

Be this as it may, I lost no time in availing myself of this effect of its provisions, as it relieved me from the necessity of a measure, which would doubtless have been exclaimed against as severe. Refusing to file an *ex officio* information, as another mode was now open of bringing these charges before a jury, though at an expense to the prosecutors of bringing thirty witnesses a second journey of four hundred miles. I took the necessary steps to procure the attendance of the witnesses, and preferred in this district, at the first court of Oyer and Terminer in the province, which succeeded the passing of the Act, an indictment for conspiracy, embracing the charges I have mentioned. It was found by the grand jury, and the process of the court issued in the ordinary manner. The only person within its reach, of those included in the charge, was the petitioner, John Allan, who from the evidence in my possession appears neither the most nor the least conspicuous among the agents of the Earl of Selkirk. He was under no obligation that I know of to appear there, or at any other court of this province, but attended as a witness for the Earl of Selkirk in some civil actions, growing out of his conduct at Fort William. He was of course held to bail upon the indictment, as he traversed to the next assizes; on that occasion he read to the court the affidavit which accompanies the petition. It contains matter with which the courts in this province could have nothing to do, and some subjects of complaint, which it would be easy to show, are altogether groundless. Nevertheless, it passed without comment from me, and I readily acquiesced in what was proposed by the court, for the ease of the defendant.

This is the part which the court and His Majesty's law officers here have had in the prosecution of Mr. Allan, who will be acquitted or convicted as a jury of his country find him innocent or guilty. Far from being the object of persecution, his prosecution is considered by those whose duty it is to conduct it, as of very inferior moment to the ends of public justice. It is the Earl of Selkirk, in whose hands he was but an instrument; however a jury may excuse his agency, who, it is most desirable to the ends of justice should submit himself to a trial by his country, for offences against the property and liberty of his fellow-subjects, of which the disclosure of a very small part, has obtained from a jury a recompence to an injured individual, by a verdict against his Lordship of £. 1,500.

As to the complaints of the petitioner against the Act which authorizes his trial here or in any other district, I do not altogether comprehend them. He complains of the preamble prejudging him, as it speaks of "offences committed;" I think the absurdity of this need not be remarked upon. In the same manner, and by the same expressions, does the British Act of the 43d Geo. III. prejudice all those who, at his Lordship's prosecution have been, or are to be tried under it. In the same manner have the many British statutes, which for reasons, and upon occasions less urgent than those which induced this Act, have removed the jurisdiction of offences from the populous counties in which they were committed, to any in which, "for their more easy and speedy trial," it might be deemed expedient to prosecute them, prejudged all those who have been condemned under them.

In truth, the whole of the observations of the defendant respecting this law, show utter ignorance of the question they relate to, or a total disregard to accuracy of statement; I am willing to believe they may proceed from the former cause. The provisions of this Act, which has but the effect of making the jurisdiction transitory, are called "unprecedented," and represented in the light of *ex post facto* enactments against the natural rights of subjects.

The one observation is untrue in terms, the other is substantially groundless. I need but refer your Excellency to the Act of this province passed in 1814, authorizing the trial in any district of any high treasons committed within the province during the late war, under which a great number of persons were condemned under a special commission in the *district of Niagara*, and several executed for treasons committed in the *district of London* before the passing of that Act, and among the number of examples which abound in the British statute book, to the Act 19th George 2, under which those engaged in the rebellion of 1745, were tried under a special commission in Surrey, for treasons committed in different counties in the kingdom; these laws are never regarded as *ex post facto*, they create no new offence, they neither increase nor diminish the measure of punishment, they merely alter the place of trial, and prevent public justice from being defaced or embarrassed in its administration, from a rigid adherence to a rule of the common law, which though once founded in reason when the jury was taken from the hundred or vicinage, is in reality