PROGRESS

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THEY OBJECT TO FACTS

LAWYERS WHO ASSERT WHAT THEY CANNOT CONFIRM.

They Are Sorry that "Progress" Told the Story of the Hepenstal Case—Friends Condole with Mr. Stockton and His Friend Armstrong Writes a Letter.

The following remarkable letter appeared in the Globe last Monday:

COPY.

ST. JOHN, Nov. 10, 18 5.

C, A. Stockton, Esq:

MY DEAR STOCKTON,—I was very sorry to see a long and unfair account of the Hepenstal case in PROGRESS. I had nothing whatever to do with its appearance directly or indirectly, and I gave no information on the subject to any reporter or anyone else for publication. Please do me the favor of mentioning this to Mr. Merritt when you have the opportunity. I am going to Fredericton in the morning, otherwise I would call and see you.

Yours very truly,

J. R. ARMSTRONG

What Mr. Armstrong's opinion may be is not usually a matter of concern, nor is it in this instance. Mr. Stockton has, however, seen fit, with Mr. Armstrong's consent, to publish a letter containing the opinion that the statements made by PROGRESS were unfair, and he has added to this his personal allegation that the statements in question were untruthful. This goes beyond the pale of mere opinion and becomes a matter in which PROGRESS has no course but to justify itself.

So far as Mr. Armstrong's letter is concerned, it may be dismissed with the remark that, while it might be privileged from criticism as a private communication, it becomes intensely silly when put in cold type. He appears to have had an idea that in a case which has become notorious in the profession he alone would be looked to as an authority for the simple facts, and to fear that he would be accused of disburdening himself of his stock of knowledge. As a matter of fact, PROGRESS, like the judges at Fredericton and Ottawa, did not think it was worth while to hear his utterances on the matter, and got along quite as well without him. The circumstances of the case are well known to many in and out of the legal profession and the proceedings are matters of record easily obtained. The story was written by a member of PROGRESS staff with a view to give the facts in a suit of considerable importance to the public, and without any attempt to reflect upon anybody. If Mr. Stockton does not like it, he must lay the blame on the facts, rather than on the story.

With a view to finding out what part of the story was considered objectionable, the editor of PROGRESS wrote to Mr. Stockton, on Tuesday, asking him to kindly point out wherein the statements were unfair. Mr. Stockton replied, "I would have to revise the whole article, as the facts are misrepresented and the article seems to be written in an unfriendly spirit, and with a view to discredit, as far as possible, Mr. Merritt and myself. A number of my friends have spoken to me about it and speak of it in the same manner." Mr. Stockton then escapes from the difficulty by stating that he is going to Boston and has therefore not the time to point out "the untruthful, unfair and uncalled for remarks contained in the article referred to,"

Mr. Stockton should have mentioned the friends who condoled with him, so that PROGRESS could have learned from them what was the cause of complaint. In the hope of finding some of them, the opinion of a number of prominent legal gentlemen were asked as to the view they took of the article. In every instance the reply was that they considered it a fair statement of facts, while more than one spoke of it being noticeably lacking in any reflections on the course taken by Mr. Stockton in the conduct of the suit. The general impression appeared to be that if Mr. Stockton felt aggrieved by the article it was not the fault of the story but of the facts. It is perhaps well not to be specific as to what some of them thought of Mr. Armstrong's letter.

Nearly all of the story told was a plain and concise statement of the circumstances of the case as developed in the evidence. It was not asserted that Mr. Stockton had done, anything that any other lawyer in his place might not have done. On the contrary the statement was made that "a lawyer and his client may conscientiously believe they have justice on their side and yet find no court to agree with them." Then the story of the cause of action in this suit was told, with the statement that while the matter in the first instance could have been settled for $75, Mr. Merritt, on the advice of his attorney, declined to pay anything, but proceeded to fight the matter in the courts with an adverse decision on final appeal. It was also stated that the cost of this litigation to Mr. Merrit was moderately estimated at $1,000. This is now believed to be considerably under the mark.

Reference was also made to the adverse opinions of the judges. Their words were not quoted but they are now, to show their views of the case. According to the published reports of the supreme court of New Brunswick, Judge Tuck thus dealt with the points raised by Mr. Stockton:

"There is nothing in the contention as to the wrongful admission of evidence. The opinion of the nurse who attended the child was the very best evidence, and properly admitted. The servant was within the scope of his employment. As to that and the matter of negligence, the real test is: Was there any evidence on which the learned judge could base his findings? I think that there was ample evidence. The damages are very moderate, and the verdict in my judgment must stand, and the rule for a new trial be refused."

Judge Hanington said: "This case comes clearly within the doctrine laid down in Whatman vs Pearson. If there is any cause for complaint it is that the damages are too small."

In these opinions Judges Landry, Barker and Vanwart concurred.

It is also the fact that this judgment was given after hearing Mr Stockton's argument and without hearing Mr, Armstrong. It is equally the fact that only Mr. Stockton's argument was heard at Ottawa and that the supreme court of Canada also delivered an adverse judgement without waiting for Mr. Armstrong to give it any "information" by an address Further than this, the chief justice of Canada stated that had there been a cross appeal filed by Mr. Armstrong he would have been in favor of giving still larger damages.

There was not the slightest desire or attempt to discredit Mr. Merritt, who, by being held legally liable for an accident in which he had no share, has been an innocent victim of what the courts have decided to be sound law. It will be generally admitted that from first to last he is entitled to a good deal of sympathy.

When Mr. Stockton states that the remarks of PROGRESS were uncalled for, he probably means he would have preferred that the facts had not been published. When he goes further and alleges that the statements were unfair and untruthful, he says that which in itself is not true. The trouble with Mr. Stockton is that the story told by PROGRESS was altogether too true to please him. There was and is, however, no allegation that he did anything wrong in the course he took in the courts. The most foolish thing he has done so far has been to publish as a certificate of his own character a letter written by Mr. Armstrong as a certificate of character for himself.

IT IS POOR ECONOMY.

The Council Proposes to Give the Clerk of Works a Boy's Salary.

The silly season appears to have come early for the common council this year. It usually sets in a little later, in the latter half of the aldermanic term, and is conspicuous for the attempts at economy which mean no economy whatever. The latest freak is the fixing of the salary of the clerk of the board of works at the ridiculous figure of $400 a year.

This position was formerly one with a salary of $1,000 a year, until one day when some North End men, hoping to save their next election, reduced it to $750. It is but justice to some of them to say they did not know what they were about, and the more manly among them have since admitted the fact. When the matter was finally reconsidered, after some of the pseudo reformers had been sent back to private life, it was found that a gross injustice had been done, and tardy amends were made by increasing the salary to $900 Members of the board freely stated that they thought the old figure of $1,000 should have been restored, but in the face of the cry for economy they were afraid to venture that far.

The late clerk of the board died a little more than three months ago, and it is recognized that his death was hastened, if not actually caused, by overwork. The position has not yet been filled, but there have been a number of applicants. There will probably not be so many now.

When the clause of the report recommending the $400 salary came before the council on Thursday, it naturally provoked some comment. Ald. Christie, who had mistakenly voted for a reduction to $750 a few years ago, pointed out that the restoration to $900 had been made after careful investigation and that it was ridiculous to now name $400 as the figure, Ald. McGoldrick also expressed his regret that he had ever voted for a reduction when he had not really known of the heavy duties to be performed by the clerk. The report passed, however, and the salary will now stand at $400. Ald Millidge probably foreshadowed something when he expressed the hope that there would not be an application for increase at an early day.

The salary of the clerk of the board of works, be it large or small, does not affect the general assessment, and a reduction of it does not benefit the ratepayers. Apart from this is the principle that if a man is needed for any public clerkship he should be worth more than $400 a year.

JUDGE TUCK WENT OUT.

ATTORNEY GENERAL BLAIR SAID TOO MUCH FOR HIM.

The Attorney Had Opinions to Express on the Functions of Courts and Judges—How He Expressed Them—Judge Tuck Gives Judge Hanington a Pointer.

Frederction, Nov. 14—The report published in a St. John paper of the tilt in the supreme court between Judge Tuck and Attorney General Blair, the other day, gave but a faint idea of that really interesting incident. The tilt occured during the argument in the case of McLeod vs the Universal Marine Insurance Company. The attorney general was moving for a new trial, and was complaining of the learned judge having refused to allow a recess of half an hour or an hour, so that George K McLeod could be compelled to produce the vessel's accounts. The attorney general, in arguing against the impropriety of the judge's ruling, said that he considered the refusal of the judge to allow time enough to produce these books and accounts was contrary to the elementary principles of justice; the courts, in his opinion, existed for the administration of justice rather than for the convenience of judges.

Judge Tuck—This court, Mr. Attorney, will not take from you what it will not submit to from any other member of the law. You must not imagine, because you happen to be nominally leader of the bar, that you have rights here that other barristers have not.

Attorney General Blair—I deny that I am using my position or taking advantage of it in any way to express any stronger opinion than I entertain. I felt on the trial, and feel now, that my clients were harshly used and in my opinion it is proper to ask this court to review his honor's decision and send the case down for another trial so that justice may be done.

Judge Tuck—Do you think, Mr. Attorney General, that this court is going to interfere with my ruling in a matter which is altogether in my discretion. I think, sir, you will find yourself altogether mistaken if you imagine this court will do so, and if they do———

Attorney General Blair—I would have thought your honor would have left it to the other Judges to have expressed that opinion. Your honor's ruling, I submit was an error.

Judge Tuck—I won't allow you, Mr. Attorney General, to tell me that my ruling in the matter was an error.

Attorney General Blair—I can't help it, your honor. I am bound to say it was an error. I think that the discretion which a judge exercises must be a reasonable discretion. After all, discretion is only an exercise of judgment, and if the judgment is at fault there must be some remedy, and here in this court is a proper place to correct error and to remedy injustice when it has been done. I think the purpose for which courts are constituted and judges appointed is to administer justice; and I wish to say that I don't think that his honor would have ruled in many other cases as he did this.

Judge Tuck—Do you undertake, Mr. Attorney General, to tell me that I ruled as I did because it was this case and these were the parties?

Attorney General Blair—No sir; I say nothing of the kind; but what I do say is that it was owing to the mood your honor was in that you denied my request for the production of this testimony.

At this stage Judge Tuck left the bench, to all appearances in quite a temper, and did not return for some little time. During his absence and until the hour of adjournment the attorney general continued his argument, without any renewal of the conflict.

The tilt was the most interesting one that has taken place in the Supreme Court for years. Both the judge and the attorney general spoke with great earnestness. In one of his bursts of oratory Mr. Blair raised himself several inches beyond his usual height, while with flashing eyes he delivered his clear cut phrases. On this occasion he excelled even his well known masterly style in forensic eloquence.

On Monday the argument in the case was resumed, and during the day another little interesting episode occurred. The attorney general was arguing some question of law and said, referring to a remark of one or more of the judges, that their honors were lending themselves, or their honors view lent itself, to what he considered an erroneous conclusion.

Judge Hanington—I don't think that is a remark the attorney general ought to make. The expression that a judge was lending himself to a particular view of a case was objectionable and offensive.

Attorney General—I can't accept that criticism. I don't profess to be a master of English, but I think I know enough about the language to know that it is a common and correct expression.

Judge Hanington—I don't think it is I think it conveys an improper idea.

Attorney General Blair—It seems to me that some of your honors are a little too sensitive to criticism. The expression may be used offensively, but it was certainly not used offensively in this instance, and such a thought was not in my mind. I think it was a very appropriate expression to use that such a view lends itself to a certain conclusion. Judges often use it

Judge Tuck (sitting far back in his seat)—Yes; I am bound to say that I don't think the attorney general intended to be offensive in that remark. I can tell thoroughly well when he intends to be offensive Nobody knows better than I when he says something which he has premeditated, and which he has come into court with the intention of getting off. I can judge from the tone of the voice, and the glance of the eye, and the whole expression of the attorney general, and I don't think this is one of those occasions.

Attorney General Blair—One would almost be induced to imagine that your honor is speaking from a personal experience.

MANAGER JAMES GILBERT.

Some Reminiscences of His Achievements in the Operatic World.

Manager James Gilbert of operatic fame, who is at the head of the company that has been regaling the citizens with sweet strains during this week, is one of the most genial and agreeable of men. By many of those who have attended the performances he is well remembered and they find him as ever a man "of infinite jest." With all his geniality and love for fun there is an unmistakeable element of business character indicating that his knowledge of his professional pursuits is very thorough. In this as in his every tour he is accompanied by his wife, a most estimable and charming lady, whose appearance in the bill at every performance is invariably expected, at least, and whose tuneful voice wins all hearts to her cause. Whether she is portraying emotions of sorrow or indulging in merriment, they are with her.

A representative of PROGRESS called on Mr. and Mrs Gilbert at the Dufferin hotel this week and during a pleasant interview Mr. Gilbert indulged in reminiscences of this city and the plays and operas put on by him here and in Halifax. In the course of conversation it was developed that he was directly responsible for the first production of "H. M. S. Pinafore" in St. John. He evidently thought little of the future or of what an amount of suffering he was then all unconsciously providing for the good people of this city. This was in April 22, 1879. "Fatinitza," given by his present company on Wednesday last, with Mrs. Gilbert in the title role, he also produced for the first time in this city. He was also the first to put on "Boccaccio" in St. John and Halifax, Miss Florence Gilbert then singing the title role and therein establishing an artistic reputation for herself that places her second to none on the stage today in that particular character. In 1881 Mr. Gilbert was here with a company, in which Miss Guenther and Mrs. Carter were members. They are both most pleasantly remembered by all who heard them many of whom will regret learning that Miss Guenther is no longer living. Mrs. Carter, however, is still alive and singing on the Pacific slope with the famous Bostonians. In the production of "Pinafore" already referred to, Mr. Gilbert played Dick Deadeye, a role that has very frequently since been essayed by many of the ambitious, both amateur and professional.

When pieces are put on well and there is a consequent smooth performance, there are comparatively few in the audience who at all realize the amount of work done by the leading voices, or the extent of the vocal range of the parts. It will therefore be a matter of not a little surprise to learn that in the role of "Fatinitza" the voice ranges all the way from low G to B, flat above the staff. Mr. Gilbert will introduce in the performance of "Billie Taylor" which has been decided upon for Saturday afternoon and evening, a song that was first heard here last summer "There is only one girl in this world for me." There is no doubt it will be sung artistically and many will be pleased at the opportunity afforded for hearing this clever lady sing it.

Mr. Gilbert has recently purchased a new opera by Von Suppe. The name of the work is "Jacinta." There is an excellent chance for comedy in it and the owner intends giving it an early production.

Mr, Gilbert and company have been out since the 17th of May last and during that time played an engagement of seventeen weeks in Lowell, and have lost but three days up to date.

All being well with Mr. and Mrs, Gilbert they propose coming back to the provinces next year, and somewhat earlier in the season. They go to Fredericton on Monday and preferably by steamer, having heard so much of the beauties of the river at this or any other time of year.

CAUGHT BY THE CAPIAS.

BRISK BOOM IN THE SMALL DEBT COURT OF HALIFAX.

The Unusually Good Record Attending the Departure of a Ship of War—Lively Scene When a Waverly Man Started to take a Steamer for Boston.

HALIFAX, NOV. 14.—Capiases are not issued so often in Halifax as one would imagine in a city where the credit system has so firm a hold as it has here. An average of two a week, the year round, would more than cover them all. There have been more than that number the past few days, however. The departure of a regiment from the garrison is generally the signal for the issuing of a number of those imperative instruments, or sometimes it is the sailing of a ship of war after a protracted stay in port. The Crescent sailed yesterday, and she had the good record of only one capias for an officer, and that against a middy who probably would have paid up if other and more gentle means had been taken to collect the money. Midshipman Allan Yates Brown, though his profession keeps him surrounded by guns great and small, shot and shell, and swords and all manner of modern warlike weapons was not satisfied with those. The young officer got a gun at Mrs. Rogers shop and whether he bought it or hired it only, the fat and fair shopkeeper claimed he did not pay for it In view of the departure of the flag-ship next day Mrs. Rogers determined that a capias was the surest way for her to recover the $4 50 due. That was the method she took, and the policeman when he put in an appearance found the money readily forthcoming.

E. Maxwell & Son took the same course to recover $36 from Mr. Hutchinson, of Seeton & Hutchinson. The bill was for clothes and the capias was successful.

Another capias that was made out recently was not so easily satisfied. It was issued by J. E. Roy against Henry J. Wood, an ex-hotel keeper at Waverly, for $56.25. Mr. Wood was to sail by the steamer Halifax for Boston, and he had gone aboard. An hour before the steamer sailed Policeman Kuhn appeared at the steamer's side. Mr. Wood was located, but that was a small part of the business. Kuhn laid hold of his man and informed him in the polite terms characteristic of a member of the Halifax police force that he would have to settle the little bill of $56.25 or come along with him to the police station. This ultimation gave rise to a great hubbub. The ship's officers and friends if Wood surrounded the debtor and defied his arrest. But Kuhn was incorrigible. He refused to retreat on any other terms than the payment of the money or with the body of the prisoner. Word of what was going on was sent to headquarters and two other bluecoats came running down. Then short work was made of it, and Wood was marched off into captivity. At the police station there was another scene. For hours the controversy raged, Chief O'Sullivan doing his best to keep it within due bounds, and to bring it to a satisfactory issue. By noon an understanding was arrived at which seemed to please both Mr. Roy and Mr. Wood. But by this time the steamer had sailed for Boston. Probably Wood's contest was fully rewarded in the discount made from the bill by the genial creditor, but whether it paid to miss the passage by steamer or not is another matter.

Married Once too Often.

HALIFAX, Nov. 14.—Many people in Halifax remember W. A. Irwin, who a couple of years ago represented the New York Mutual Life Insurance company here. He has now been found out in Woodstock, Ontario, to be a bad man. His real name was W. H. Pye. While in New York he lived with a Mrs. Irwin, whose name the fellow adopted; at Woodstock he formed the acquaintance of Miss Maggie Thomas, proposed marriage to her, and was accepted. The girl's mother refused her consent till more could be learned of Irwin or Pye—a wise precaution. But Miss Thomas would not brook the wise parental restraint. She eloped with her lover and was married in an adjoining town. Soon the truth came out that he had been married under an assumed name and that his character was bad. A writ has been issued to declare the marriage null and void.

They Have Taken to Letter Writing.

There are at least two decided attractions in St. John for Haligonians today—the football match and—let it be whispered—the fair members of the opera company, who found Scotia's capital so pleasant, and her patronage so good that they spent six weeks there. Cupid can do a lot of damage in that time and while there does not appear (from the vivacious work of the chorus) any perceptible effects of the distressing parting, still there are evidences, it is said, that the youths of Halifax are mourning the departure of their bright companions, and, in the absence of some thing better to do have taken to letter writing. The post office is not authority for the statement that an extra letter bag lined with asbestos was required to bring this volume of burning correspondence to St. John, but the gentleman who gave PROGRESS the fact vouches for it.

WHO IS REFERRED TO.

"A Sanctimonious Rascal" In the Lear Case In Halifax.

It is said that Lawyer Tremaine of Halifax does not like to see his name in print. In fact he has given PROGRESS some very good evidence upon this point. After the issue of this paper which contained his portrait and an account of the interesting part he took in the Lear cases Mr. Trimaine thought that the subject might not be exhausted and that it was just possible that a second act might be as interesting as the first. He evidently has a horror of the bulletin, that inoffensive sheet of paper that announces the contents of PROGRESS and so he began to make threats as to what he would do if his name figured again in such a prominent fashion. He did not appreciate the free advertising and wanted to scare PROGRESS and those he thought connected with it. Still in spite of his bluff the posters went up and the people knew that something more had transpired in the case and had a chance to read the full text of Judge Graham's judgement.

This week a postal card comes through the mail from Halifax thanking PROGRESS on behalf of the ladies for showing up the Tremaine Lead business but suggesting "the sanctimonious rascal" take his share of the blame. How can any one say who is referred to in this pleasant phraseology.

Trouble For Mr. Vincent.

License Inspector Geo R. Vincent and others concerned in some of the county liquor cases appear to have got into a snarl. John Newman, innkeeper, of Grand Bay, was convicted of selling liquor without license, though the agency of Riggs the informer, and was sent to jail for two months in default of payment of a fine. The other day the point was raised that a conviction for more than one month was illegal under the act, and an application to set it aside was made to the supreme court. Mr. Vincent let Newman out of jail at the end of one month, but that does not stop the proceedings to set aside the conviction as bad in the first instance. Should it be so declared, Newman will be likely to bring an action for false imprisonment, and so may others who have been convicted and inprisoned in the same way within the last year or two.

No Time to Lay Up.

Mr. Dodd, the clever actor who relieves Mr. Gilbert in the part of Koko in the Mikado when presented by the Gilbert company, met with a curious and somewhat serious accident Wednesday evening on the stage. His part required him to fall upon the stage but when doing so he forgot that a jagged stage, knife was in his hand and the result was a nasty cut through the palm requiring several stitches. Few if any of the audience were aware that an accident had happened, for Mr. Dodd carried his part through to the end though in pain enough to warrent an ambulance and the hospital.

Who Lost the Letter.

There is said to be a little stir in some circles ouer a letter which was supposed to be dead, bvt has come to life in an unexpected way. It seems that a lady in St. John, some time ago wrote a letter to a friend in another country, signing it only by her pet name, instead of her usual signature. The letter, for some reason, did not reach its destination but came back to St. John through the medium of the Dead Letter office. How this happened when the name of the writer was not clear is not stated, but the letter may have had an address of street and number at the top. At all events it came back, and by some extraordinary chance fell into the hands of a lady, not the writer of it, who was more than interested in some of the free remarks the writer had made in regard to her particular self. This has led to the natural result of not making the relations between the critic and and criticised as pleasant as they were before the letter went astray in the first place and worse astray in trying to reach the sender in the second place.

Settled at Last.

The quick solution of the winter port question by the granting of a subsidy to the Beaver Line shows that a great deal can be done when the tide is taken at the right turn and the men who take hold of the oars pull with a will. Now there is one less thing for the pessimist to grumble about,