

In order to shew the provocation given by the prosecutor it will be necessary to recur to the circumstances that give rise and lead to this prosecution. In the spring of the year 1789, the Government had it in contemplation to raise two additional companies of the British Militia, which would require a new appointment and an additional number of officers. Mr. Caldwell had given in to the Governor † a list of names whom he had recommended to be appointed to commissions. As soon as the defendants had information, application was made to the Honorable Edward Harrison, in whose company they were enrolled, to be informed if he had any knowledge of such proceedings. From him they learnt that he knew nothing but by report, for Mr. Caldwell had given no communication of it to him; he referred to the Major, (Malcolm Fraser, Esq.) who declared that all he had to do, or had done, was to give in a general list of the citizens of Quebec proper to have commissions, and that the defendants were of the number; and he referred to Henry Caldwell, Esq. the Colonel, from whom the defendants learnt that a particular list was given in, and that their names were not inserted in it. Upon this the defendants memorialled the Governor, stating their pretensions and complaints, ‡ and the same day a copy of one of the memorials was given to Mr. Caldwell.

It was generally believed that the contents of these memorials, so respectfully stated, appeared to be reasonable and well founded, and to have had weight with his Excellency the Governor, for the promotions did not take place till twelve months afterwards.

But notwithstanding this suspension, last spring the commissions were issued, in which the defendants were not included. From the conduct of Mr. Caldwell, in so unfair a recommendation, they considered him to be the cause of their being left out, and felt themselves hurt by his apparent ob-

† To be seen (the defendants presume) in the Office of the Secretary to the Governor, See appendix No. 4.