

To the reproach intended to be conveyed by the petitioner, as having promoted an act to inquire and try, in any district of the province, crimes and offences committed in any district without the limits of the organized population of the province, I am happy in the occasion to refer your Excellency to a short history of that bill.

In the forty-third year of His Majesty, an Act passed the Imperial Parliament, giving conditional jurisdiction to the court of this province to try offences committed in the Indian territories, without the limits of Upper and Lower Canada. It was not until 1817 that any appeal was made under this statute, when various charges against many individuals were transmitted under the seal of Lower Canada, conformably to the provisions of the said statute, to be inquired of, and tried in this province.

A vast extent of Indian territory, inhabited only by Indians and their followers, lies within the limits of this province, which are not precisely known, and difficulties were apprehended on the question of jurisdiction.

A bill was introduced into the legislative council, to relieve us from the expected embarrassments; this bill was referred to the three Judges, discussed, amended and approved by them, passed the legislative council, but was not returned that session. The House of Assembly having considered the bill during the recess, it was sent up at the next session as having originated in the House of Representatives, and passed the council, and received the Royal assent. Such a course seems incompatible with the suggestions in the petition, that your Excellency and the other branches of the Legislature were surprized.

With respect to the construction put upon the bill by the Chief Justice, and complained of by the petitioner, I am at a loss to discover to what he alludes; no question upon this bill has yet been agitated to call for construction. At the assizes for the home district, a bill of indictment was found against the Earl of Selkirk, the petitioner, and many others, for a conspiracy; the process of the court was prayed upon filing the bill, and surgeon Allan, having attended the court as an evidence in certain civil actions at *Nisi Prius*, applied to the court to be admitted to bail, and traversed the indictment to the next session. Upon the question of bail, it appeared to the court, from the details of the overt acts charged in the indictment, as read to the traverser, that the bail should not be light, and it directed £1,000 for the traverse, and £500 for each two sureties; which last, by the indulgence of the court and prosecutor, was admitted to be subdivided, to suit the circumstances of the traverser.

Your Excellency will perceive, that in all this no occasion was offered on either side to discuss the legality of the proceeding; and as the traverser had counsel at his side, the court had no cause to presume any doubt, to form any construction, or pronounce any opinion upon the Act under which the indictment is alleged to have been found. Any question of expediency or propriety in bringing forward the prosecution in that shape, was for the consideration of the Attorney General, and not for the court. I am grateful to your Excellency for the early communication of this and the former letter, and shall ever be so, for occasion to account for my conduct in any of the various relations in which I stand with your Excellency, the Crown and the public, conscious of no motive but duty, for my actions as a magistrate, a legislator, and executive counsellor.

I have the honour, &c.

(Signed)

Wm. Dummer Powell

His Excellency Sir P. Maitland,
Lieut. Governor, &c.

May it please your Excellency,

York, March 15th, 1819.

I have perused the petition of Mr. John Allan, and the affidavit accompanying it, which I am to thank your Excellency for submitting to me; and to assist your Excellency in forming an opinion on the matters they relate to, I will give a short account of the facts, with which I am necessarily conversant, respecting the prosecution of John Allan.

Some time last Spring, I think late in April, the agents of the North-West company and their counsel, placed in my hands, as Crown officer, a great mass of testimony, consisting partly of documents in the hand-writing of the accused, and incapable of contradiction, and partly of depositions of a great number of witnesses to facts which they were ready to substantiate, by *viva voce* evidence in a court of justice.

Inclosure

(4)

in Sir P. Maitland's,
of 3d April 1819.