Capt J. Lucas

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INDIAN INTELLIGENCE.

FROM THE FRANKLIN GAZETTE.

Extract from the Journal of a gentleman travelling in the Southern section of the United States.

The Indians inhabiting the country lying between Georgia and the Mississippi river, could bring into the field about 11,000 warriors.

The Choctaws	4000
Creeks	3500
Cherokees	1400
Chickasaws	1300
Seminole	1000

This force if embodied and hostile, would be a serious enemy to the United States. Fortunately, however, there exists among the different tribes, jealousies and enmities that will prevent such an association ever taking place, and enable the United States in the event of hostility with either, to employ as active allies, any of the nations. The Creeks were formerly the most warlike, but the severe conflict in the year 1813, diminished their numbers and their spirit; none of them are, however, enemies to be despised; in personal courage they are seldom deficient, but like all irregular troops, having no idea of military combinations, or that confidence and reliance upon each, taught by discipline to the formed soldier, and so essential to victory; they will always be defeated unless they are the assailants, or are attacked on ground exceedingly advantageous to them.

Their capacity to endure great fatigue, watching, hunger; their personal activity, knowledge of the forest, added to their courage, render them in a close country an exceedingly dangerous foe.

The Seminoles, with whom we waged the last war, inhabit a tract of country, part of which lies within the United States, but the larger portion lies beyond the line separating it from Florida. They were originally a small party of banished outlaws, driven from among the upper and lower Creeks, who increasing in number—living in a country exceedingly difficult to penetrate,—associated themselves with a band of desperate runaway negroes, and instigated by their natural ferocity, and the artifices of British traders, have always manifested a disposition inimical to the United States, and have since the year 1813, been notorious for their depredations upon the whites.

In August last it was very well ascertained that they were the authors of several murders committed upon the white inhabitants of the frontier. A patient endurance of suffering is always regarded by the Indians, as an indication of weakness, and is sure to produce a repetition of the insult or injury. General Gaines demanded that the murderers should be given up. it was answered with taunt and defiance;—and let it be remembered, by those who accuse the country of pursuing a barbarous policy towards the people, and endeavor to involve them in wars, that when PEPITICOXY, the principal warrior and leader, was asked why he was thus hostile to the United States, he replies, by acknowledging. "that the government was always ready to do him justice, and to make peace with him, but that war was a fine manly exercise, in which he wished to practice his young men!"

The 7th Regiment crossed the Flint river, dispersed the Indians, burnt Fowl's town and returned. This act of war was premature; the troops we had in the field so far from being able to subjugate the enemy, were inefficient to meet him in fair conflict. The Indians assembled, attacked a boat assending the river, captured it, and put to death 30 persons composing its crew; they advanced up the river, surrounded our troops in Fort Scott, and cut off their communication. General Gaines called upon the state of Georgia for 1500 militia, these men unfortunately were detailed but for two months, and before they could approach towards the enemy, that period expired, and they returned to their homes.

General Gaines made a second call upon Georgia, for 2000 men for six months; they assembled at Hartford; General Jackson was now authorised to accept the services of 2000 Tennessee Volunteers, to call out the friendly Indians, and to take the field himself. With his accustomed activity, he rapidly organized these men for service, and giving them orders to concentrate at Fort Scott, he proceeded to Hartford, and placing himself at the head of the Georgia militia, moved them towards the same point. General Jackson had in vain endeavored to procure provisions for this force; and a correct idea may be formed of the intrepid cast of his character, from the circumstance of his starting, with 2000 men, on a march of 10 days, through a wilderness, when his only means of subsistence was a daily pint of corn for each man, and when he well knew, that on his arrival at Fort Scott he could procure but a very scanty supply. At Fort Scott General Jackson found the regular troops and friendly Indians. The movement of the Tennessee Volunteers had not been marked with the same boldness as that of the other troops; apprehensive of a want of provision, they halted on the rout, and had not yet joined. General Jackson advanced into the Indian country, destroyed their villages, and entering Florida took possession of St. Marks. The Indians fled before him, and the Spaniards dared not oppose his progress.

The state of Georgia affords but few of the necessaries for the subsistence of an army, and the face of the country in which general Jackson operated, abounded with invincible impediments to transportation in wheel carriages; great, therefore, were the sufferings of the troops—subsisting upon a pint of corn—marching through swamps and morasses, wading creeks, and sleeping on the wet ground, without shelter—were privations endured from motives of the purest patriotism, and in which the General participated equally with the meanest soldier in his army.

General Jackson was now about to move his troops from Florida, when he discovered that the governor at Pensacola, instead of exerting himself to fulfil the treaty existing between the United States and his king, by which he was bound to protect our citizens from savages within his dominions, had basely violated the Spanish faith, and protected, encouraged, and furnished with the means of war, a worthless band, at the same time laying waste to the frontier of the Alabama territary, and waging a war of destruction against the most lovely and most innocent part of our population. General Jackson considered that this breach of treaty authorised him to take possession of Pensacola, knowing well it was the only movement that could afford the effectual protection he was bound to give to every individual within his military command; and although politicians may argue in their closets that general Jackson exceeded his authority, and treated Spain with less respect than she was entitled to, yet the course of conduct he pursued will be justified by every high minded man, having at heart the true honor and glory of his country. What—was general Jackson coolly to remonstrate, and politely correspond with the despicable representative of an imbecile tyrant, with a pen dipped in the blood of his fellow-citizens; or was he calmly to look on and witness the butchery of his countrymen, while he waited two months to hear from Washington, whether the violaters of a treaty, and the protectors of murderers, were, or were not to be chastised? The American general was not deterred from protecting the territory of the United States, and punishing those who encouraged the murder of his countrymen, by any flimsey, wire-drawn, sophistical arguments.

The opposition of the Spanish troops was ill calculated to occasion a display of the full devotion of the American army. The governor retired at their approach, and shutting himself in the Barrancas, declared his determination not to surrender. The Barrancas is a fortress, situated on the southern cape of the bay of Pensacola; it consists of a heavy water battery on the beach, protected by, and communicating with, a regular work on the bluff.—Although this work cost the king of Spain an immense sum of money, yet the lower battery is entirely inadequate to guard the water communication into the bay, and the upper work cannot sustain an attack from the meanest train of artillery.

The parapet consisted of a sand mound, supported by pine pickets and unprotected by glacis; conflagrate these pickets, the sand must fall into the ditch, and there is no impediment to a platoon marching to the centre of the place.

Gen. Jackson cannonaded the fort; the garrison discovering that scaling ladders, and other preparations were making for the assault, hoisted the white flag and surrendered. Gen. Jackson, with extraordinary forbearance, permitted the Indian chief who had sheltered himself in the fort, to accompany the garrison to the Havana.

General Jackson is a more extraordinary person than has ever appeared in our history.—Nature has seldom gifted man with a mind so comprehensive, or with a body better formed for activity, or capable of enduring greater privations, fatigue and hardships. She has been equally kind to him in the tranquility of his heart. General Jackson has no ambition, but for the good of his country; it occupies the whole of his views, to the exclusion of all selfish or ignoble considerations. Cradled in the war of the revolution; nurtured amid the conflicts that afterwards took place between the Cherokee Indians and the Tennesseans; being always among a people who regard the application of force not as the ultima ratio regem, but as the first resort of individuals; and who look upon courage as the greatest of human attributes: his character in this stormy ocean, has acquired an extraordinary cast of vigor----a belief that any thing within the power of man to accomplish, he should never despair of effecting, and a conviction that courage, activity and preservance can overcome, what, to an ordinary mind, would appear insuperable obstacles. In society, he is kind, frank, unaffected and hospitable, endowed with much natural grace and politeness, without the mechanical gentility and artificial, flimsy, polish, to be found in fashionable life.

Among the people of the west, his popularity is unbounded—old and young speak of him with rapture, and at his call, 50,000 of the most efficient warriors of this continent, would rise, armed and ready for any enemy.

Having entered the military service of his country at a late period in life, gen. Jackson appears unaware of the necessity of strict discipline and subordination, and being utterly fearless of responsibility himself, and always taught to believe that his personal liability would be a justification of his conduct, he does not sufficiently reflect how intimately the character of the country is associated with his own now he is an officer; and that although he may freely offer his personal sacrifice, yet it places the government in a most delicate situation to accept it.

Law Intelligence.

COURT OF KING'S BENCH.

LIBERTY OF SPEECH AT THE BAR.

Hodgson, Gent. vs Scarlett, Esq.

This was an action brought by an attorney against Mr. Scarlett, the king's counsel, for slanderous words spoken by the latter, of and concerning the former, during a trial at Lancaster, in which the plaintiff acted as attorney for one of the parties. The words declared upon, and alleged to have been spoken by the defendant, were, "Mr Hodgson is a fraudulent and wicked attorney." Plea, the general issue, not guilty. At the trial before Mr. Baron Wood, at the last assizes for the county of Lancaster, the plaintiff was non-suited; the learned Baron ruling in point of law, that words spoken by a barrister in discharge of his forensic duties were not actionable.

Mr. Raine now moved for a rule to show cause why the non suit should not be set aside, and a new trial granted, on the ground, that the opinion of the learned Baron was not founded in law. The learned counsel, in stating the circumstances of the case, set out by observing, that the words alleged to have been uttered, were spoken with reference to the supposed conduct of the plaintiff in the former case, in which he had acted as attorney for the then plaintiff, and in which case Mr. S. had acted as counsel for the then defendant. On the opening of the case at the trial now under consideration the learned Baron said, that the action was of a novel nature, and could not be sustained; for, if such actions were encouraged, there would be a multitude of a similar nature, and the greater part of the time of courts of justice would be occupied in trying actions for words spoken by counsel in advocating the cases of their respective clients, at the preceding Assizes; and the learned Baron assimilated the freedom of speech at the bar to the privileges of Parliament. Now, the learned counsel submitted, that the learned judge was wrong, first in his law, and next in his comparison. The privilege of speech in parliament was quite distinct from that of the bar, things said in parliament were not cognizable in a court of common law; whereas, for words spoken out of parliament, a man might be civilly and criminally liable. No man was punishable for any thing said by him in either house of Parliament, as was decided in Lord Abingdon's memorable case. This was, however, a privilege which did not belong to advocates at the bar; and, therefore, the privileges of parliament were clearly distinguishable from those of counsel. The learned Baron said, "as at present advised, I think the action is not maintainable." This general and unqualified position, the learned counsel submitted, was not founded in law. He must take the liberty in stating, that the learned judge laid the law down too generally, when he stated, that words spoken at the bar were not, in any case actionable. Undoubtedly it was necessary for the protection of his client's interests, that an advocate should have considerable latitude afforded him in advocating the cause entrusted to his care; but the privilege of speech must be exercised in the honest and conscientious discharge of that duty. It could not, however, be disputed, that freedom of speech, which was so essential to the interests of particular clients and of the public in general, might be so abused, as to reflect upon the character of the advocate, and derogate from the dignity of the bar. If an advocate thought proper to exceed the limits assigned him, and travelled out of his instructions to malign the character of any man, he (Mr. R.) took it to be a clear principle of law, the defamatory words so spoken were as actionable as if they were uttered in his private and individual capacity. The abuse of such a privilege was as amenable to the laws as any other abuse calculated to inflict a private injury. The learned judge was, therefore, clearly wrong in his general position, that no action could be maintained against a counsellor for words spoken in court.

Lord Ellenborough.—Was it on the opening of the case that the learned judge non-suited you?

Mr. Raine.—Yes, my lord. He would not permit me to go into evidence, taking it for granted that I should be able to prove the case I had opened. I was not permitted to go into evidence. When the learned judge lays it down as a general rule, that no action of this kind, is maintainable, I apprehend he lays down that proposition with too much latitude; I submit, with the utmost deference, that this is not the law of the land. There is a case in Croke, Jac. 90, which shews, that the action is certainly maintainable. That was the case of Brook v. Sir Henry Montague, Recorder of London, and I will read it to your lordships:

"Action for words; for that the defendant, at such a place in Surry, spake these words of the plaintiff: that he was arraigned and convicted of felony, &c; the defendant pleads that the plaintiff at another time brought false imprisonment against J. S. one of the Sergeants of London, who justified by warrant from Sir Nicholas Mosely, Mayor of London, for arresting him to find sureties for good behavior, and they were therefore at issue, and found against the plaintiff, who brought an attaint; and the defendant being *consiliarius et peritus in lege* was retained to be of counsel with the petit Jury; and in evidence at the trial in London, spake those words in the declaration, and so justifies; and Yelverton, and Coke, Attorney General, being of Counsel for the defendants, the Court resolved, that the justification was good; for a counsellor in law retained, hath a privilege to enforce any thing which is informed unto him for his client, and to give it in evidence, it being pertinent to the matter in question; otherwise action upon the case lies against him by his client, as Popham said; but matter not pertinent to the issue, or the matter in question, he need not deliver, for he is to discern in his discretion what he is to deliver, and what not; and altho' it be false, he is excusable, being pertinent to the matter. But, if he give in evidence any thing not material to the issue which is scandalous, he ought to aver it to be true, otherwise he is punishable, for it shall be intended for an action. So, if a counsellor object matter against a witness which is slanderous if there be cause to discredit his testimony, and be it pertinent to the matter in question, it is justifiable what he delivers by information, altho' it be false. So, here it is material to prove him a person fit to be bound to his good behavior, and in maintenance of the first verdict: therefore his justification is good; and Coke cites a case, 27 Eliz. where Parson Trick, in a sermon, recited a story out of Fox's Martyrologie, that one Greenwood, being a perjured person, and a great persecutor, had great plagues inflicted upon him, and was killed by the hand of God, whereas, in truth, he never was so plagued, and was himself present at that sermon; and he thereupon brought his action upon the case, for calling him a perjured person; and the defendant pleaded not guilty; and the matter being disclosed upon the evidence, Wray, Chief Justice, delivered the law to the Jury; that it being delivered but as a story, and not with any malice or intention to slander any, he was not guilty of the words maliciously, and so was found not guilty.—14 Hen. 6. 14. 20. Hen. 6. 24. And Popham affirmed it to be good law, when he delivers matter after his occasion as matter of story, and not with any intent to slander any; wherefore, for these reasons it was adjudged for the defendant." On the authority of this case, therefore, I submit that the learned Judge was wrong. Here my learned friend (Mr. Scarlett) pleads only the general issue, not guilty, and does not justify. In the case referred to, the justification was matter of evidence, the fact being capable of proof. All I mean to contend is that the learned Judge was wrong in his opinion: too hastily pronouncing that the action was not at all maintainable. This is a question of very considerable importance, and I apprehend it to be quite indisputable, (if I may be permitted to so say) that the learned Judge was premature in his opinion.

Lord Ellenborough.—That, I think, is without doubt. If the learned Judge had said that the words uttered were pertinent to the case, he would be right in saying that the plaintiff was wrong in his action; but to say that the person who introduces, without any cause, what is *prima facie* calumnious, is protected by his character of counsel merely, is further than I am prepared to go.

Mr. *Topping* interposed, and said, that the words stated by his learned friend Mr. Raine, were not the only words used by the defendant, as would have been proved if the case had gone on. The case, however, was certainly considered as if the witness had been called into the box, and had proved the words stated.

Mr. *Raine* said, that one of the counts of the declaration contained only the words "Mr. Peter Hodgson is a fraudulent and wicked attorney;" but these were coupled with others, which he (Mr. R.) certainly never meant to withhold. The words stated in the first count were these: "Some actions are founded in folly—some in knavery, and some in both. Some in the knavery of the attorney, some in the folly of the parties. Mr. P. Hodgson was the attorney for the plaintiff; he drew the promissary note fraudulently, and got Beaumont to put into his hands 150*l* for the benefit of the plaintiff. This was one of the most profligate things I ever knew done by a professional man. Mr. Peter Hodgson is a fraudulent and wicked attorney."

The court enquired whether the former action was upon a promissory note, and was informed by Mr. Serjeant Hullock, counsel for Mr. Scarlett, that it was for money had and received, tried before Mr. Justice Bayley.

Mr. Justice Bayley.—I have no precise recollection of the circumstances of the case, but it seemed to me, that there was folly in it. If I had known that this case was to be moved to day, I should have brought down my notes of the former trial.

Lord Ellenborough.—Was the nature of the former action so laid before the Judge, as to enable him to say whether the observation of the learned counsel was pertinent, or warranted under the circumstances?

Mr. *Raine* said, that there was no evidence gone into