treatise on the British Constitution,  
says the people have a right to canvass public  
measures, with whom rests the censorial  
power; and to which they are indebted for all  
the liberties they enjoy. And he would ask if  
this is the state of public liberty in England, why  
should it not be enjoyed in this colony, whose  
inhabitants have the same constitutional rights  
and privileges as those in the mother country.  
In calling the attention of the Jury to the lib-  
erty of the Press, he should not follow the ex-  
ample of the Attorney General, who had gone  
as far back as 1521, and had only ventured to  
make one reference to the subject. He pre-  
ferred more modern authorities, and these  
which were more in accordance with public  
sentiment in the present liberal times.—Baron  
Park says, public men are public property.  
Mr. Justice Coleman, says the same, and far-  
ther that public acts may be discussed without  
fear, and even in language that is coarse and  
liable to reprobation. Such is the state of the  
law in the present day; and so long as a writer  
is not actuated by public hatred and a desire  
to create mischief, his conduct is justifiable,  
notwithstanding the severity of his remarks.  
The learned gentleman said he would here re-  
mind the Jury, that the test by which they  
were to judge was. Would the publication  
alluded to, excite disturbance in the country.  
This was the first instance he said of a pro-  
secution of this nature in the Province; and there-  
fore he trusted he should be excused for occu-  
pying so much of the time of the Jury, with  
observations relative to the liberty of the  
Press; and to which he had been driven by the  
remarks of the Attorney General. He had  
said a man might ride, but he must take care  
he did not ride over others; and he would say  
in reply that a man must keep out of the way.  
And if public men act wrong, or take the  
wrong side, (and here he did not allude to  
the present case, or wish what he said to apply  
to the Lieut. Governor,) although from the  
best of motives, any person actuated by pro-  
per feeling, might publish his opinion.

The learned gentleman said he should not  
take up the time of the Jury, by citing any  
other law authorities; but would turn their

attention to the consideration of the case itself,  
as it was presented to his mind. And here  
he would observe, that the alleged libel had  
been made notorious by the present prosecu-  
tion; which did not arise at the instance of  
the Lieutenant Governor, who did not trouble  
himself about it; and conscious of his own  
integrity, was satisfied to let his conduct give  
the lie to the assertions of his enemies. But it  
was not left to him to act as he thought proper.  
The Assembly took it up; some of whose  
members felt that the publication hit hard, and  
were determined to wreak their vengeance  
on the publisher. They could not venture how-  
ever to proceed by a civil action and let the  
opposite party prove the truth of his assertions;  
but they induced the Governor to think the  
attack was of sufficient importance, to warrant  
the institution of a criminal prosecution: As  
he had before stated the law officers were desirous  
of retiring from the Upper House when the  
question came up; but that was not per-  
mitted; and in the Lower House he thought  
the majority were satisfied, there should not  
be a trial; but being fearful of misconception,  
they spoke against the measure and voted for  
it. He was therefore satisfied, the publication  
would not have been heard of by many in  
court, had it not been for the present trial.  
So much for the manner in which the pro-  
secution had been instituted;—now for the pub-  
lication itself.

With reference to that document, which it  
was not pretended to justify, he would say if  
the Jury were satisfied that its tendency was  
to create sedition, they would pronounce it to  
be a libel. But if they were not of that  
opinion, they would acquit the defendant. The  
learned gentleman here took up the publication,  
which he read, commenting as he went along.  
The first part he said, had reference to public  
measures upon which there might and should  
be a diversity of sentiment. It had been pro-  
posed to introduce the same plan with refer-  
ence to money votes which prevailed in Eng-  
land; and some of those who were most ener-  
getic in defence of the people, were convinced  
the British practice most correct, and that all  
votes should come down having the sanction of  
the government. The separation of the Coun-  
cils he was satisfied for his own part was a  
good measure; but the writer thought differ-  
ently. The plan to carry into effect the ob-  
ject alluded to, he had therefore characterised  
as a job, and "the dirtiest job which a Gov-  
ernor could be called upon to perform." The  
expression certainly was a coarse one, and  
people might put upon it various constructions;  
but it was not libellous. The appointing Mem-  
bers of the House of Assembly to seats in the  
Executive Council,—the originating many votes,  
—and carrying into effect the despatches re-  
ceived from the Home Government, had for  
their object it was said to carry out the per-  
sonal views of Sir John Harvey; which certain-  
ly would convey a reflection if it stopped there.  
But from what followed, great parental feeling  
was attributed. Reference was then had to  
the Commissioner of Crown Lands, who it  
was said had been induced to retire upon a  
pension, that the Governor's son-in-law might  
obtain his place. Now there was nothing dis-  
creditable in that. Let the Jury look at the  
conduct of His Excellency's predecessor; one  
advantage of holding a government was the  
patronage it gives; and a Governor had a right  
to provide for the members of his family. The  
learned gentleman said he had seen animadver-  
sions upon the conduct of Earl Gray in provid-  
ing for his relations, and it was much the  
same in all conditions of life. Had the writer  
said the Lieutenant Governor wished to prevent  
his son-in-law from obtaining the situation;  
then it would have become a severe reflec-  
tion. The scheme the writer went on to say,  
had been defeated by Mr. Saunders, who  
showed an authority from home for the first  
vacant appointment. There was nothing im-  
proper in this; and it showed a high sense of  
honour in His Excellency in giving that gen-  
tleman the situation under those circumstances,  
and in compliance with this intimation from the  
colonial office.—With reference to the remarks  
on others, those the learned gentleman said  
were not to be taken into consideration by the  
Jury. The article went on to say, "Now  
nothing is left, but go on with the original  
plan, and obtain £500 from the Assembly,  
and a sly £1000 annually through Mr. James  
Taylor under the head of repairs." But let  
the counsel on the other side place upon this  
sentence the strongest construction, they could  
not substantiate the allegation. It would  
merely appear that Sir John was desirous of  
getting an additional £500 a-year; and from  
the Legislature an annual vote of £1000 for  
repairs on Government House; and the scheme  
alluded to, was to introduce the mode of vot-  
ing supplies, which prevails in the Imperial  
Parliament. This he repeated would be the  
worst construction which could be put upon