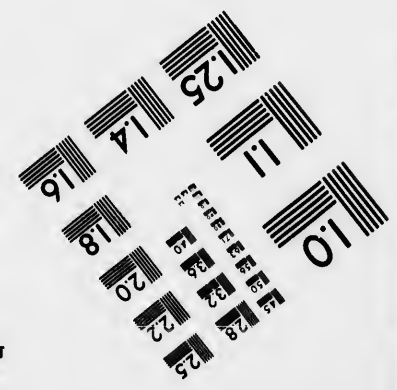
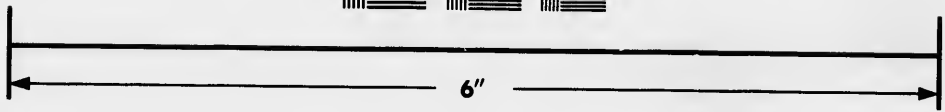
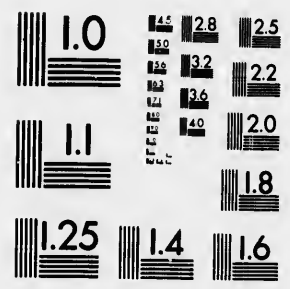


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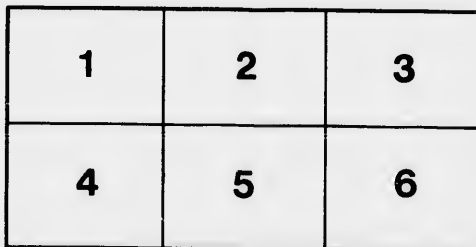
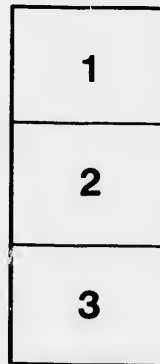
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13

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DEFENCE

INTENDED TO BE DELIVERED AT THE

BAR

OF THE

Court of King's Bench,

HELD IN THE

CITY OF QUEBEC;

In the Month of November, 1790; on a prosecution, for a

LIBEL.

AT THE INSTANCE OF

Henry Caldwell, Esquire,

WITH AN

INVESTIGATION, POETICAL ADDRESS, AND APPENDIX.

Colonel's passing worth,
how he fallied forth,
virtues and his own
singing pages shew.

HUDIBRAS.

*Quebec
Nov 1790*

On being, by W. S. ...
in the ... of ...
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INTRODUCTION.

THE present little Pamphlet is ushered into the world under certain disadvantages; the prejudices of men, often incline them to lean on that side they imagine to be the strongest, and political views frequently bias their conduct; men in power are never without their parasites, who will on all occasions blazon forth their actions, let them be ever so arbitrary and unjust, and endeavour to make them appear highly meritorious, while the injuries of private citizens are neglected and forgot;---for those that can and impartially, the following pages are published, and ---they were originally penned by the subject to a bill of indictment for a libel, the Grand Jury of the Court the 11th of November last, at the

talion of British Militia, and were meant to be delivered at the Bar in their defence; but a spirited and complete Grand Jury saved them that trouble, by unanimously rejecting the bill; that being the case, they have thought it necessary to publish it, with an Appendix containing copies of the original papers referred to, not from dictates of malice, or resentment, which they totally disavow, but in their own justification, and to enable the public by a general statement of facts, to judge fairly between them and the prosecutor, by whom they have been for these six months past so unjustly harrassed, and so insultingly treated.---In all free governments, particularly under that of Great Britain, as subjects of which they boast themselves, every individual has the right of representing his grievances, even at the foot of the Throne; and the authoris'd Liberty of the Press, every Englishman's choicest birth-right, affords the opportunity of an appeal, upon the matter in question to an impartial public; the Subscribers, notwithstanding they are far removed from the fountain head of these invaluable blessings take their opportunity on all occasions, the

loyalty to the British Crown, and due deference and respect for his Majesty's representative in this Province; and convinced that in no one action of their lives, they can have merited the epithets of disloyalty, or disaffection, they think they have a right to complain of the conduct of Mr. Caldwell, who in capacity of Colonel of the British Militia, has treated them more like Slaves--than Englishmen, by ungentlemanly expressions contained in his Militia orders, by holding Military Courts illegally constituted, by wantonly issuing executions on their property and ordering them to be put in force in the most insulting and disgraceful manner, by vexatiously harrassing them and disturbing the peace of their families, and finally, not having his vengeance sufficiently satiated by these unwarrantable proceedings, by attempting to bring them forward criminally at the public bar of the Court of King's Bench, for a * publica-
 appeared in the Quebec Herald of the 23d of
 ridiculing his Quixotic ideas---this will it is
 apology on the part of the subscri-
 the following pages; they ask nothing

but a cool and deliberate perusal of every part thereof, and a fair and candid interpretation, not doubting, from the explanation therein given, that the public will unanimously unite, as the Grand Jury of the Court of King's Bench did, in a general verdict in their favour.

JOHN WALTER,
GEO. IRWIN,
JOHN JONES.

Quebec, 6th Dec. 1790.

INDICTMENT.

IF the defendants could have obtained a copy of the Bill of Indictment, it would have been prefixed to the Defence.

They applied to His Honor the *Chief Justice* for it, who gave them for answer "that it could not be granted *out* of Court."

The GRAND JURY having returned the Bill of Indictment into *Court* only the *L* of the Session, no motion was, be made for communication of it; and judged necessary to delay the purpose of the defence till MAY NEXT purpose of prefixing to

101

M. H. H. H.

An Address to the Public.

PERHAPS what here is said in our defence,
May to a prosecution give pretence;
We'll therefore ask before we speak aloud---
Is no Informer sculking in the croud?
With art laconic noting all that's said,
Malice at heart, indictments in his head,
Prepared to levy all the legal war,
And rouse the clamourous legions of the bar.
Is there none such? not one? then entre nous
We will a tale unfold, though strange, yet true:
The application must be made by you, }

At Athens once, fair Queen of arms and arts,
There dwelt a citizen of mod'rate parts;
Hibernia claim'd him as her darling son,
Great on the Bench, much greater at a gun;
In rank a Colonel, and on horseback mounted,
Perform'd such deeds! as ought to be recounted,
Not much unlike that Knight renown'd in fame,
A Squire, call'd Sancho Panz by name,
By him for Giants were once mistaken
The day, and barely saved his bacon.
The Grecian was the Picture of this Knight
He was only born to fight;
And drums, and all such Warlike geer,
He had for half the year,
Which he had nearly fail,

'With great men's company was much delighted,
And some folks say he ought to have been knighted

One Aristophanes, (a wicked wit !
Who never heeded grace in what he writ,)
He mark'd the manners of this Grecian Sage,
And, thinking him a subject for the Stage,
Had, from the Lumber cull'd with curious care—
His voice, his looks, his gesture, gait and air,
His affectation, consequence and mien,
And boldly launch'd him on the comic scene;
Loud peals of laughter thro' the circle ran,
All felt the satire,—for all knew the man.

Then Henry---Henricus was his classic name,
Fearing the loss of dignity and fame,
To a grave lawyer in a hurry flies,
Opens his purse, and begs his best advice.
The fee secur'd, the lawyer strokes his band,
" The case you put I fully understand ;
" The thing is plain from Coco's reports ;
" For Rules of Poetry a'n't Rules of Courts :
" A libel this---I'll make the mummer know it,
" And d--n me but I'll trounce the daring Poet ;
" I'll stop the fallies of his laughing muse,
" And harmless wit, prove scandalous abuse."
The bard at Court with vengeance was indicted,
The Jury took the pains to see him righted,
A virtuous inquest set the Poet free :
Greece was to him what Quebec is to

N. B. For this the defendant
late Samuel Foote, Esq.

M. J. Hunter.

Math. Bell.

Quebec. June 14 1828

D E F E N C E, &c.

Gentlemen of the Jury,

IT is a mortifying circumstance for men of fair and respectable characters to be made a public spectacle of, as the defendants are this day; their situation is a painful one, and they feel it so in a very high degree. At this bar they are compelled to appear; if there be any alleviation to their pain, it is totally independent of the prosecutor; it arises from a consciousness, that they have not sought it, but are under compulsion; it arises from experience and knowledge that the worthiest and wisest men, the best of characters have in like manner been dragged forth upon very frivolous pretences by malicious and rancorous prosecutors. If their distress is in any degree diminished, it is from a knowledge that the Court, in which they appear, is not like a Militia Court, which to say the best of it, is scarcely locally constituted; the powers of which are ill defined, understood, and though limited, have been scanned, perverted and abused. This Court has no resemblance to a Militia Court, into which the President is so far from being deficient of knowledge, or one principle of justice, that he is obliged of explaining the Laws (laid down for the benefit of himself, who is to administer it, to the public who ought to be instructed in the principles of it: So far are the members of it from being deficient of judging and deciding, that they went to preside

the Board of Officers, with minds replete with military ideas, with minds predisposed, not to hear and determine, but to condemn; they went into that Court with menacing countenances and menacing voices, avowing in the most public manner their vindictive and unjust intentions. The judges of that Court have declared they could descry guilt by observing the countenances of men*, they never said one word about innocence; their minds were filled with nought but judgment, condemnation, and punishment.

The judges of that Court are even unqualified to hold a Court, or sit at a board, which touches the persons, or properties of individuals, they have not even taken the oath of office, which every Officer of a Court Martial, appointed to try a foldier under the Mutiny Bill, does take and declares that he will impartially try the prisoner. I say gentlemen if the defendants have any alleviation to their trouble, it is because they appear in a Court which every British subject ought to admire and boast of; a Court constituted in right reason, and law; a Court whose powers and authorities, though extensive, are limited, defined and understood by every man of whatever degree: a Court in which the subject may hope with confidence for protection and impartial justice; a Court in which a gentleman presides of jurisprudent learning, who is placed in the seat of judgment without prejudices, without partiality, who can have no interest in the question at issue, for he cannot be presumed to possess Militia, or Military ideas, nor to do otherwise than view with equal eye the parties in litigation.

If there be any consolation afforded the defendants upon this trying occasion, it results from appearing in a Court thus constituted, and where they are to be tried, by a jury composed of their fellow citizens, in whom they can confide; by a body of men impartial, unprejudiced, indifferently and superior to suspicion or surprize; by men

* This can be proved by several creditable witnesses when this declaration was made.

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city of jurors have done credit to this country; and who will, the defendants trust, do credit to it this day.

The plain and literal meaning of a libel is a satire, a lampoon, or a *defamatory writing* generally printed; according to one of the ablest english Lawyers (Sir William Blackstone), it is a malicious defamation of any person made public by printing, or writing. This great Author in commenting on libels, says,

“ The tendency which they have to create animosities, and to disturb the public peace, is what the law considers, and therefore in such prosecutions the points to be enquired into are: First, if the fact of printing and publishing be true, and Secondly, if the matter thereof be *criminal*.”

Great deference and respect is due to Sir William Blackstone; yet he has been and will continue to be commented upon; He has in his most excellent book of Commentaries leaned to a doctrine that was practised only by the Stuart race, and died with them; it is a doctrine that lay dormant from the Revolution, till revived by another great Lawyer, Lord Mansfield: These two authorities may be adduced on the present occasion to sustain the strange and unintelligible doctrine of libels, and you may be told that one man is not wantonly and unprovokedly, to write, or print any matter, or thing to make his neighbour angry; or publish any thing of, or concerning his vices or follies, lest you should provoke him to wrath and urge him to an act of desparation, in which he may break the peace, infract the law, and disturb the tranquility of society; you may be told also, that though he is very deservedly exposed, and in a very true light, yet they that expose him are not justifiable in the eye of the law, but the more guilty; for the truth of the vice or folly which they exhibit to public view, is an aggravation of the crime, and as the *libel* more *libellous*. I shall endeavour to show you that all this (which may be told you in the prosecution) is a farrago of nonsense, unintelligible, and unworthy your notice.

Since

Since the Revolution, and before the time of Mr. Murray (afterwards Lord Mansfield), a libel was almost unknown in England; it never was brought into play, but when a man had printed, or published, or otherwise exposed the King, the Houses of Parliament, or the Magistracy, so as to bring them into disrepute and contempt; it never was employed in any difference between subject and subject, who might happen to expose each other in writing, or print, and for this very plain reason: "The subject had a remedy in the Civil Courts for any injuries he could prove to have received in his person, property, or reputation, by an action of trespass, or personal wrongs, to be tried by a jury, who would upon sufficient proof give him damages." Lord Mansfield was a great and able Lawyer, and an impartial one between individuals; he was not impartial between the crown and the subject, nor in cases where two powerful men of different political principles were in litigation; he inclined to the ministerial man, of which several instances might be produced. He was a prerogative man, had very arbitrary principles and supported very arbitrary measures.

He revived the doctrine of libels and fictions of law, which means perversion of law, and which nobody understands; he has opened a new source of prosecution which has no foundation in law, to the great disquiet and confusion of society, for there are no limits affixed either to the degree of criminality, or punishment.

By introducing such a system he has tarnished a great professional name, and his principles are no longer followed; his opinions in many points are already exploded. Mr. Judge Blackstone, also, (who was a courtly, though a more constitutional Lawyer), in descanting upon libels, if not contradictory, is not very clear; because while he seems inclined to support the doctrine, he concludes with these very remarkable lines; "Every Freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid it, is to destroy the freedom of the Press; but he must not publish any matter that is *mischievous* or *illegal*."

If

"If nothing of a *dangerous tendency* is published, there is *no libel*." It would have done this great man much more honor to have spoken, in other places as in this, more decidedly and less equivocally; he could not in conscience support the doctrine of libels; he was unwilling to offend the court and ministry, for he was solicitor to the Queen, he has given a feeble opinion in favour of them, and a strong one against them. Such as they are, we will take the sentiments of this great commentator to be the criterion and standard, and by them try if this publication can, with the aid of the most subtle sophistry, or fiction of law, be construed into a libel, or to contain matter defamatory to Henry Caldwell; if it contains nothing injurious to him in his person, property, or reputation, if it has nothing in it of mischievous or illegal tendency, it cannot hurt him, and consequently can have no degree of criminality in it; nothing malicious, nothing libellous, no ways tending to the disturbance of the public tranquillity.

Upon criticising and dissecting * this piece, is there found any one expression in it malicious, mischievous, or illegal? It may be called a lampoon, a satire, a pasquinade; pasquinades are not offensive things in the eye of the law, and *sensible* men laugh at them; this publication is very harmless; it is laughable and jocular, written with great good humour, without malignity, without rancour.

If it contains nothing in it to make any body laugh and smile, certain it is that the most surly cynic can take no offence at it: Neither was it published wantonly and unprovokedly, for the defendants can produce the most ample proof of the greatest provocation on the part of the prosecutor, that one man can receive from another. But to pursue the doctrine of libels as insisted upon by Lord Mansfield, to shew its fallacy and that it does not even upon his principles apply in the present instance, let us state what might have been printed and published, and which surely would

* See appendix No. I.

not have fallen within the construction of a libel. It is this,

“ John Doe might have stated that John A’noaks was not Seigneur of any point, place, or parish in the province of Quebec; that he was only the farmer, or tenant at will or for life, of John A’Stiles.” If this assertion is not true, John A’noaks is not angry, is not provoked to wrath; though the publisher of such a story, has the impudence to assert a falsehood, John A’noaks smiles with all the good humour in the world at the impotent malice; but if it be all true, John A’noaks rages like a fury, his pride is hurt to the quick; and though John A’noaks has not one capon per annum the less, yet will he have honest John Doe, who tells the truth tried for a libel, while he suffers the rogue John Doe who tells a lie to escape; was ever any thing more absurd? It would be astonishing that great men, like Lord Mansfield, should be guilty of such absurdities, if the frequency of them did not make the wonder cease. And further to prove a libel is a word without meaning, unintelligible and undefinable, the defendants insist that no two able Lawyers will agree in opinion if they are kept at a distance, and that the same great Lawyer cannot, for Sir Wm. Blackstone did not, write two pages without contradicting himself; and of the second rate Lawyers, they beg leave to afford an example, and by them also to prove that a libel is a word without any meaning. Into the hands of a Crown Lawyer shall be put a sheet of paper without stain, stamp, or writing, fair as alabaster and white as snow; when it comes within the focus of his jaundiced eye, it is foul, as foul as can be, every line is a libel; in his microscopic eye every pore is an inuendo; he sees lurking at every point insinuations, inuendoes, and—and—and God knows what.

It may be urged and asked why will you wantonly and unprovokedly write any thing of a man, though true, that may urge him to anger?

The defendants answer that they have neither done, nor said,

nor

nor printed, nor published any thing to provoke the prosecutor to wrath; and that though they had been guilty of the foulest Libel, they would be excuseable in the eye of the law, because they have * been highly provoked and aggravated by him; or if that makes a libel, they insist that he has been guilty of more than one, that he has deliberately committed acts for which he merits severe reprehension; § for those acts *have had* the foul tendency to sow divisions and create animosities among the citizens, and distraction in the society; those acts might have impelled good subjects and useful citizens, (already too ill used by his former conduct) into violence. They maintain that he is the aggressor, that he has acted illegally, ¶ contrary to the plain import of the Ordinance in letter and spirit; that he has attempted to introduce military discipline over the Merchants and Citizens; that to establish it he has violated the law, and insulted the whole body thereof, by his menacing and indecent language on the Parade, † by his open declaration that he would interpret the articles of the ordinance according to his judgement of them, ‡ by holding military courts; by issuing and causing to be executed military sentences; and they do farther maintain that because he could not succeed in this establishment, he wishes now to introduce a judiciary despotism in the form of libels; from all which, gentlemen, you may collect, that while his Majesty's Ministers are preparing a free government and liberal constitution for this province, the prosecutor seems to be forming projects to counteract his Majesty's gracious intentions, and to render them of no avail; that at an enlightened period when libels are exploded throughout the British dominions, on account of their evil tendency, they are introduced by the prosecutor *in terrorem* over the heads of the inhabitants of this country.

* The orderly Book of the British Militia, if not destroyed or mutilated will prove all this.

§ This can be proved by numberless witnesses. ¶ Examine the Ordinance.

† This fact is proved by more than one credible witness. See appendix No. 2.

‡ See which is a copy of the order in which he publishes such his intention.

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 Frazer, 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 memorialed 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.

stinacy, in getting such a partial list adopted, for this reason they refused to appear on the Parade, in the month of May last, with no other intention than to resent the injuries they had received through him; it is surely impossible that men of reason, or reflection can suppose the defendants did it from a principle of disloyalty, disaffection or disrespect to the Government, or Governor; no one action of their lives can justify such a suspicion; the whole tenor of their conduct proves the contrary.

Unhappily well behaved citizens, have not always justice done them; and the defendants cannot forbear complaining in this Court (as they have already done in the most respectful terms to the Governor) that they have been ill treated by Mr. Caldwell.

The consequence of their refusal to appear on the Parade was, that Henry Caldwell, in quality of Colonel, issued a Military order, (conceived in indecent terms, highly provoking and injurious,) for the assembling of a board of Officers, which condemned them in a fine of ten shillings, with the expences of levying; which fine was levied upon their goods and chattels, in a manner the * most degrading.

Thus you see Gentlemen, that an offence is supposed to be committed; (and for the present it may be allowed to be committed merely for the sake of the argument;) and you see clearly that punishment was inflicted, and satisfaction given to the law—Mr. Caldwell, if he only wanted satisfaction to the law, gained his point, and ought to have desisted. But it would appear he had other designs; and that he meant a great deal more; he either meant a personal injury to the defendants, or he did not; if he did intend a personal wrong, it must be acknowledged that he is highly culpable; if he disclaims any personalty, and that he did it for the sake of obedience, order, and discipline, he is still more so,

Whether the defendants refusing to appear on the first parade in May, was, or was not a right, or reasonable action is the question of the present day; it was done in re-

* See appendix

sentment * of injuries received and sorely felt, § with no other view than to let the aggressors, or the Field Officers know, that they should not with impunity injure citizens of Quebec, by the exercise of partiality and injustice.

If it was an offence, it was punished very severely: This offence was not repeated; for when a † second order was issued for the appearance of the Militia, what was the conduct of the defendants? Did they refuse a second time to appear? Did they make two resentments for one injury? No—they conformed to the law. They had leave of absence legally given, according to the Ordinance, by the Captain of the company in which they were enrolled. Let us now see what was the conduct of Mr Caldwell, as Colonel, and if he conformed to the Ordinance. When the return was made that the defendants had (*with others*) obtained leave of absence from their respective Captains, the behaviour of this Honorable Colonel was more like that of a Bashaw of three tails, than that of a well behaved citizen. His countenance and his manner was not sufficient to mark his vindictive temper; he burst out into the most indecent expressions against the Captains who had given the leave. He assumed military powers, and absolutely insulted them, ‡ by a public reprimand upon the Parade, for doing what the Ordinance authorized them to do, and issued another order in a high military strain forbidding (in direct contradiction to the Ordinance) any Officer whatever to grant leave of absence, except upon the most urgent occasion.

He went still farther. He ordered a || third appearance of

* This is proved by a letter wrote by one of the defendants, See appendix No. 6.
 § It is a notorious fact that one or more citizens who had served in the Garrison in 1775, and were neglected, had apologies made to them by the field Officers for being omitted, and were promised that they should not be forgot at the next promotion; and this at the time that one of those who were recommended declared that the Field Officers hawked about the commissions and solicited some of the citizens not to refuse the favors of Government.

† See appendix No. 7. being a copy of the order of the 21st of June.

‡ This can be proved by several witnesses of character.

|| See appendix No. 8.

the Militia; and when report was made that the defendants were much indisposed, * and that it would be dangerous to their health to go out, he totally lost his temper. † He insulted in the grossest manner two Surgeons, and one Lieutenant, the last of whom he ordered to go like a lacquey to the house of one of the Surgeons, at an improper and unseasonable hour, to the annoyance and disturbance of his family, and menaced him with the displeasure of the Governor; and all this for no other reason than that he reported, a gentleman (whose family he attended, and who was then actually under a course of medicine,) to be sick, and unable to appear. He had the audacity to order *Surgeons in military array, attended by orderly Serjeants*, to enter the houses of private gentlemen and citizens, at an unseasonable hour, that they might report if they were, or, were not sick.

These orders and these proceedings, were issued and conducted with such thundering threats, and imperious manners, that the whole city was struck with terror. There appeared to be an universal eclipse over the minds and countenances of men: amazement and consternation seized the whole society; for three days there was a continued gloom; *all was darkness visible*: Instead of good humour, good neighbourhood, social intercourse and friendly conversation, nothing but distance, animosities, jealousies, fears, alarms, and all the attendants of a divided and distracted society were to be seen. From this state of horrors the public (dreading the impending and deplorable fate of the defendants) were happily relieved, not by any preternatural, or supernatural, but by very natural means, by the fortitude of minds conscious of rectitude, by the assistance of a gray goose quill, and of the Herald-Printing-Office, which gave birth to a polite complimentary card to the worthy Colonel. ‡

* Which was proved by the Surgeons and can be proved by other witnesses bearing commissions in the British Militia.

† This can be proved by half a score of witnesses.

‡ See appendix No. 9.

This little piece unbent the contracted brow, dispelled the gathering cloud, recalled our wonted serenity, brought back the smiling countenance, gave scope to laughter, and all was again tranquil and serene.

So may it long continue; may we never see the like again!

It did not suffice with the prosecutor that the defendants were sick, and were tried for it; * he still persists in his Militia career; and fulminates as before in imperious and insulting language; he orders a fourth, and partial appearance upon the Parade, that is, of one company only, on which day the defendants were out of town upon their private concerns; † they gave previous notice, to the Captain of the company in which they were enrolled, of their intended and necessary departure, even before they knew that the Militia was to be assembled; notwithstanding his partiality in illegally calling out only one company, notwithstanding the expediency and necessity of their absence, the Honorable Colonel ordered ‡ another Court Martial, and the defendants were condemned to a fine of twenty shillings, and this fine was like the first in § a disgraceful manner levied on their goods and chattels. This marks his vexatious and oppressive spirit; for if they had asked Captain Harrison permission to go out of town on their private business, he was deterred from giving it them, by the severe reprimand he and another gentleman had received before on the public Parade; and if they had attempted to explain to him how *urgent* the occasion was, he probably would have told them that he was not a judge of what was, or what was not an *urgency*, or an *urgent occasion*, that there was no Ordinance of the Province to define it, or that his ideas of expediency, urgency, or necessity might not square with the Colonel's. But, gentlemen, no law requires a merchant, or citizen of Quebec, to ask leave from any Officer (high or low,) to go out of town in prosecution of his affairs, nor

* See appendix No. 10. which is a copy of his order 4 July,

† Which they can prove.

‡ See appendix No. 11.

§ See appendix No. 11.

to consult him about it in the smallest degree. It is impossible that the Governor can expect any such thing from the citizens; then who, and what is this Colonel that assumes such airs? He must certainly be military mad, and if we remain longer in his corps we shall catch the infection, for it is truly a very contagious disorder.

The defendants having thus described the beginning and progress of the Militia business, which has led to this prosecution, submit to your consideration, if they, (or whoever else may have been the authors) have not had too much provocation to write this laughable, ludicrous, Hudibrastic piece, which touches a little on the follies of the prosecutor.

If writing, or printing and publishing any thing that may tend to provoke a citizen to rage and anger, and exciting discontent, and divisions among the citizens be criminal, certainly Mr. Caldwell is highly criminal for issuing such cruel unjustifiable orders and sentences, which were neither necessary nor useful, and altogether illegal and contrary to the Ordinance; you perceive that though the defendants were extremely insulted and injured, they did not follow his example by a mischievous, or calumniating publication; if he has sustained any wrong in his person, property, or good name, he has his remedy against the authors whoever they are in the Civil Court, where he should have sought it, and not have prosecuted for a libel, which, even § Lord Mansfield acknowledges, is justifiable and not criminal, if provocation be given; and of that you have had very ample proof.

This is a very important question to the community at large, to every individual in it, to the future generation and inhabitants, as well as to the present. It does not concern the prosecutor and the defendants only; for if its influence did not extend beyond them, it would matter very little what would be the punishment, or the fate of the defendants, or the prosecutor.

§ The case was Rex versus Woodfall, prosecuted for a libel on a letter signed Junius

The event of this trial will decide whether the tranquility of the public shall be disturbed, and the peace of private families destroyed, by the introduction of an oppressive, arbitrary, and unintelligible doctrine of libels; whether individuals shall be harassed and tormented by a malicious prosecution which exposes them to great expence and uneasiness, because they have the sense and spirit to resent injuries and insults wantonly committed against them; because they exhibit in a laughing good humoured way the injustice and unreasonableness of a man who assumes powers that are unknown, and not warranted in law, and who under those assumed powers, in the name of a Colonel, and a military character, vexes and mischievously maltreats his fellow citizens, whom he exposes to excessive plague and expence, while it is to be presumed it does not cost him a single shilling.

The verdict of this day will establish that point; one precedent alone is sufficient to put us into inextricable confusion. You will therefore deliberate very seriously upon the consequences.

It is your duty to consider the prosecutor, not in the character of a Colonel, or a great man, but as a citizen, as one of yourselves; you know him in no other capacity; view him on a level with yourselves and the defendants; for he can appear in this Court no more than your and their equal; *out* of Court the defendants consider him only their equal, you may do as you please *out* of Court; here you ought to do your duty.

The Honorable Judge on the bench is a man of jurisprudent learning, and every way capable of explaining the law in this case; the defendants take pleasure in avowing their confidence in him; they confide in his honour and integrity, that he will in his charge give you a fair and candid construction and interpretation of the law, that he will on this occasion practise the doctrine, which he inculcated to the first Grand Jury, when he enjoined them to the discharge of their duty "unawed and unbiassed."

They

They have a confident hope that he will not pervert, or distort the law; they rely on his impartiality in the instructions he shall give you, and that on this day he will confirm us in the good opinion we entertained of him, when he came among us, that he will establish the character (he brought with him) of an able and an upright Judge and leave behind *clarum et venerabile nomen civibus*.

But gentlemen, though great is their dependence and confidence in the Honorable Judge, their greatest consolation is in you. Since this prosecution must take place, they prefer a jury indifferently chosen to any one judge, or any three judges on earth; because twelve men selected out of the body of the people are found to be the best investigators of truth; for, not being appointed till the hour of trial, they cannot be influenced, they are superior to surprise and suspicion; the defendants view you as men without prejudice, without prepossession, and have full assurance that you will judge candidly and impartially between them and the prosecutor.

They deem it necessary to enlarge on the nature of juries, so as to bring to your recollection, what is the power, as well as the duty, of a juror.

Lord Mansfield made many attempts to deprive juries of the power with which the law invests them, (namely to judge of the law as well as of the fact,) by perverting the law in his charges, by menacing the juries, by sending them back, by refusing their verdicts, and by other vexatious means.

In all cases of libels, in his charges to the juries, he ordered and enjoined them not to consider the point of law, for that was not their province; all that they were to deliberate upon was the fact of printing and publishing; and if they were satisfied in that point, their business was done, they were to return *a verdict of libel*.

It is to be hoped that we shall never be insulted with such a doctrine in this country, for it is the most mischievous that ever was preached; it is to be hoped that neither this, nor any

any other jury will give ear to it. It is a doctrine neither founded in truth, nor consonant to reason; it is one of the most absurd opinions that ever entered the head of man to suppose, that twelve men are brought together for no other purpose than to enquire if the defendants wrote, printed and published a certain instrument of writing; when it is most manifest that they are assembled for the express purpose of discovering if that instrument is in any degree *malicious, defamatory* and *mischievous*, so as to stamp a degree of criminality and guilt upon the writer thereof, who is to be punished not for publishing an *innocent, harmless instrument*, but for *publishing a calumnious and defamatory instrument*; and consequently the jury are to judge if *that instrument contains any matter of calumny and defamation*.

Let a case be stated;

A man is tried for a libel, that is, for exhibiting to public view an instrument of writing; the fact of publishing is proved to the satisfaction of the jury, who must in the next place examine what the instrument contains, what is the nature, and what is the subject of it; whether there is any thing in it *malicious, defamatory, or injurious to the person, property, or reputation* of the prosecutor; if they are deprived of the privilege of thus reading and examining if there be any degree of criminality, or malignity in it, they cannot give a verdict, or only a partial one as far as their investigation goes; all they can say, and find for is, that the defendant is guilty of *publishing only*;

Publishing what, asks the judge? A written paper. But do not you find that written paper to be libellous? No: In your charge you told us we were to find only the fact, and that only have we found; for in compliance with your instructions we went not into the discussion of the law, we entered not into it, and consequently give a verdict as we found upon the investigation made, *guilty of publishing only*. *

* In the case, *Rex versus Woodfall*, his reasoning is not that of a man of sense, he rings changes on the word *only*, which he wanted the jury to leave out, so that he might make his application of the law, they would not consent.

Then

Then the judge (Lord Mansfield for instance) tells the jury that they must find generally and not partially; they must find the defendant altogether guilty, or altogether acquit him; but he would not allow them the power of judging of his guilt or innocence, for he sends them back with this prohibition, "that they are not to apply the law," which means that they are to bring the defendant in guilty whether they know him to be so or not.

When Lord Mansfield revived this unintelligible doctrine, by the power of his eloquence, the subtlety of his reasoning, and the novelty of the subject since the revolution, and by the difficulties and perplexities, with which he teased the juries, some of them were fatigued into verdicts according to his good pleasure.

When the people found his pernicious principles were gaining ground in the nation, that it was not the cause of one man who may be tried to day, but the cause of every subject, liable every day to be tormented, men of understanding and reading, jurisperit men began to examine this new fangled law, and discover on what basis it stood; they discovered it had no foundation in law, or reason, and accordingly opposed it. Junius attacked and confuted both Lord Mansfield, and Sir William Blackstone.

When Lord Mansfield found he could not maintain his system of libels, he gradually relaxed in obtruding them upon the public, and though he could not submit to alter his practice altogether in direct contradiction to his first attempts, he softened it very much latterly, and particularly by declaring that the man who publishes a libel, even though it be a very foul one, will be justified, if he has been thereto * provoked by insults and injuries:

* In the case, Rex versus Woodfall, for a letter signed Junius, Lord Mansfield declared---"That where an act *in itself indifferent*, if done with a particular intent, becomes criminal; there the *intent* must be proved and found. Where the act is in itself *unlawful*, the justification; or excuse lies on the defendant." Now let us ask, is not this publication in itself indifferent? was it done with a criminal intent? has it acquired, or is it become criminal? can the prosecutor prove any such intent? have not the defendants proved provocation to justify, or excuse them in this, or any other production similar to it?

In further elucidation and confirmation of your powers to judge of the law, the defendants will state another case.— A man steals and carries away from one of your neighbours five pounds: He is arraigned for a felony, and tried by a jury, who judge from the evidence produced if he did actually take away the five pounds, which is the matter of fact; if that fact is proved, the jury judge if that fact constitutes the crime of felony; how are they to judge if it be criminal or not? but by consulting the law, to learn what sort of a crime the law pronounces this fact of carrying away to be, either felony as stated in the indictment, or a crime of a less offensive nature, or no crime at all. If they *have doubts about their comprehension of the law*, and if they *choose* they may consult the judge and ask his opinion: It is his duty, and he is bound by oath to give them a faithful explanation of the law, as well in his original charge, as at any time during their consultation; *they are not bound to follow his opinion*, because he may from ignorance, or design give a very improper interpretation of the law; they therefore take the whole into their consideration both fact and law, and adjudge him guilty, or not guilty of felony, or any lesser, or no crime. Just so it is with libels, which (like felonies and larcenies) expose a man to corporal punishment. The fact is publishing, if that be proved, you go to the consideration of the contents whether there be any thing illegal, and criminal in it: This can be done no otherwise than by comparing the law, which marks the criminality of the deed, or instrument, with the instrument itself.

The defendants are solicitous to put the matter in a clear light for your easier comprehension, and they hope they have succeeded.

They will now adduce some authorities to establish and confirm, what they have advanced in support of your power and privilege of judging both fact and law.

Judge Blackstone, in describing the nature of juries concludes in one place thus, (vol. 3. p. 378.)

“ The jury, if they think proper, may take upon themselves

“ selves to determine the complicated question of fact and
“ law.” In another place he is still more copious and po-
sitive, vol. 4. p. 361.

“ A verdict may be either general, guilty, or not guilty ;
“ or special, setting forth all the circumstances of the case,
“ and praying the judgment, or opinion of the Court as to
“ the point of law. This is where they *doubt the matter of*
“ *law*, and therefore *choose* to leave it to the determination
“ of the Court; though they *have an unquestionable right of*
“ *determining all the circumstances, and finding a general ver-*
“ *dict if they think proper so to do.* A practice had once
“ prevailed of punishing jurors for finding their verdict con-
“ trary to the direction of the judge, *which practice* he de-
“ clares to be *arbitrary, illegal, violent, tyrannical, and un-*
“ *constitutional*; and he quotes the authority of Sir Thomas
“ More and Sir Matthew Hale, who observed that such a practice
“ was an unhappy case for the defendant; *for if the judge's*
“ *opinion must rule the verdict, the trial by jury would be use-*
“ *less*, and that it would be unreasonable to *forbid the jury*
“ *to go contrary to the Court in matters of law.*”

Thus gentlemen have the defendants carried you through
a variety of facts, statements, quotations, reasonings and ar-
guments; they will now draw to a conclusion by briefly
stating, and bringing into a more confined compass the ob-
jects to which they have called your attention:

The first object of your investigation is the fact, whether
this instrument was written, or published by them; and you
are to judge from the evidence that has been offered, whe-
ther that fact has been sufficiently proved to your satisfac-
tion; they make no comments upon it, you are competent
to judge.

The second object which demands your serious attention
and deliberation, is, if this instrument of writing contains any
matter or expression that can by a fair construction of law, be held
to be malicious, mischievous, malignant, illegal, and criminal;
to discover this, most certainly you must have recourse to
the law itself; the defendants take leave to urge it strongly

to you, and to impress it upon your minds, that you have the most clear and undoubted right to take the whole of the case into your consideration, the law as well as the fact; that you are to apply the law to the fact of publishing, so as to discover what degree of offence, or criminality the law affixes to the contents of the printed instrument; for there is no criminality in the act of publishing; it is the *malignity* of the *writing published* that constitutes a criminal or libellous intent; and it is the more incumbent on you to retain and preserve this right inviolate, because the power of the Judge is already sufficiently ample, if not too great, by being possessed of the sole and entire disposal of the defendants after your verdict, if you find them guilty; by having it in his breast and his conscience alone to inflict such punishment by fine and imprisonment as shall be agreeable to his good pleasure. Though we may all entertain the highest opinion of the present judge, the very dread of a precedent alone should deter you from incautiously and inconsiderately abandoning, or yielding up your right and privilege of deciding upon the law; for though the present judge may be a man of integrity and honor, and devoid of arbitrary and oppressive principles, you know not who may succeed him; his successors may have the same arbitrary principles as Lord Mansfield, may menace, perplex, and fatigue juries upon the system of libels, which he most certainly did; and when he found he could not succeed by menaces, he flattered and intrigued with them by insinuations of the intricacy and difficulty of the law of libels; and by thus soothing, he did prevail upon some juries to give up the right of discussing the point of law, which was the very end he aimed at.

He wanted to have it in his power, by *his* application of the law, to affix to the fact of publishing, a very heinous and aggravated degree of criminality and guilt, so that the severity of his punishment might rather carry the appearance of moderation and mildness. The defendants for these cogent reasons expect you will judge of the law as well as of the fact.

The

The third and last object for your enquiry is, if the defendants have received any, and what degree of provocation. On this article they have to recommend to you carefully to examine the ordinances and by them to discover,

If Henry Caldwell has, or has not the right and power of forbidding the Captains, or any other Officers of the Militia to give leave of absence to the privates that solicit it.

If Henry Caldwell has authority to send in *military array* a Surgeon, attended by a Serjeant to the house of a citizen, whom that Surgeon had previously reported to be sick, and which report has been proved to be just and true by several witnesses examined before you;

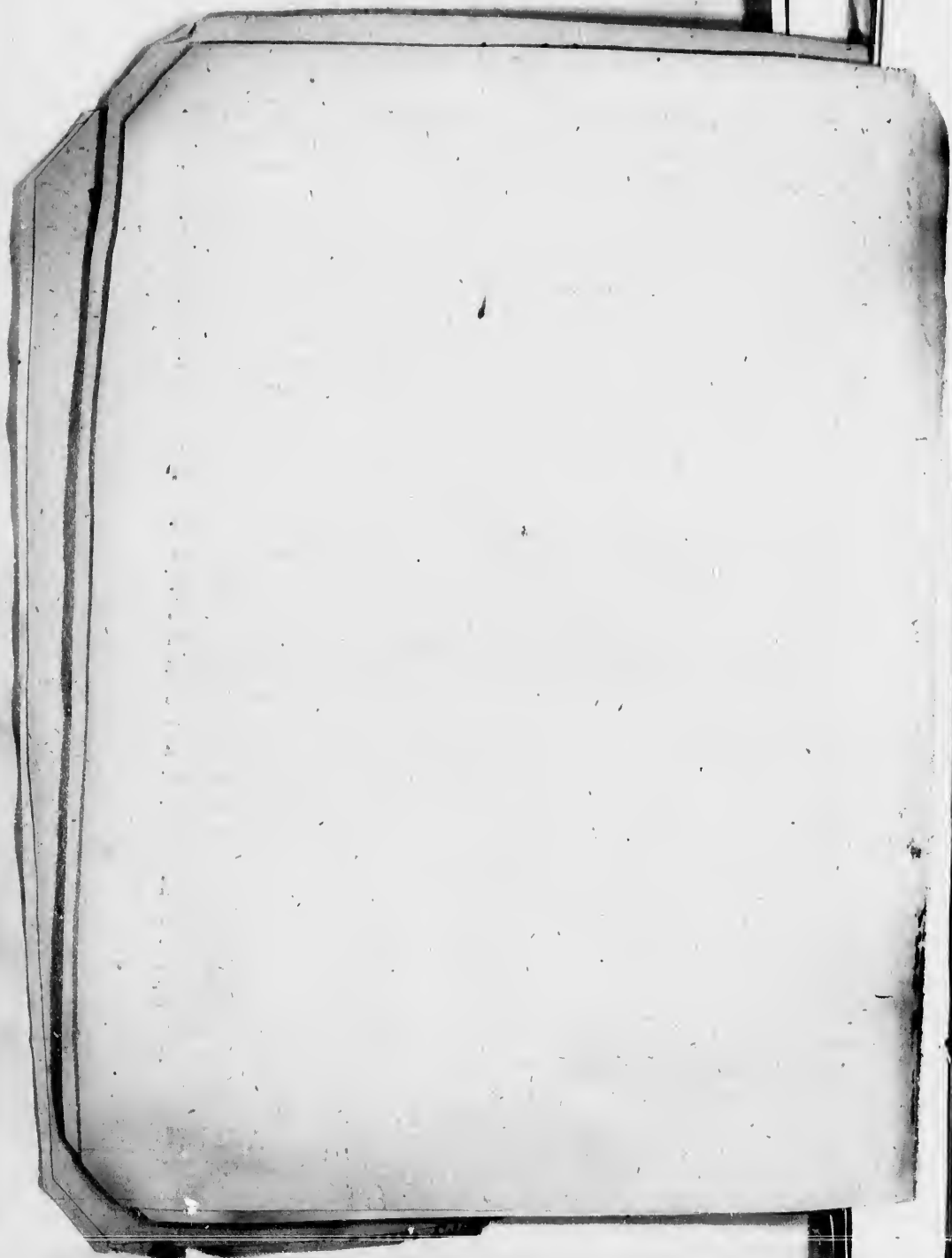
If Henry Caldwell has a right to interpret the law (as he has done) according to his judgment and conception of it.

If he has the power to forbid the defendants, or any other citizen to go out of town, upon their private concerns however important they may be, for the mere purpose of walking up to the Parade, and not for any actual, useful, or necessary service; and after consulting the Ordinances on these points, the defendants recommend to you, and expect of you to consider if the military orders, courts, sentences, and executions, which he has held and issued, are warranted by any known Law, or Ordinance of the Province; and finally they expect you to consider whether they have not by such orders, courts, sentences, and executions received the most cruel, malicious and aggravating provocations that man can receive and experience from man.

The defendants came into Court with characters unstained and unfulled; they commit them to your keeping; do you, as their country, take heed to give them good deliverance and return them their characters as you found them. They rest persuaded you will find nothing in the publication of evil tendency, or criminal intent; that they have been injuriously treated and highly provoked, and that you will return a general verdict of

NOT GUILTY.

APPEN-



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APPENDIX.

Number I.

ADVERTISEMENT.

Ecce Iterum Crispinus——

Is not th' *High Court of Militia* sworn
To judge that law that serves their turn
Make their own jealousies High Treason,
And fix 'em whomsoe'er they please on?
Cannot the *Learned Colonel* there
Make Laws in any shape appear?
Mold 'em as *Witches* do their clay
When they make *Pictures* to destroy?
And vex 'em into any form
That fits his purpose to do harm?

HUDIBRAS.

In the present age, when the *Inventive faculties* of mankind seem daily to be breaking forth into meridian splendour, just as the sun bursts through a cloud at Noon Day, dazzling the eyes of all its beholders, what a happiness it is that in this Frozen Clime we are not totally deprived of its genial influence; for though England may boast a Newton, a Chatham, or a Marlborough, we can also bring forward to view a *Caldwell*: in whom the character of a Philosopher, a Statesman, and more particularly that of a Warrior, is combined:

For when he does abandon dwelling,
And *drones* about a Coloneling,
A wight he is, whose very sight wou'd,
Give him a claim to what's called Knighthood.

And though he was unfortunately out of the way when Peg Nicholson's order was first instituted, otherwise he would undoubtedly have participated in the benefits thereof, yet he may be justly stil'd

Chief of Domestic Knights, and Errant
Either for Chartel, or for warrant;
Great on the Bench, Great in the saddle,
That cou'd as well bind o'er, as swaddle:
Human perfection is his Plan,
Dealer in *War*, as well as Bran;
And being a Dab at both of these,
He may be stil'd of *War* and *Peace*,
For Geese lay Eggs, and Eggs form Geese:

As the Galen of the present day he exhibited himself on the 6th of July last, and by Magic Incantations laid claim to a power of banishing the worst of human evils, namely sickness—and proved to the world that he was equal if not superior in skill to the Learned Talacotius, who

from

From Brawny part of Porter's Bum,
Cut supplemental Noses, which
Would last as long as Parent Breech :

On the 15th instant he again came forward with his *Inventive Faculties*, and that they might be more publicly known, attempted to read his lectures on the Necromantic Art, not, as before in the house of Bran, but in what was once the residence of Episcopal dignity, or the house of the Man of God, where Messrs. Jones, Walter, and Irwin, were summoned to appear each in propria persona to answer certain chimerical Charges, formed from the Effervescence of his brain, like Maggots in a rotten Cheese ; but as they did not attend, he lost an opportunity of displaying his Oratorical Abilities, for which he is so famous,—and at which he himself was so enraged, that he sentenced each in a fine of twenty shillings, which was levied last Saturday, not for any offence he could prove them guilty of (except attending to their Business, in preference to Militia Orders given in time of profound Peace, can be construed into a crime,) but it is to be presumed, for withholding from him a part of that Pageantry, which, as Colonel of the British Militia he vainly thinks himself entitled to ; for

He assumes a power as absolute,
To judge, to censure and controul
As if he was the sole Sir Poll,
And saucily pretends to know,
More than his dividend comes to ;

The Subscribers, as in justice they ought, apologize to the public for depriving them of the pleasure of hearing a display of the Colonels' *Inventive Faculties*, on the last Militia Court day ; for how can a surgeon shew his Anatomical skill in dissection, without he has a subject brought before him to work upon, and, though they do not approve of fulsome adulation, they must say that the Colonel is a man taking him all in all, his like will never probably be seen again, and as all Characters of such striking Genius should have Historiographers to record their Actions, they pledge themselves to hand down to Posterity from Time to Time, a faithful state of all his Errant Proceedings, and should he, Don Quixotte like, find occasion for a Squire to attend him in future, worthy Sanchez's *Good Qualities* shall not be forgot.

JOHN WALTER,
JOHN JONES,
GEO. IRWIN.

Quebec, August 23, 1790.

Number II. & III.

QUEBEC, 16th June, 1790.

R. O.

• The Captains and Commanding Officers will at the Parade on Sunday morning next, Cause the following Extract, &c. from the proceedings of a Court of Field Officers held the 8th, 9th, and 10th instant by adjournment, to be read at the head of their companies by an Officer.

“ The Court having fully considered the nature of the charge (that of being absent from the Parade on Sunday morning the 23d May last, without leave or lawful excuse) exhibited against Messrs. Alex. Wilson, John Jones, John Walter, and George Irwin, of Captain Harrison's company, John Buchanan, of Captain Lees company, and John Rene, of Captain Ainslie's company, are of a decided and unanimous opinion ;

• By this order the defendants are justified in accusing Colonel Caldwell, of the Militia Mania ; instead of regarding them as men, he treats them like reptiles.

" that they have incurred the Penalty imposed for the first offence of such a nature
" by the Ordinance, To wit, ten shillings, and they are fined accordingly. Several other
" gentlemen were absent, against whom a like judgment was given, but they have since
" came forward with apologies that were deemed sufficient to exculpate them. The
" Commanding Officer, feels it as a very disagreeable part of his duty, to be under the
" necessity of enforcing * obedience to the laws, and hopes that the conviction of those
" gentlemen will produce those good effects, which cool reflection should impress on the
" minds of those whose example † should teach other people, that a cheerful compli-
" ance with the laws of their country, intended for their common safety, is the first duty
" of every good citizen, and superior to every other motive or consideration. † The
" Commanding Officer, thinks it right to make public, that the Court of Field Officers in
" future may construe the refusal to attend the Parade, as a refusal to serve and may im-
" pose the fine accordingly."

(Signed) WILLIAM LINDSAY, Jun.

Number IV.

To his Excellency the Right Honorable Guy Lord Dorchester, Govern-
nor and Commander in Chief, in and over the Province of Quebec.

Memorial of John Jones, Merchant and Citizen.

SHEWETH,

THAT your memorialist has been an inhabitant of this Province and a resident of this City for the space of twelve years, and is at present the oldest house keeper among those that arrived since the year 1775; that for ten years past he has been a Merchant, and traded to considerable extent; that he has sustained the character of a fair, and honorable man, in proof of which he can appeal to the general voice of his fellow citizens and particularly to every Officer in the Battallion of the British Militia.

That your memorialist has been informed three companies are to be added to the British Militia of this city, and that a number of citizens are to be appointed Officers to the said companies.

That your memorialist has been taught to believe, that long residence, loyalty as a subject and good conduct as a citizen, would be the best recommendations for a commission in a corps in which he enrolled and served with alacrity and zeal, ever since the Bill for embodying the Militia passed.

That your Memorialist has represented, through the proper channel, to his Colonel the Honorable Henry Caldwell, Esq. this statement of facts and his hopes that § " Youths and

* The defendants have ever shown obedience to the laws; the prosecutor has violated them in this R. O.

† Does it not appear from this declaration that Colonel Caldwell, had determined to obviate all difficulties and remove every obstacle for the attainment of his purposes in establishing a military discipline over the citizens?

‡ Is not this a positive avowal of his intention to violate the law? The Ordinance says, that the not enrolling in the Militia, is the only refusal to serve.

§ Several of the gentlemen appointed to the new commissions had the candour to confess that Mr. Jones had greater, and preferable pretensions than themselves; since the avowed purpose of the Bill was to make the Militia respectable, and efficient, it may be presumed that the defendants were more likely to answer the intentions of the legislature, than young boys, and ought to have been recommended. They have some influence in society, and over their fellow citizens, the youths have none.

new comers would not be preferred before him in the distribution of commissions," Colonel Caldwell was pleased to answer that, "it had not occurred to him that your memorialist had resided so long in this city, but that the recommendations were now given in."

Your memorialist submits with all deference to your Excellency's judgment, whether a man of known and unimpeachable character, is, or is not, entitled to that distinction which the Government may be distributing among the citizens in granting commissions for the Militia; and confides in your Excellency's justice that if those gentlemen who may have been recommended, cannot plead better conduct, nor so long residence, he will not be passed over. And your memorialist as in duty bound, &c.

JOHN JONES.

Quebec, 16th May, 1789.

N. B. The same day a copy was delivered to Colonel Caldwell.

Belmont, 16th May, 1789.

SIR,

I Received your note with the Inclosed copy of your Memorial to Lord Dorchester, I am glad to find it has been given in, in time, (the commissions not being yet issued) as his Lordship with the greatest propriety can take into consideration your merits and services, and make such alterations in the list as he thinks proper; all that I can say is that whatever his Lordship thinks proper to do in that particular will be perfectly agreeable to me, I am Sir,

Your most Obedient Humble Servant,

HENRY CALDWELL.

NOTWITHSTANDING Major Frazer declared that a general list was given in, and that the defendants were of the number they have great reason wholly to doubt the truth of the assertion; it can be proved by one of them, that his name was not down in the general list, a gentleman of credibility having heard Major Frazer mention it; this unprovoked and as it would appear intended slight on the part of the Major, gave rise to the following letter to Colonel Caldwell, which, with his answer, is submitted to the perusal of the Public, to show how much the Field Officers have insulted and endeavoured to tyrannize over respectable citizens.

SIR,

Quebec, 19th May, 1789.

HAVING been informed, that in consequence of an intended augmentation of three companies to the British Militia, a general list of the respectable citizens was taken, for

Is Colonel Caldwell a fit man to recommend who are proper to have commissions in the Militia, when he is ignorant, or forgets that there are citizens in town who have been respectable house keepers for many years; and when such proper characters as the defendants were known to the Field Officers where was the propriety of recommending young boys? where was the necessity of those Field Officers going upon the impress service and forcing men to accept commissions who had refused them? and where was the necessity of those Field Officers making private and secret enquiries and sounding as it were whether certain gentlemen would accept their commissions? This conduct of the Field Officers can be proved. There was no necessity no propriety in either instance; nor was there any propriety in the Field Officers neglecting the Captains of each company who should have been consulted. If Government was in such distress for Officers, there are characters to be found in town that would save Government from such a humiliating situation, and would not have dishonored the appointment. The recommendations were made to promote private interest and gratify private passions.

the

the purpose of appointing Officers from a part thereof, and as I find my name was not down in that list, though I have better claims than many, from long residence, and at least equal in point of respectability of situation and character, I take the liberty of applying to you as Colonel of the British Militia, hoping you will favour me with the reasons why my name was omitted.—I arrived here in the year 1782, with a considerable property under my charge, and have ever since supported the character of a merchant and a gentleman; my loyalty and courage I flatter myself cannot be doubted, and my having a family establishes me a citizen of the place, not an itinerant: I must beg leave to observe, that it is not from an ambitious view of becoming an Officer that this is dictated, but from a dislike of being made an exception to an almost general rule, and a conviction of my being entitled, from the rank I bear in society, to a similar mark of distinction with the rest of my fellow citizens, with whose esteem and friendship I have ever been honored.

I am with the utmost respect,

Sir, Your very humble servant,

(Signed)

JOHN WALTER.

Henry Caldwell, Esq.

Belmont, 20th May, 1789.

SIR,

I Received yours of 19th instant, in answer to which I have to inform you that I did see a list of several gentlemen's names of the town of Quebec, but not having that list by me, I really cannot say whether your name was included in it, or not; but if it was omitted, there were several gentlemen's names as respectable as yours that I know were not included in it, not I am satisfied through any want of respect to either you, or them, but merely I suppose from inattention; neither your rank in society, your loyalty, or courage, are called in question, and all that I have to regret is, that the number of commissions proposed to be made out will not admit of my recommending all the gentlemen of the town to be Officers; there are no commissions yet signed, the filling up the vacancies rests intirely with his Lordship, and having giving in names sufficient for the companies proposed I shall interfere no further with any gentlemen's pretensions, or with his Lordship's pleasure in consequence, though at the same time I mu^t say that I think all gentlemen settled in the town however short their residence may have been, have equal pretensions provided their respectability in point of character and situation will allow of it, *

I am Sir,

Your most obedient humble servant

HENRY CALDWELL:

To the Right Honorable Guy, Lord Dorchester, Captain General and Governor in Chief of the Province of Quebec, &c. &c.
The Memorial of Alex. Wilson, John Antrobus, John Walter, and George Irwin.

HUMBLY SHEWETH,

THAT your memorialists understanding a promotion of Officers is about to take place in the British Militia, and that Colonel Caldwell has given in to your Lordship a partial list of such people as he wishes may be appointed.

That amongst the names in that list are persons who, left Quebec in the fall 1775, some of short residence in the country, and others youths now actually under tuition.

Your memorialists in consequence humbly presume to remark to your Lordship,

That some of them arrived in this city in the years 1777, and 1778, and others in 1782, and have families and property to protect.

That the being obliged to serve under Officers of the above description, your Lordship must easily conceive a degrading circumstance to the feelings of your memorialists.

That your memorialists have shewn themselves during a long residence in this city

The defendants insist that longer residence with respectability give preferable claims; what respectability have the youths in point of situation

loyal subjects and good citizens, and that the being commanded by Officers whom they think totally unqualified as well from their inexperience in life, as their want of consequence in society must be very mortifying and painful.

That some of your Memorialists having applied to Colonel Caldwell upon this business, conceiving the injury done to their feelings originating with him, one of your memorialists received an answer thereto by letter, a copy of which they take the liberty of inclosing to your Lordship and to which without making any remarks thereon, your memorialists humbly beg leave to refer.

Your memorialists with all due submission state the above mentioned grievances to your Lordship, hoping your Lordship will be pleased to take them into your consideration, and grant your memorialists such redress in the premises as your Lordship in your wisdom may think proper, and your memorialists as in duty bound will ever pray, &c. &c.

(Signed) ALEX. WILSON,
JOHN ANTROBUS,
JOHN WALTER,
GEO. IRWIN.

Quebec, May 1790.

Number V.

Quebec, 2d June, 1790

Regimental Orders.

A COURT of Field Officers will assemble on Tuesday the 8th instant 11 o'clock forenoon at the Commanding Officers quarter at the Casoterie, to fine such persons as have neglected to enroll themselves and to enquire into the cause of several men of the B. M. being absent without leave from the Parade on Sunday the 23d instant, in order that the delinquents may be fined as the law directs.

The Commanding Officers of companies whose men were absent without leave will attend with the non-commissioned officers, who warned them.

Mr. John Jones, Mr. John Walter, Mr. George Irwin,

Sir,
You are hereby summoned to appear at the time and place as directed by the above order.
EDWARD HARRISON, Captain B. M.

Quebec, 8th June, 1790.

SIR,

I Received a summons yesterday to attend this day at 11 o'clock in consequence of a charge of delinquency made against me by a court of Field Officers, in Regimental Orders; I know no persons that can have a power to call me before them, except his Majesty's Judges and Justices legally assembled, before whom I shall at all times be ready to appear to answer to any charge that may be brought against me, and I cannot help observing that the term delinquent (made use of in the Regimental Order) conveys an odium, which I conceive myself by no means entitled to.

I am with respect, Yours, &c.

JOHN WALTER.

Edward Harrison, Esq.

Quebec, 8th June, 1790.

Dear Sir,

I received your summons accompanying a Regimental Order without signature directing "several men of the B. M." to appear before I know not whom (for it is not mentioned) that *Delinquents* may be fined.

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I am not conscious of any delinquency, nor do I consider myself obliged to appear before any man, or any set of men but before his majesty's Judges and Justices in his Majesty's Courts.

For this reason I decline appearing.

In Spring 1789, I memorialled Lord Dorchester against a partial list of names given in and recommended for commissions in the British Militia; in which I stated my pretensions and prayed that I might not be passed over in the distribution of commissions-- a copy of that Memorial I gave to Henry Caldwell, Esq. and to that memorial I now refer, having only to add that several of the Gentlemen who have had commissions have had the candour to confess that I had preferable claims to them.

Copy I am &c. JOHN JONES.
Edward Harrison, Esq.

At a Court of Field Officers held the 8th June and 9th and 10th by adjournments.

Colonel Henry Caldwell, President.
Lt. Col. Nairne, } Members.
Major Frazer, }

MESSRS. Alex. Wilson, John Jones, John Walter and Geo. Irwin of Capt Harrison's company, John Buchanan, of Captain Lees company, and John Rene, of Captain Ainslies company, were accused of being absent from the Parade of the B. M. on Sunday the 23d of May last.

Sufficient proof being exhibited of their being absent without good cause, leave or lawful excuse, they were fined ten shillings each agreeable to the Ordinance it being the first offence.

EXTRACTS from the proceedings
(Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

To Hugh Mackay, High Constable, for the City and District of Quebec.

Viz.

WHEREAS John Jones of the City of Quebec, Auctioneer and Broker was upon Friday the eleventh instant duly convicted, before us Henry Caldwell Esq. Colonel Commandant of the British Militia for the City and Banlieue of Quebec, John Nairne Esq. Lieutenant Colonel of the same, and Malcolm Frazer Major—all Field Officers, for that he the said John Jones being a private Militia man in Captain Edward Harrison in the British Militia aforesaid and bound to come therein, and being duly warned to attend a meeting or assembly of the said Militia, on Sunday the twenty third of May last, the day fixed for such meeting for review and exercise, did not attend the same, (though not prevented by sickness or upon good cause assigned, having obtained leave of absence from the Captain or the Officer Commanding the company) whereby he the said John Jones hath incurred the penalty of ten shillings.

These are therefore in his Majesty's name to command you to levy the said sum, by distress of the Goods and Chattels of him the said John Jones, and if within the space of four days, next after such distress, by you taken, the said sum

sum with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the goods and chattles so by you detained, and out of the money arising by such sale, that you do pay the said sum of ten shillings to the Colonel of the District to be accounted for and applied as the law directs rendering the overplus (if any shall be) on demand unto him the said John Jones the reasonable charges of taking, keeping and selling the said distress (not exceeding five shillings) being first deducted. And that if sufficient distress cannot be found of the goods and chattles of him the said Jones,

Whereon to levy the said sum of ten shillings, that then you certify the same to us, or either of us, together with the return of this precept Herein said not

* Given under our Hands and Seals at Quebec the eleventh day of June in the year of our Lord One thousand seven hundred and ninety

(Signed)

HENRY CALDWELL, Coll. B. M.
JOHN NAIRNE, Lt. Coll. B. M.
MALCOLM FRASER, Major B. M.

Seals.

A true copy H. MACKAY, H. C.

Province and City }
of Quebec, Is }

I do hereby certify to all whom it may concern that what is wrote on this and the two preceeding pages contain a just true and exact copy of the original, the same having been carefully compared by me this eleventh day of June one thousand seven hundred and ninety. IN TESTIMONY whereof I have hereunto set my Hand.

CHA. STEWART, Notr. Pubs.

Quebec 12th of June 1790

These are to Certify, that I have seized and taken from the Counting-house of Mr. John Jones being his property, in consequence of, and by virtue of the within warrant and for the purpose of satisfying the same—viz.
One small square folding table and one round table.

H. MACKAY, H. C.

N. B. Both tables are Mahogany. H. M.

Number VI.

QUEBEC, Wednesday 18th August, 1790.

SIR,

I consider your conduct for these three months past to be personal to me and highly offensive, by the Military orders you have issued and the Courts of Officers which you have held, in which you have made use of my name in a disgraceful and degrading manner. I now demand of you a full explanation of such behaviour, and expect you will give me ample satisfaction for the injury you have done to my honor and my feelings. I will not allow you nor any other man to use me like a soldier, or otherwise maltreat me with impunity.

I am a Gentleman and Citizen of Quebec, and as such I expect your answer to this letter in writing by 4 o'clock to-morrow afternoon, that I may know whether I am to treat you as a Gentleman, or otherwise, whenever and wherever I shall meet you.

(Signed) JOHN JONES.

To Henry Caldwell, Esq.

A similar writ of execution was issued against John Walter and Geo. Irwins goods and chattels.
Number

(31)

Number VII.

Quebec, 14th June, 1790.

R. O.

THE British Militia are to be again assembled on the New Parade near St. Louis Gate on Sunday the 20th instant at 6 o'clock in the morning.

The Commanding Officers of Companies previous to the meeting will take care that their non-commissioned officers, warn the men of their respective companies and be particularly careful to warn personally those who were absent at the last meeting.

By Order (Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

Number VIII.

Quebec, 21st June, 1790.

R. O.

The British Militia are to Parade on Sunday the 4th July at 6 o'clock in the morning, when the Captains are desired * *not to give any leave of absence, especially to those gentlemen who were fined for being absent without leave on Sunday the 23d of May last.* No man is to presume on any pretence to leave the company he is appointed to without leave from his Captain, and the approbation of the Captain whose company he joins, who are authorized to make such changes for their respective convenience, giving notice to the Adjutant,

Mr. Alex. Wilson late of Captain Harrisons company, accused before the Court of Field Officers held this day, of being absent without leave from the Parade the 20th instant pleaded his exemption from serving in the Militia, being a Seigneur Primitif, which the Court having considered and he having produced his Captain's Certificate to that purpose, Mr. Wilson was acquitted of the charge exhibited against him.

Robt. Hadden of Captain Finlays company is appointed Serjeant in Captain Harrisons company, and is to be obeyed as such, — No Serjeant or Corporal in future is to be appointed to any company except through the medium of the Commanding Officer of the Corps, nor is any non-commissioned officer to be recommended from any company, before the Captain or Commanding Officer of the company to which the man belongs is acquainted therof.

When a Recruit offers himself to any Captain, or Commanding Officer of a company he must be directed to the Adjutant, who will appoint him to the weakest company, except such Recruit may be fit for, or wish to serve in the light company, in which case that company if not of equal strength with the others of the corps may have the preference.

By order (Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

Number IX.

ADVERTISEMENT.

ON Tuesday morning last, by order of Colonel Caldwell, a Military Court of Field Officer, was held in his counting house at the Canoterie, to try several gentlemen, for being sick on Sunday the 3d instant without the Colonel's permission.

* The defendants challenge Col. Caldwell to produce a specimen of such an order in the British Army. Gentlemen Captains what an insult is this to you!

Henry

Henry Caldwell, Esq. President.

John Walter being first called for, to shew the reason why he was sick, and appearing, his Doctor was then examined touching the cause thereof, when the Court after mature deliberation on the *heinousness of the offence*, not being able to find any clause in the Ordinance to punish offenders of that description, was pleased to acquit him, well as John Jones, and George Irwin, who were tried for the same *Crime*.

The Subscribers present their respectful compliments to Mr. Caldwell, hope he will well after the fatigues of that day, and at the same time felicitate the public upon the prospect of the blessed æra approaching, when through his skill, sickness will be no longer known; they are inclined to think, in consequence of the rapid strides he is daily making towards human perfection, that the far fetched ideas of the famous Dr. Price, relative to a second Golden Age taking place, when vice and every calamity not excepting death itself, is to be excluded the present state, will, *through his inventive faculties* be put in practise.

JOHN WALTER,
JOHN JONES,
GEO. IRWIN.

Quebec 7th July 1790.

Number X.

Quebec, 4th July, 1790.

R. O.

A Court of Field Officers (Lieutenant Col. Nairne and Major Frazer being absent in the country) to be composed of Col. Caldwell, Captains Johnston and Ainslie, to meet at the Commanding officers on Tuesday next at nine o'clock in the morning, to enquire into the cause of Messrs. Walter, Irwin and Jones being absent from the Parade this day without leave.

The repeated * intentional absence of those gentlemen from the Parade, makes this enquiry necessary, the Doctor, Adjutant and Serjeant Major will attend, those gentlemen that were absent will likewise be directed to attend with the Serjeants who warned them.

Captain Harrisons company to parade on Sunday the 1st of August next, at the New Parade at 7 o'clock in the morning, † *No leave of absence to be given to any person except on urgent business.*

By order (Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

Quebec, 6th July 1790.

R. O.

At a Court of Field Officers held this day,
Colonel Caldwell, *President.*
Capts. Ainslie, } *Members.*
Johnston, }

Messrs. John Walter, Jones and Irwin were accused before the Court of being absent from the Parade on Sunday last without leave, when it appearing from the testimony of

* Unless Colonel Caldwell proves their "repeated intentional absence" this must be taken for Militia declamation and falsehood.

† Probably such an order as this is not to be found through the whole British army during this Century.

Doctors

Doctors Davidson and Gold, that those gentlemen were ill and taking medicines that morning, so as to make it improper for them to go abroad, they were acquitted.

By order (Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

Number XI.

Quebec, 30th July, 1790.

SIR,

I am obliged to go out of town this evening or to-morrow morning upon business of a very urgent nature, which I expect will detain me two or three days; it will therefore be out of my power to attend the Parade on Sunday morning next, without doing a material injury to my concerns,

I am with much respect,
Sir, your very Hble. servant,
JOHN WALTER.

Edward Harrison, Esq.

N. B. Mr. Jones and Mr. Irwin gave verbal notice of their departure on their private concerns.

Quebec, 14th August, 1790.

R. O.

A Field Officers Court of the British Militia to consist of Col. Caldwell, Captains Johnston and Ainslie to be held on Tuesday the 17th instant at 9 o'clock in the morning at the old Court of Appeals room in the Bishops Palace, to try Messrs. Jones, Walter and Irwin, privates in Captain Harrisons company, who stand charged with being absent without leave from the Parade on Sunday the 1st instant; Captain Harrison will attend with the necessary proof in conformity to his report respecting those gentlemen: The Commanding Officer is sorry that from their conduct (sometimes refusing to obey the law, and sometimes trying by little shifts to evade it.) He is under the necessity of enforcing it, which at this juncture is particularly necessary, when we have a prospect of a war and when the safety of the Province may depend on a well regulated Militia and † the zeal and alacrity of the Inhabitants in the defence of their country.

By order (Signed) WM. LINDSAY, Jun.
Ensign & Adjutant.

YOU are hereby required personally to appear before the Field Officers Court of the British Militia, at the old Court of Appeals Room at the Bishops Palace, on Tuesday the 17th instant at nine o'clock in the morning to answer to the charge against you of being absent from the Parade on Sunday the 1st instant: herein fail not at your peril,
Quebec 14th August, 1790. †

HENRY CALDWELL, Col. B. Militia.

To Mr. John Jones, private in
Captain Harrisons company of
British Militia, Quebec.

† The defendants declare that they will with the most zealous alacrity defend the country in common with their fellow citizens against all its enemies without pay, fee, or reward, or the hope thereof.

† A similar summons was issued and served upon Mr. Walter, and Mr. Irwin.

Quebec

Quebec, Monday 16th August, 1790.

Dear Sir,

I this day received a paper signed "Henry Caldwell," requiring me to appear and answer to a charge against me of being absent from the Parade on the 1st instant, before men holding a Court, of which, and of whom I have no knowledge, and as I have already wrote you on a former and similar occasion, before whom I do not consider myself obliged to appear; for no public Act that I have ever read, or heard of, have established the said Henry Caldwell and his Colleagues into a Court Martial, a Civil Court, or a Court of Record, and the said Henry Caldwell has declared that the said Court, at which he has more than once presided, is not a Court of Record; It may be a Court of Inquisition, but I do not choose to expose myself to any inquisitorial powers, or to submit to the *Questiōn ordinaire et extraordinaire*.

I do again decline to appear before any man, or set of men, except the King's Judges in the King's courts legally authorised to assemble. In compliance with the law I enrolled myself in your company and so continue on the list. I have with cheerfulness served as a private, and as a citizen have in all things conformed to and justified the Law.

When I have been absent upon the Parade, it has been upon reasonable and solid grounds, and so acknowledged by the said Henry Caldwell in more than one instance.

Upon the 1st instant I was absent on my private affairs and upon an urgent occasion; A few days before, I told you that my private affairs called me out of town; you were present, when Mr. Hadden gave me the summons, some hours before which I told you that I was preparing for my journey.

The first duty of a citizen is to attend to his business which is his primary object, every thing else is secondary. If I had judged it necessary I would not hesitate to communicate my private correspondence and concerns relating to my expedition to any friend, or gentleman in the town, but not to Henry Caldwell, nor to any other Field Officer, and for this very plain reason, I do not know that any Court has a right in such a case, to order me to expose my private concerns to the public inspection; and especially where the presumption lies that one of that Court has a particular interest in getting access to his neighbours secrets.

If I am directed by a Merchant to go 20 or 30 leagues out of town, to buy, to sell, or transact any other business for him, I am humbly of opinion it is not necessary I should delay my departure a few days, for the sole purpose of going upon the Parade, or that I should ask permission from you, Henry Caldwell, or even the Governor; Under this opinion I will ever act, and prosecute my business without asking leave, or giving any notice of my departure. *

Edward Harrison, Esq. Captain B. M.

(Signed) JOHN JONES.

Quebec, 16th August, 1790.

SIR.

I was much astonished this morning at being served with a summons by Serjeant Had-
den requiring me to appear before a Court of Field Officers, to-morrow at nine o'clock, to answer to charges against me for being absent from the Parade on Sunday the 1st instant--you must know that I am regularly enrolled in your company agreeable to the Ordinance and that I have never illegally absented myself. I have already said in a let-

* Mr. Caldwell has had the assurance to assert that all men (officers or privates) ought to obey HIS orders and remain in town for Parading, and neglect their business however important that may be; He would have the Merchants and Citizens risque the loss of their property and the subsistence of their families for his ostentatious Parade. It would seem that he wants to reduce them to a level with soldiers in the Barracks.

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th August, 1790.
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ter to you of the 30th ult. that private business of an urgent nature called me out of town on the last Parade day of your company, and I do not conceive myself obliged to ask any Person, or Persons permission for so doing, I have to-morrow morning business of more consequence to attend to, than that of dancing attendance upon a Court of Field Officers, who appear to be guided in their actions merely by caprice, and could I go, it would only be to say, that I was absent upon business the 1st instant, and that I should always attend to the business by which I am to gain a livelihood for myself and family, in preference to militia orders, given in time of profound peace, and which seem to be calculated for no other purpose, than, that of disturbing the tranquility of society.

I am with all possible respect,
Sir, Your very Humble servant,

JOHN WALTER.

Edward Harrison, Esq.

Quebec, 16th August, 1790.

SIR,

After intimating to you that my private business in the country would prevent my attendance at the Parade of the B. Militia on the 1st instant, I am very much surprized at receiving a requisition to appear before some Field Officers.

Having been guilty of no crime as a Militia man I beg leave to acquaint you I shall make no such appearance.

I am your most obedient servant,

GEO. IRWIN.

Edward Harrison, Esq.

Quebec, 17th August, 1790.

R. O.

At a Court of Field Officers held this day,
Colonel Caldwell, President,
Captain Ainslie, } Members.
Captain Harrison, }

MESSRS. Jones, Walter, and Irwin, were accused of being absent from the Parade on Sunday the 1st instant * without leave, which being proved, the Court condemned them in a fine of twenty shillings each, it being the second offence of the same nature they have been guilty.

By order (Signed) WM. LINDSAY, Junr
Ensign & Adjutant.

Quebec, ss.

To JOHN HOOPER, Bailiff.

WHEREAS George Irwin of the city of Quebec Merchant was upon Tuesday the seventeenth day of August instant, convicted before us Henry Caldwell Esquier Colonel Commandant of the British Militia for the and Banlieue of Quebec, Thomas Ainslie and

* They have stated and can prove that they gave notice to Captain Harrison that it was necessary to be out of town on their private business. And he dared not give them leave.
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Edward Harrison Esquiers Captains of the same, for that he the said George Irwin, being a privet Militia man in Captain Edward Harrisons company in the British Militia aforesaid and bound to serve therein and being duly warned to attend a meeting or assembly of the said Militia on Sunday the first August instant the day fixed for such meeting for Reveu on Exercise did not attend the same (though not prevented by sickness or upon good cause assigned, and not having obtained leave of absence from the Captain or the Commanding Officer of the company) whereby the said George Irwin hath incurred the penalty of twenty shillings These are therefor in his Majesty's name to command you to levy the said sum, by distress of the Goods and Cattels of him the said George Irwin and within the space of Eight days, next after such distress, by you taken, the said sum, with reasonable charges, of Taking and Keeping to said distress shal not be paid that then you do sell the Goods and Cattels so by you distrained, and out of the money arising by such sale you do pay the said sum of twenty shillings to the Colonel of the District to be accounted for and applied as the law direct rendering the overplus if any shal be on demand unto him the said George Irwin the reasonable charges of Taking and Keeping and Selling the said distress not exceeding five shillings being first deducted, and that if sufficient distress cannot be found of the Goods and Cattels of him the said George Irwin whereon to levy the said sum of twenty shillings, that then you certify to us or either of us, together with the return of the precept Herein fail not, given under our hands and seals at Quebec,

(Signed) HARRY CALDWELL, Colonel B. Militia.

JOHN AINSLIE, Capt. B. M.

A true copy.

Quebec, the 21 of August 1760 these to certify that I have seized and taken in execution of the within warrant and for the purpose of satisfying the same a picce of Printed Cotton containing seventeen yards and a half

JOHN HOOPER, Bailiff.

The diction, spelling and signatures are literally printed from the certified copies left with the defendant; and similar warrants were issued and executed upon the goods and chattels of Mr. Walter and Mr. Jones.

FINIS.

ERRATUM.

Page 10. Marginal note, or Reference, for 21st June, read 14th June. *Hurry* the Printer hopes will excuse some errors of the types, which it is needless to enumerate.



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