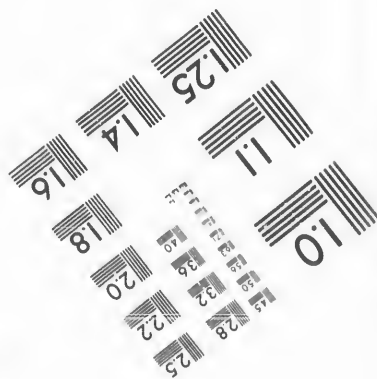
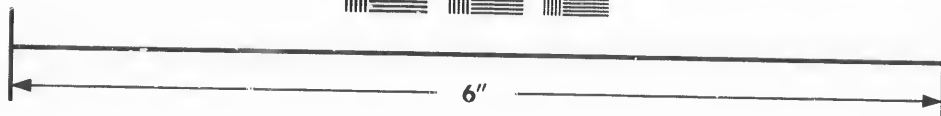
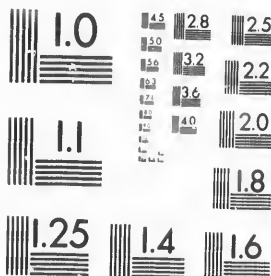


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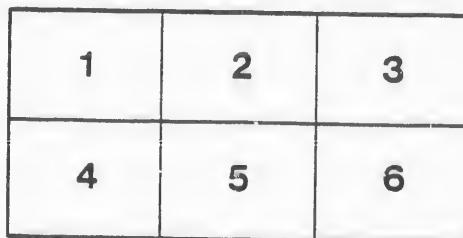
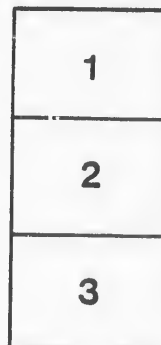
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6

STORY

OF

A REFUGEE.

*Faint handwritten text, possibly a library or collection stamp, including the words "Library" and "of the" followed by illegible text.*

YORK :

PRINTED AT THE PATRIOT-OFFICE.

1833

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## P R E F A C E.

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THE following Story is given with a view to neutralize the poison of a Libel, in the character of a Report from two Members of the Executive Council of Upper Canada, recorded on the Books of that Board, (Report, 26th January, 1825,) as an Answer to a Message from Lieutenant-Governor Sir Peregrine Maitland, on occasion of Chief Justice P—, at the age of seventy, after thirty-six years' service on the Bench, requesting permission to retire on the Pension.

*June*

The Libel was transmitted to the King's Minister, sanctioned by the Lieutenant-Governor, as worthy of credit, to influence His Majesty's notice of his request. That notice was a gracious permission to retire upon a pension of One thousand Pounds sterling for life, payable out of the Crown funds, as a consideration for Mr. P—'s long and useful services.

As the base Libel remained of record in Upper Canada, Mr. P— respectfully entreated His Majesty's Secretary of State for the Colonies to command an enquiry to be made into the grounds for the charges of this invidious Libel, or to direct its removal from the Record of the Executive Council; both which were refused on account of *inexpediency*, as he had received all that he had asked—retirement, and the Pension. At the advanced age of seventy-seven, this relation is made to shield his posterity from the infamy which the existence of such a Public Record might inflict upon them; and may excuse, if not justify, the egotism and tendency to self-commendation observable in the STORY OF  
A REFUGEE.

W. D. P.





## STORY OF A REFUGEE.

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AN aged man, rapidly sliding towards the grave, is desirous to leave behind him some notice that he lived.

At the close of the Revolutionary War in 1783, he had been resident for years at Montreal, a Refugee from the revolted Colony of Massachusetts. The Province of Quebec was at that time governed under the 14th George the Third, called the Quebec Bill—a wise and just law as related to the conquered subjects, but in no wise apt to console the loyal refugees from the United States.

Experience had taught that, to their precursor, and he set on foot a Petition to the King and Parliament, which he carried to the foot of the Throne and delivered in person to Lord Sydney, principal Secretary of State for the Colonies. That part of the Petition which affected immediately the Refugees, and remotely their descendants in Upper Canada, follows, and will speak for itself.

“ Your Petitioners look with concern on the infinite distress of your Majesty’s loyal subjects, who, expelled from their native country, driven from their estates and possessions, are early taking shelter in this British Colony.

“ Your Majesty will readily perceive that a free Constitution and a Government similar or superior to that under which they were born and lived, and were happy, will be considered by your Majesty’s injured subjects as the greatest protection and relief your Majesty can now grant, and the more so as it will be a protection and blessing, not merely granted to them, but extended to their children and posterity.

2

"Fifth Article.—That all personal actions may be tried by the modes, and decided upon the principles of the Common Law of England.

Sixth Article.—That the Habeas Corpus Act, 30th Charles II. c. 2, be made part of the Constitutional Law of this Province, and that by a perpetual law of the British Legislature; subject, however, to suspension by the Provincial Legislature, if need be."

The Refugee had the satisfaction to be assured that the important articles of the Trial by Jury, in controversies relating to civil rights, and the Habeas Corpus Act, were granted as soon as he had explained to the Minister that the Judges of the Colony had declared from the Bench, that the enjoyment of personal liberty was a civil right, and that the controversies relating to the infringement of it were to be decided by the French Law, which knew neither Jury nor Habeas Corpus.

The further review of the 14th George III. required more delay, and was the subject of deep consideration for seven years, when it resulted in the present Charter, the 31st Geo. III. c. 31.

On the return of the Refugee to his former residence at Montreal, he found the country inundated with his fellow sufferers, the expatriated loyalists, under the government of the cherished chief, Lord Dorchester, who had witnessed their loyal struggles to defend the unity of the Empire, and felt compassion for their situation. With a prophetic eye to the future, he had placed them upon land aloof from the French population, and above the ancient grants of Seigniories, to expect their future estates as they now hold them, in free and common soccage.

A part of these interesting people had been placed on a Seignorie of the Crown at Sorel. The remembrance of their former happiness was probably no longer consolation, but rather occasioned dissatisfaction with their actual situation, and rendered them troublesome among each other.

The Governor-General, anxious to preserve peace amongst them, had issued a respectable Commission of Enquiry, to which he invited the Refugee; probably supposing that his conduct on other occasions bespoke an interest for these poor people.

The letter of invitation is subjoined, to show in its true light the amiable character of that Nobleman.

"QUEBEC, 24th May, 1787.

"SIR—The inquietudes at Sorel, and in that neighbourhood, have determined the Governor to entrust several gentlemen, who

will soon be on the spot, to make such a minute enquiry into their origin, and the conduct of the parties, as will enable him to apply the proper remedy for healing the disorders in that quarter. The researches to be useful, must be minute, and the material allegations stated in a report so fully as to leave nothing for further investigation and proof. With this in view, my Lord Dorchester perceived a utility in joining to the confidence a gentleman of the law, and you'll find your name for that purpose, in the hope that you will not decline the service, and that the remoteness of the term will admit of your assistance in the execution of it. You'll know from Mr. Holland and Mr. Collins, the time of its commencement, which I conjecture will be the next or the week after, and they will show you not only his Lordship's chief object, but the course pointed out as most likely to attain it.

I only add, that I write on this business at the Governor's instance, and that I trust it will be the more agreeable to you for its tendency to preserve the loyalists, who, though not wholly inexcusable in these animosities, may nevertheless be entitled to those allowances always to be made, where the weight of affliction has worn out the patience of the sufferer.

"With our best compliments to you and Mrs. P—, I am,  
Sir, your most obedient, humble Servant.  
(Signed) "WILLIAM SMITH."

The Report on that Commission may be supposed to be satisfactory to his Lordship, as the following from the Governor himself to the Deputy Surveyor-General, and the Report on the Commission] was received and followed by a close visitation and enquiry from the Point au Bodet to the head of the Bay of Quinty, in which the identical Refugees may be recollected by many members of the present Legislature of Upper Canada—or if not, by their fathers or ancestors.

In the mean time, the continuance of the 14th Geo. III. limited all grants of land to Seignorial Tenures, no fee simple grant would be conferred on the Refugees located between the waters of the St. Lawrence and the Ottawa, who however, encouraged by the extra visit of the two Commissioners, cultivated the soil in full confidence, and rendered the shores of these two great rivers, and of the tributary streams between them, the admiration of the visitors from old and wealthy countries.

"QUEBEC, 4th June, 1827.

GENTLEMEN—At the same time that I wish the article for

your joint investigation, as well as other instructions herewith declared to Mr. Collins, to be made known to the inhabitants of the new Western Settlements, there will be need of caution in the execution of it, for the better discovery of the principles and temper from which the discords to which it refers originate.

That you may be apprised of the object of that article, you will receive with this letter, and carefully peruse, the late communication from that quarter; and in marking the conduct of the chief agents in exciting disorder and contentions, you will accompany your reports with proofs upon oath, to substantiate what shall appear so exceptionable as to deserve public animadversion.

"You will also give public information of my design to form these Settlements into a distinct district, agreeably to the late Act of the Legislature, and endeavour to make your visit there useful in obtaining information concerning the fittest instruments for the several offices and trusts necessary for its organization, as well as the most convenient distribution of them, and the proper places for a Court-house, and Prison convenient with Sir John Johnson's settlers, whose acquaintance with the loyalists, and disposition to serve them and the Government, I very much confide in, maintaining a proper reserve as to others, that the common curiosity may not be awakened, nor any handle given for any popular conventions and representations upon these heads.

"I am with regard, &c.

(Signed)

"DORCHESTER."

The result of this Commission opened what were called the new Settlements to every advantage of civilization, and the assiduity displayed by the Deputy Surveyor of Lands and the other Commissioner to fulfil all his Lordship's gracious purposes towards the loyal Refugees was so fully approved by that Nobleman, that being honoured himself by a highly confidential trust, which his station did not admit of his executing in person, he thought of delegating to the high honor the poor Refugee who had so faithfully executed his former trusts.

"The Lords of the Treasury on the one part, and Messrs. Harley and Drummond, Contractors for supplying money to his Majesty's Forces in Canada during the late war, and the Honorable John Cochrane, their agent, on the other part, have delegated full powers, with right of substitution, to Lord Dorchester, to recover the outstanding debts due on the account of bills drawn by the said Mr. Cochrane on Messrs. Harley and Drummond, and sold

in credit in the year, eighty-one and eighty-two, and to adjust and liquidate all matters and demands relative to the same. His Lordship had named you, together with Mr. McGill and myself, to compose a Board to enquire into, arrange, and settle this business, and directed me to acquaint you therewith by the last post. I had prepared a letter accordingly; but it being suggested that having been employed as Counsel for Mr. Cochrane, you might be considered as a party, and the letter was, in consequence thereof, withheld. His Lordship now directs me to mention the matter to you, and submits it to yourself, whether you have entered so far into, and taken such part in this business, as to make it become objectionable for you to become a Member of the intended Board.

"I am to suggest to you, that as you intend soon visiting Quebec, if you could make it convenient to come immediately, it would be very satisfactory to his Lordship.

"I am, dear Sir, most truly and sincerely yours.

(Signed) "THOS. ASTON COFFIN."

So long as the ancient Refugee could conveniently identify himself with the subject of these notices, he wished to forbear assuming any other distinction which might possibly impress a feeling friendly, or hostile, independant of the narrative.

If the adoption of a distinct name can longer be dispensed with, the story may perhaps be as well carried on in the third person, and it will be more agreeable than the frequent recurrence to a real name.

The honorable Arbitration being persevered in, and the award satisfactorily concluded, the high minded Governor took occasion in acknowledging the service to express a regret, that he could not compensate the absence from home, but suggested a grant of land to be beneficial in future, and upon that suggestion application was made in the following manner :

#### THE PETITION OF W. D. F.

"Humbly Sheweth,

"That your petitioner is a native of Boston, in the late Province of Massachusetts, the only male representative of two ancient, wealthy, and respectable families in that Province:—that at the breaking out of the late unhappy warfare, your petitioner was among the first who on the 19th of April, 1775, associated to protect the laws, support the rights of the Sovereign, and repel the arms of the rebels: and that your petitioner actually carried arms in the defence of the royal garrison of Boston, during

the command of his Excellency General Gage; when the declining health of his wife required him to embark for England: that your petitioner had at that time no personal fortune, no landed estate, no possession, but had expectations from his family and connexions of an ample inheritance in lands, which he forfeited by his loyalty, being declared by a Provincial law to be an Alien incapable of such inheritance: that your said petitioner, without requesting any aid from the public under the oppression of real poverty, acquired a profession by which he obtains with great labor and application, a moderate subsistence for a large and growing family;— he hopes that your Lordship will not consider it too presumptuous in him at this time to solicit a grant of land in this Province which may in some measure repair to his children the loss they will sustain from their father's loyalty—and in humble assurance that your lordship will incline a favourable ear to his petition, presumes to point out a vacant spot of land on the South side of the Ottawa River, lying between the Upper Boundary of the Seignory of Mr. de Lothbinere, and the lower boundary of that of M. De Longueuil, and to pray, that your lordship would grant permission to your petitioner to locate in that tract such quantity of land, as your lordship in your goodness may judge meet.

And your Petitioner as in duty bound will ever pray."

"SIR—Mr. Chief Justice has this evening communicated to me the tenor of your declaration to Lord Dorchester in Council this morning, purporting, that after enjoying the protection of his Majesty's Government during the late war, in the character of a loyalist; I had at the peace quitted the Province with the view to establish myself in the United States, and had actually abjured my allegiance, and taken the oaths as a subject of one of the revolted Colonies.

"The facts which gave color to the promulgation of so injurious a falsehood, I never pretended to conceal from Lord Dorchester, nor did I think an apology necessary for any part of my deliberate conduct; but as my quitting the Province for a time, and actual residence in the States, form a colourable pretext to give credit to the other false and invidious charge, I find it owing to myself to call upon you to declare from what source you have your information, that I ever took the oaths of allegiance to any of the United States; that if it proceeds from any one of any credibility, I may take the necessary steps to confute and punish the slander."

I am, &c.

W. D. P.

To the Hon. Dr. Mabane.

SIR—Reflecting upon the Communication I had the honor to receive this evening from you, respecting the assertion made at the Council Board this morning by Mr. Justice Mabane, that since the peace I had taken the oaths of allegiance to one of the United States, I deem it incumbent on me to trouble you on this occasion to communicate to my Lord Dorchester and the Members of the Honorable Board, at which such an injurious falsehood was published my unequivocal declaration, that I never at any time took, or subscribed any oath or oaths of a public or private nature, either of abjuration or allegiance in or to any of the United States of America, and the only declaration I ever subscribed, (except that prescribed by Statute for admission to the Bar) was on the 19th day of April, 1775, voluntarily pledging myself to support the person, laws and government of his present Majesty with my life and fortune against my own countrymen.

The publicity and nature of Mr. Mabane's assertions may perhaps justify me in stating for his Lordship's information, what and who I am, my conduct, and the motives of it, since I could think for myself, not only that his Lordship and the Council may the better judge my pretensions to a few acres of land; but of my claim to support and countenance against so cruel a slander, aggravated by the grave character of its Author, the manner, place, and occasion of its publication.

I am &c.

W. D. P.

“ PETITION.

“ W. D. P. for lands on the south side the Ottawa River, between the upper boundary of Mr. De Lothbinere's Seignory and the lower boundary of that of Monsieur De Longueuil.

“ Ordered, that the Surveyor General report a survey of three thousand acres, corresponding as nearly as may be with the location described by the Petitioner.

(Signed)

“ J. WILLIAMS.”

The execution of the honorable part delegated by Lord Dorchester, of representing himself as the middle-man in the arbitration between the Lords of the Treasury and the remitters of public money, of which Mr. Coffin, the Controller of Public Accounts for the Treasury, was one, and Mr. M. Gill the merchant, for Harley and Drummond, was another, and the Refugee represented the third person, was so satisfactory, that his Lordship almost immediately placed the Refugee at the head of a highly confiden-

\* *Send to Montreal for the ordonnance here  
referred to.*

x  
tial Commission (not gratuitous) to settle and compound the  
freights due to Government, for freight in the King's vessels upon  
the Lakes, amounting to a large claim by the Government, which  
duty the Refugee commenced, but had not completed, when he  
was offered, and accepted, the singular appointment of sole Judge,  
in the District of Hesse, under most extraordinary provisions of an  
ordonnance passed expressly for the protection of the great Indian  
trade carried on in the vast tract of un governed land between Hud-  
son's Bay and the South Sea, to the shores of Mexico.

This elevation of the humble Refugee, carrying law, equity and  
justice into that vast region, raised him to observation and envy,  
but to no direct censure, until 1792, after more than two years'  
residence as sole administrator of the law; when, on failure of all  
just cause, he was assailed by a vile forgery, in the shape of a let-  
ter to the American Secretary at War, then carrying on extermin-  
ating inroads upon the Indian nations under British protection.

(COPY OF THE FORGED LETTER.)

"SIR—I received yours of the 12th of June, which gave me  
infinite pleasure to hear of those resolutions you have entered into  
to form a new campaign, as the former proved so unsuccessful, and  
this last one, quite the contrary, as it gave me the greatest concern  
imaginable for the loss of so many brave men;—the exquisite pain  
I was in, for fear any thing from me may fall into the hands of the  
enemy. You desire that I should give my opinion as to the  
strength of this country, and how they stand affected;—I have  
already given you all the information I could get,—how Mr.  
M'Kee has conducted matters, and the policy of the English.  
Last year it was in agitation to fortify the Maimies;—M'Kee,  
Caldwell, Elliott, La Motte, a Captain Banbury, and Lieutenant  
Selby, were very strong advocates for the completion of it, as the  
above Captain expected the command there. They have pitched  
upon a place for a Fort; but, from what motive I cannot determine,  
it is laid aside. The line of conduct which Mr. M'Kee has laid  
down is of a very intricate nature: he has got over Caldwell,  
Elliott, and La Motte, who are implacable enemies to the States.  
The embezzlement of the stores has no small share in bringing  
these matters about, what with purchasing negroes and horses,  
which are purloined from the country, and with land or lead,  
and presents to the savages to induce them to cut off the poor  
husbandmen from your frontier, sums up but a small share of  
their villainy.



“The regiment that is quartered here you have a very good right to know, as they were the first who drew blood on the defenceless people at Lexington. The officer who commands them is a very quiet, easy man, and would rather attend the slaughter-house or the carpenter’s shop, than give himself the trouble to exercise his men. I can assure you, upon my honor, that he has not had them through a field one day since they have been stationed here. This Fort has great quantities of ordnance come up here, six field-pieces, carts, waggons, ammunition, and intrenching tools, I suppose for the use of the intended Fort. All these matters are of very little consequence, as the French in particular, through my management, are no way attached to their savage principles; they in general are very well versed in the Indian tongue, and have frustrated in a great measure the above villain’s plans. I’m positive, if an army was to appear, the major part of them, and the militia would join you, with plenty of provisions and every necessary you may be in want of, there being an abundance of every kind here. I make no doubt, if you was once in possession of this place, that you could raise a complete battalion for the internal protection of it.

“As to the naval department, they seem to make a very great show: they are now building a twenty-four gun ship, which will be an extra expense to the King, especially while they have such commanders. I should be very happy to give a clear idea of every thing that would be of service to you in your undertaking; but to know these things, we should have them in detail; and as that is in a manner infinite, our knowledge is always superficial and imperfect. I have had a great deal of conversation with Lieutenant Turner about those matters, and to give him a clearer idea, I took him down to the Settlement in my carriage, and introduced him to such friends as I could confide in (they being but few); the residue being a remnant of Caldwell’s blood-hounds, the most egregious rascals existing.

“The plan I mentioned to you in a former letter, conceived by our friend Robinson and me, to abolish this infernal department; I have had no return from Europe; so that the following may, if well executed. I have mentioned it to Turner, who will acquaint you with particulars more at large than I can possibly pen it.

“If agreeable to you, I think it will be the means of extirpating the savages and heads of the blood-hounds. If you can confide in twelve or fourteen men of undaunted courage, with a resolute officer at their head, I have not the least doubt but, by what instructions I have given a few friends down the Settlement, who are

ready and willing that assistance, to be able to carry and cut off M'K—, C—, E—, L. M—, and Girty. I have made sure of an asylum at Cornell's or Keazle's, until matters may be ripe. You have a number of savages now resident with you; let them be brought as far as Fort Pitt, and let them be put under the immediate care of some skilful doctor to inoculate with care; and when fit to go about, let them have instructions to infect every individual article belonging to them, and send them by the route of Sandusky, the Rapids, Fort Jefferson, the Miamas, Six Nations, Wabash, and the Illinois, which will effectually prevent the . . . and Michilmackinac Indians from coming to the assistance of those now already on your frontiers. We have had accounts lately of three men and a woman being . . . and Miami savages which might have been stopped if the least motion towards it had been made by those barbarians I should have sent Turner off some time ago, if my plans were not frustrated by M'Kee, who insinuated to the commander that it was dangerous merely to gain time, as he and his . . . only waited for the ice to get good to go with Girty (a noted villain) and a prisoner he had got, who was at the party who buried the intrenching tools, with intent to dig them up, and to secure the cannon which were hid on some part of the field of battle. Some time ago, a Commission came up to try a criminal, and Mr. M'Comb was appointed one of the Judges.

"I was obliged to administer the oath of allegiance to him, I had some doubt whether he would not make some difficulty in taking it; but, upon my honor, he swallowed it with as good a grace as you or I would a glass of Madeira. You must be very cautious how you let him or his brother know any thing of our correspondence, as I am confident it would be of very dangerous consequences to me. Things have a very different aspect since Mrs. P. left this place.

"I hope my endeavours may have the desired effect. I should be very happy to hear from you the first opportunity.

"I am, Sir, with the greatest respect, your most obedient, humble Servant.

[No Signature.]

"Major-General Henry Knox,  
Secretary at War.  
Philadelphia, Feb. 2d, 1792."

The forgery was so perfect, that when presented to the Refugee as a paper found in the garrison at Detroit, he could not but admit at the first sight that it must be his writing, which, however, no

one who knew him would believe, or reading the contents; yet there was an active enmity in the vicinage, which had gratification in stirring up the savages by going into their villages, explaining the horrors of this hellish libel, insomuch that his life was thought in danger beyond the Posts, and he decided to seek protection of the Commander-in-Chief, at Quebec.

There he found the new Lieutenant-Governor of Upper Canada just arrived from England, under operation of the new charter given to the divided Province of Quebec by the 31st Geo. III. c. 31. This gentleman received the Refugee with kindness, and at once assured him that he knew the authors of the libel to be two officers under his (the Refugee's) official protection, who had accompanied him from Montreal.

Mr. Simeoe introduced the libelled man to the Duke of Kent, then Commandant at Quebec, and to Sir Alured Clarke, then Commander-in-Chief, who, with the ready politeness of a courtier, congratulated the Refugee upon the occasion for this visit to Quebec, as affording to the world the highest assurance that he had deadly enemies, who, finding no just cause of reproach in his actual conduct, had recourse to invention and forgery. While conjecture was afloat at Quebec as to the possible excitement to so diabolical a libel to be found in the character of the Refugee, it occurred that some years before, whilst residing at Montreal, he had, on more occasions than one, discovered a feeling hostile to the pretensions of the Indian department, to be independent of all control, and that threats had then been held out of future revenge.

At the commencement of the Revolutionary manifestations in the British Colonies in America, there resided in North Carolina a considerable planter, of French descent, named La Force. He retained his loyal principles, and was on that account so much harassed by his neighbours, that he decided upon abandoning his plantation and retiring into the wilderness to seek repose. Having formed this plan, he made no delay in the execution, and began his march to the Westward with his whole family, consisting of a wife and several sons and daughters, slaves female and male, with his flocks and herds. When they had penetrated into the woods beyond the settled population, he proposed a day of rest and thanksgiving, and directed that after the day's march a heave should be slaughtered for a feast on the following day. Before sunset his sons had selected a fat ox, and two of them prepared their rifles to bring him down: the first shot did that, and the young men laid down their rifles to close in and flay and dress the carcase. This was a work of some time, and their parents, fir-

tigued with their day's march, retired to their tent and went to sleep. When the ox was fully dressed, the young men sought to withdraw their rifles from the dews of the night, now fast closing in, and in the act of removing them from the ground, that which had not been discharged had its trigger caught by a tent cord, and its ball pierced his father's heart as he reposed in the tent, in his mother's arms.

The scene is not to be described ; imagination can alone represent it. They gave one day to lamentation, a second to the duty of inhumation of their father, and on the third proceeded on their route Westward. In due season they reached the plain of the Ohio, and making a favorable pitch became stationary, and surrounded their demesne with a lofty picket, as defence against the wild beasts ; they had no other apprehension, nor for years did they experience any interruption to their cheerful labors, which the soil and climate amply rewarded to the entire satisfaction of the emigrant, master and slave, black and white.

In this state of happiness they were discovered by a numerous armed force of Indians and Britons prowling for prey ; but the British uniform was to this loyal set a sufficient pledge, even without their word, for their protection from rapine and insult : they opened their gates and received in their arms the venerated insignia of Royalty, assured of no danger to person or property. It was but for an instant : insult to the females first betrayed the want of faith in compact. Blows followed, and death ensued, closed by their entire capture and removal ; as prisoners of war, the whites, and the blacks as slaves, who were marched first to Detroit, from whence the detachment issued, and where the black slaves were disposed of as such to the mighty of the land, and the white prisoners were marched eight hundred miles to Montreal.

In that residence I was then an inhabitant, and on a summer's afternoon saw arrive at the Provost Guards (the prison) the singular group of Mrs. La Force's family—men, women, and children—in the forlorn appearance of prisoners of war under military escort.

The Serjeant of the Guard graciously permitted me to exchange a few words with Mrs. La Force before she entered the prison-gate ; and the bystanders collected by so unusual an appearance readily listened to my account, and threw into my hat, held out for the purpose, as many pieces of silver and gold for their relief instantly, as enabled a kind-hearted shopkeeper, on receiving the counted contents of my hat, to engage to supply the immediate wants of the party at prime cost.

On the next morning I visited the gaol, and learned from Mrs.

La Force the particular disposal of her slaves, which had been taken from her and assigned to the names in a printed list she gave me, and which the same post I transmitted to the Commander-in-Chief at Quebec, who expressed thanks for the part I had taken, assuring me that he had ordered the Commander at Detroit to seek out and return Mrs. La Force all her domestic slaves; but the General-in-Chief had not power to enforce such a command at the distance of a thousand miles.

The slaves remained in the possession of those who had obtained them as spoil; such, at least, as fell to the Officers of the Indian Department.

My call upon Sir Frederic Haldimand for this act of authority was no recommendation to me some years afterwards, when I became myself a public functionary at Detroit; and that circle (when the means devised to punish my interference was the forged letter to General Knox) well suited to its object, the destruction of a supposed enemy, by the savage resentment of an ignorant and barbarous race.

Some of the plunder of those unhappy wanderers from North Carolina still remained about Detroit, out of the reach of the Commander-in-Chief, at the moment of the unholy attempt to rid the Indian tribes and their adherents of so impertinent an intruder, who being now resident among them, might be apprehended to revive the claim of the widow and orphan.

The awful termination of the career of the libellers (one by drowning in a state of intoxication, the other in a foreign dungeon for no good) gave quiet to the Refugee so long as he continued sole Judge of the District of Hesse, when his removal to the Provincial Court of King's Bench closes the first part of this narrative.

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All was changed: the Province of Upper Canada received the long delayed result of the Petition carried to England by the Refugee in 1783.

Its new charter gave to it the Laws and Religion of England, and provided by the Crown and Clergy Reserves abundant support for the Crown and the Altar, without taxing the labor of the inhabitant.

To the immortal William Pitt the world is indebted for the practical execution of so happy a thought, which might have oc-

curred to his glorious father, who only wanted the prophetic eye to see the wilds of Canada filled with an intelligent race of beings cultivating navigation and commerce.

In the infancy leading to such a state, the Refugee was indulged in being made useful to the loyal population in the early details of organization, and was during a period found eminently so, in pointing out a remedy for the long delay in granting to the loyalist settler the assurance of his labor on the lands assigned to him by the Royal Patent; during which delay, of nearly ten years, the ordinary vicissitudes of life must be expected to have transferred the actual possession. The labors of the Refugee towards this good end may be supposed to have been successful and satisfactory, as, many years afterwards, a voluntary reward of one thousand pounds was awarded to him by the popular part of the House of Assembly.

During the administration of the first Lieutenant-Governor, the Refugee, so much encouraged and so rapidly advanced by the Governor-in-Chief, remained stationary. The distinguished approbation of a predecessor is rarely a recommendation to a successor; and the first Lieutenant-Governor having served under the Governor-General while he commanded the Army in chief, had some imaginary cause of offence, which he was at times inclined to visit upon the favored Refugee; but, upon the whole, was satisfied to pass him over, equally free from censure or applause, and he enjoyed the *otium* of the Bench with little interruption; but he must observe that, humble as was his sphere, he was treated with attention in the several successions in the chair of Government until 1816.

In that interval, the most remarkable interruption of the pure enjoyment of domestic life was the misfortune of his son, a youth of great promise, who was led into the expedition of Miranda, and captured by the Spaniards in the Province of Venezuela. As the character of this invasion could be only high treason in subjects, or piracy in foreigners, the son of the Refugee was sentenced to suffer the punishment of labor and imprisonment for ten years in Omoa, as a commutation of the sentence of death on account of his youth.

The receipt of this intelligence interrupted every enjoyment in the dwelling of the Refugee, which he left in sight of the great waterfall of Niagara, to procure the release of his son. Unknowing and unknown in Europe, where it was requisite to make his efforts, he descended to Montreal, where, being too poor to command credit, he obtained one thousand pounds in exchange for the

grant of land upon the Ottawa, and arrived in London. Being known by name at the Colonial Office, he received attention to the subject of his visit. The nation was at war with Spain, and entertained at Madrid a Commissary of Prisoners to attend to what related to the legitimate prisoners of war, and the Spanish Court maintained in London a similar establishment.

The Transport Board, under the direction of the Secretary of State, made known to the Spanish Resident the case of the Refugee, who, deeply interested, waited upon that officer to learn in what delay he might expect to hear from the Court of Spain, and thought he perceived an indifference in the Spaniard that argued his interference useless.

An obscure Refugee from the wilds of Canada, unacquainted with diplomacy, was correct in his judgment. The following correspondence was the result.

“ Sir Rupert George having shown to me the letter written by the Board to Don Manuel de la Torre, and his answer on the subject of my son, it struck me forcibly that the Spanish gentleman did not apprehend the force of the application. Impressed with this idea, I waited upon him to show that part of the grace asked by the Board was probably secured by the Spanish Minister in America, and that the object now was the release, absolute or conditional. When he learned that I had made such exertion for this purpose, he expressed his surprise that the Board had not sent for him, and verbally communicated to him the full interest they took in the application, for, as it was, he conceived that they had been urged by some pressing individual, and had given the letter to gratify him rather than to urge the reciprocity of a favor. That under this impression, he had written to Madrid in a very different manner from what he would have done, had he conceived the British Government inclined to the favorable notice of the application. He seemed much to regret that he had forwarded the paper in such a way; but proposed that by the next packet he would enter into further explanation. But I thought I could perceive that he wished to be able to say positively, that any of His Majesty's Ministers, though unofficially, had expressed the wish urged by the Transport Board. I have thought it possible that Mr. Wyndham could authorize you to write a line expressive of his good wishes to promote the object of my voyage, which I might show to M. de la Torre, for I can perceive that he makes a wide difference between the private wish of a Minister of State and that of the Transport Board.

“ W. D. P.

“ To Thomas Amyot, Esq.”

“Downing-street, 12th January, 1807.

“Mr. Wyndham presents his compliments to M. de la Torre, to request that he would have the goodness to use his friendly endeavours to further the object of the application of Mr. P. to the Court of Spain. Mr. Wyndham would not have taken the liberty of troubling M. de la Torre on this subject, if he did not feel a strong interest in favor of the young man in whose behalf the application is made; and if he had not also felt that the respectable and important office held by his father as one of the Judges of the King's Bench in Upper Canada, demanded from Mr. Wyndham, in his official capacity as connected with the Colony, such an expression of his good wishes for the success of his Petition, as he has done himself the honor of communicating to M. de la Torre.

“Don Manuel de la Torre.”

“Finsbury-square, 14th January, 1807.

“Don Manuel de la Torre begs leave to acknowledge the private note which the Right Honourable Mr. Wyndham did him the honor to address to him on the 12th of this month, in favor of the application made to the Court of Spain by Judge P. in behalf of his unfortunate son. Don Manuel will, in behalf of the Right Honourable Secretary of State's desire, immediately endeavour to promote with his Catholic Majesty's Government the wished-for success of the venerable Judge's Petition. Don Manuel avails himself of this opportunity to assure the Right Honourable Mr. Wyndham of his best endeavours, and that he will lose no time in communicating the issue of his representation to the Spanish Government, which he has the best hopes will prove favorable.

“Right Hon. Mr. Wyndham.”

In consequence, the Refugee, upon his arrival in Spain, found an influence had gone before him more favorable than he could have expected. He arrived at the Court of Aranjuez on the 4th of June, presented his petition to the Prince of the Peace on the 6th, and on the 10th received the crown of his labors in so full and gracious a manner, as to afford pleasure to the reader at this distance of time.

This unweighed measure of the heart, in defiance of reason, had proceeded so far, (England,) with a scarcely suspected success, but the singular occurrence which then enabled the further pursuit has in it matter for wonder.



The state of war had for three years so impeded the correspondence with the Spanish Colonies, as not to afford to three Spanish Viceroy's, or Governors, conveyance for their annual reports to the Sovereign.

At this time, nine large packets found their way from the Continent to Admiral Dacres, confiding to his honor to present them to their address to the public functionaries at Madrid. The gallant Admiral shifted the responsibility to the General Post-Office, in whose mail for Jamaica they arrived in London. The case was new. The Postmaster General did not feel at liberty to transmit such a correspondence, in the time of war, to their address in an enemy's country. He sent them to the Office of the Secretary of State for the Colonies, who, upon the Refugee's solicitation of a passport for Spain, received the nine despatches, to hold as the *sine qua non* of a passport for himself to Madrid. It could not have been obtained without this concurrence, as the orders were so peremptory to the Spanish Ambassador at Lisbon not to grant access to any foreigners, that it had been refused to all the solicitation of an Irish gentleman for many months; who, after he found that it was granted to him on account of these despatches, became indignant, and quitted Lisbon without disclosing his errand to Spain, which was afterwards discovered to be an important negotiation for the preservation of the Spanish Colony of Peru, of which his father or uncle had been Viceroy, and of which, as soon as Mr. O'Higgins returned, he became the Revolutionary President.

This journey to Spain upon so interesting a subject, had introduced the humble Refugee to a great variety of character, in which it was delightful to observe that in the highest circles—for he was admitted to close interview with Nobles and Princes—he uniformly discovered the most liberal, condescending and delicate kindness in the highest ranks; and he feels called upon to say, that amongst these, a poor and obscure Protestant foreigner, he received the most ardent and powerful countenance from the respective Nuncios of His Holiness the Pope, at Lisbon and Madrid. The Refugee fingers with extreme gratification on the event of this successful expedition in the recovery of his son, in the progress of which he was taught to admire human nature less adulterated in the Old World than he had found her in the New.

He returned to Upper Canada, still enjoying the confidence of its Governor, who called him from one step to another, until he found himself in some measure related to the Chief of State—for he was a member of the Executive Council, and a member

He had for some time held the station of a Legislative Councillor; but had declined to take his seat, as doubtful of the propriety of uniting the Legislative and Judicial characters; but was induced, by the offer of a large salary, to accept the office of Speaker. This station had, from the first organization of the Government, been occupied by the Chief Justice, (for the time being,) who, an amiable philosopher, adverse to the intrigues of politics, readily exchanged it for a pension with ease and indulgence. As the succession was intended for the Refugee, it was considered requisite that he should make a voyage to England, to present in person the recommendation, and receive the appointment there. He did not readily acquiesce in this proposition, having affected a point of delicacy as to solicitation of Judicial promotion, which had hitherto been put upon him. This hesitation gave occasion to a well-wisher to address to him arguments in favor of the voyage, which he could not resist, and proudly refers to that document of professed good-will, in order to mark the contrast, which, at no late day, declared him unworthy the reward of his extended services.

The Refugee, having now attained the summit of preferment, had more than ever at heart the benefit and happiness of society; and as he could not avoid reflecting that the Province in some measure owed its existence to his exertion in 1783, when he carried to the foot of the Throne the Petition in favor of the loyal Refugees, he was led perhaps beyond his sphere.

In the administration of Governor Simcoe, he had been present when the Bishop of Quebec urged the allotment and endowment of parishes with the Clergy Reserves as the substitution for tithes, which induced the consideration of that subject, and the discovery that from an omission in the printed statute 31 Geo. III. c. 31, the Church, notwithstanding its endowment with the Clergy Reserves, would be legally entitled to tithes of a parish as soon as it was constituted and the Incumbent inducted, and all in his power to delay such constitution of parishes and induction of Clergy; in which he succeeded, and no parish was legally existing when he, the Refugee, took a lead in the great Council. To secure the inhabitants of Upper Canada from the most remote possibility of being called upon for tithes, he introduced and carried the declaration that they should not be claimed, paid, or received.

In the unprecedented omission in the printed statute of that important clause respecting tithes, the Refugee thought to watch the legalizing the Provincial Act, and found that although there was special provision in the Charter, that the King should assent to no Provincial law affecting the Church of England.

without first submitting its enactments to the consideration of Parliament, the Abolition of Tithes Bill had received the Royal Assent, without submission to Parliament, he gave offence by peremptorily requiring that it should undergo the ceremony before it could be received as law here.

This close attention to the Royal prerogative in its exercise, the Refugee had reason to believe, was made use of by some who ought to have known better, to represent him as inimical to the Church of England; but posterity will judge. When, at a future period, finding that the national honor was likely to be intrigued into an act of injustice, by the disposal of these Reserves, otherwise than as provided by the Charter, he risked the charge of inconsistency, in an attempt to give back to the Church her right to tithes, of which she had been robbed by his own act, if the Reserves should be taken from her.

The Refugee had obtained, in the contemplation of his friends, the summit of reasonable expectation, or even hope.

In the great meeting of his fellow-subjects, in the exercise of their most flattering privilege—that of making laws for their own government,—he held a most surprising pre-eminence, second only to the Representative of his Sovereign; having his family about him, in prominent stations in the drama,—his eldest son Clerk of Parliament; his second son Clerk of the Commons, and his son-in-law the Clerk of the Crown. Such a display afforded a morbid satisfaction, as indicating to the Refugee the rapid contrast in all human affairs. His labours became no longer satisfactory, and he sank gradually to the distressing situation of being held out to the community at large as the basest of mankind.

After having rendered service to an individual of great importance, and to the very verge of duty, the Refugee found himself constrained to resist an application from him entirely unjust.

Sometime after, a libel appeared from that quarter, base and contemptible in the extreme, and entirely unworthy of notice, if the Official Gazette of the Government had not adopted the libel and encouraged its circulation.

This revolting indecency called for notice, which will be seen in the following remarks and correspondence.

*“ To Lord Chief Justice Van Pawkie, at the Hague.*

*“ MY DEAR LORD—There is something so venerable in the aspect of age, that we are led at once to demean ourselves before*

it, with gravity and decorum. The faded brow, the hoary locks, and the furrowed cheek, strike us with awe, and forbid the tongue of levity to move in their presence. If to age be added WISDOM and EXPERIENCE, crowned with the inestimable diadem of RELIGION and VIRTUE, the effect is proportionably striking—but more especially if all these are united in one who is exalted to any of the highest stations in life, where firmness and excellence of moral character always shine with distinguished lustre, and give real importance to the dignity of office. But when we approach the grey head, high in authority, and instead of finding those substantial virtues that shed their sacred brilliancy upon the post of honour, we find enormous wickedness interwoven but the more closely into the texture of the mind, by the confirming hands of habit and time, we are shocked, and recoil from the spectacle with horror! This last, my lord, has been my situation when contemplating *the Cardinal Alberoni*, seated upon the throne of justice, and holding her sacred balances in his partial hand. I saw in him the dissembling hypocrite, the vengeful enemy, the treacherous friend, and the unjust judge. I saw him still fresh in the exercise of his mental faculties—strong and eager to pervert justice—bold and unblushing in oppressing the innocent,—and I determined to hold the glass of truth before him, that in it he might contemplate himself; conscious that the public eye was taking the same survey. And now, my lord, permit me to speak of him to your lordship, with a boldness and freedom becoming an unshackled mind.

“After the separation of the S—h C—s in A—a from their imperial mother, what could have induced his lordship to select this realm for his home, when subsequent acts of his life so strongly mark his predilection in favour of republican principles? Did he perceive that here would be a more ample field for the exercise of that deep cunning for which his lordship is proverbial? Was it that thereby he could build the fortunes of his house, and fix his strong hold of the public purse upon a firmer foundation, where competition in the arts of dissimulation and intrigue would not be so likely to deprive him of that monopoly which superior management generally secures? What passed in his mind, previous to his extraordinary tour to a *strong city*, is not for me to know: I can only draw conclusions from the facts which transpired. But I may indulge a little in conjecture. The scenes then acting in r——y F——e might have fired his breast with the *mania* of extirpating kingly authority. They might have fallen upon his spirit like the ignited spark upon the nitrous composition, and produced those curious STATE PAPERS

which fell from his bosom in an unguarded moment, and which were the cause of that journey. In this cause he risked much, and came nigh losing all; and had it not been for his wily sagacity—can your lordship tell what would have been the result? But here he was not only sufficiently artful to balk blindfolded Justice, as she put her hand to the balances charged with his fate, but so managed as to come from the contest ready to ascend upon the scale of promotion, whenever fortune should furnish vacancies. Vacancies have occurred; and he has not only availed himself of their advantages, but he has subsequently dared to attempt insulting the ear of a gracious monarch, through his minister, by applying for an office to be fixed upon his family, during the lifetime of an honourable and aged incumbent, who has a descendant of gentlemanly pretension, who is legitimately looking forward to succeed his father. Whatever may have been his address, or the insidiousness of his cunning upon that occasion, it is to be hoped his application will be understood and properly appreciated by his Majesty.

“It once fell to the lot of his lordship to sit in judgment upon some unfortunate wretches charged with the crime of high treason. He sat as the mouthpiece of Justice, to dispose of the lives of men who had only followed his own example. What ought to have been Alberoni’s feelings at that critical moment?—a lapse of twenty years had not obliterated the remembrance of that example from the public mind, and recent suspicions were of the same texture. The *jury* were inclined to the side of mercy; but Alberoni, with a little too much zeal, for a disinterested Judge, told them it was necessary to make examples, in order to strike fear into the hearts of others. True, my lord; but was it because justice demanded it, that the Cardinal felt they must expiate their crime at her altar? or did not his lordship feel as if immolating human victims to the Moloch of his own emolument? or is it possible that self-interest so far blinded him that he never reflected upon the effect his over-anxiety to convict these men would have upon the public? If Alberoni ever thought the common multitude incapable of thinking shrewdly upon such occasions, he has been grossly mistaken. They often trace actions to their true source, when they appear but idle spectators. It may be, however, they could not, at that time, comprehend the clue that wound up his primary object; but they strongly suspected he had something at bottom besides punishing rebels out of either a sense of justice, or a feeling of loyalty. They suspected (and they had a right to suspect,) that his conduct then formed a link of the chain by which he drew four thousand dollars from the public chest, to enable him to carry

on a speculation of no less magnitude than the centre seat of the bench of Justice? Had he been appointed upon a late distant and important mission, which he very much desired, armed with the weight of legislative, executive, and popular authority, as the honourable person who went was, the God of Heaven only knows what he would have aspired to. No person who knows him can doubt for a moment that the interests of the whole people would have vanished from his recollection, the instant they came in competition with the fancied interests of himself and family. Upon that occasion he had the finest opportunity his whole life had afforded him of knowing positively the manner in which his real or pretended excellence was estimated by all classes of the King's subjects, from the highest to the lowest. His affectation in defending regal prerogative from being trenched upon by the popular branch, was most perfectly understood; and the result of his squabbling to defeat the wishes of the whole country ought to have taught him, that, as the country grew in information and moral improvement, dishonesty in politics, and quackery in law would be put down, and that he ought to retire from his high public situation.

“Upon another occasion, he sat in judgment when certain justices of the peace were prosecuted for something done in discharge of their magisterial duties. From some cause or other, best known to Alberoni himself, they seemed particularly obnoxious to him: probably their principal crime was, living in the neighbourhood of, and acting with a person whom to destroy would be to him superlatively gratifying. When pressed by the observations of counsel, he had to acknowledge to the jury, and in presence of the country, that the conduct of the magistrates had been authorised by facts proved to have been before them; that an action did not lie against them; and that, if a verdict was obtained, it would be set aside in the court above. He stated that this circumstance had occasioned a good deal of talk, and that he was glad that it had come before the country; and then said he would give the matter to the jury, as though an action did lie, and that the jury, under these circumstances, might find such verdict as they pleased, but which would be set aside, if the court above agreed in opinion with him, that an action did not lie—at all events, in the way in which it was brought, the Cardinal Judge was sensibly annoyed when any thing came out in evidence in favour of the magistrates, as he did not take it down on his notes.—Several evidences deposed very strongly in their favour; but he did not take down a word they said, nor did he repeat one syllable

of it in his charge to the jury. Now, my lord, what was his object in doing so? It seems he was determined they should give a verdict against the magistrates, at all hazards. Why did he not take down all the evidence, and give the whole matter to the jury?—was it that he might gratify his own wicked disposition, and wound the feelings of the justices, by having a preposterous verdict against them, and then put them to the expense of setting it aside? Or, was it no more Alberoni that did it, but sin that dwelt in him.

“The writer of this has no other object in view than the lord Cardinal’s good and the good of the public; and he hopes that, before his valedictory act, in retiring to receive an additional pension, out of the fund which was granted for other purposes, but from which he has been receiving a large sum annually, contrary to the positive and expressed determination of the Commons who granted it, he may repent, as becomes a Christian, and see the evil of his ways; conscious, at the same time, that the public will have to be taxed for his benefit, until he shall have slept with his fathers. A construction was given to the act granting the money, by the Cardinal, during an administration which, for a long time, had resisted the machinations and insidious intrigues practised by him, but towards its close became entirely subject to his control. He had been manœuvring with certain persons, during the progress of the bill, to get it through, couched in the language of ambiguity which he himself had recommended, and which was but too successful; and when passed, he cunningly gave it the singular appellation of ‘The King’s Pealium,’ and decided, in his high capacity, that himself might, with impunity, receive the sum he wanted annually, to put him upon a footing with another person. This has always been resisted without effect. Alberoni’s judgment in his own favour, has so far obtained its object; because, having received the money during the time his influence prevailed over the kingly authority of the country, (Spain, in the days of Philip V.) subsequent administrations have felt delicate about depriving him of that which he receives as a matter of grace, although, that he should never enjoy it, has been the unanimous wish of the people.

“ A SPANISH FREEHOLDER.

“ Madrid, September 29, 1718.”

“ *Extract from the York Weekly Register, 7th October, 1821.*

“ A Freeholder’s letter to ‘Pawkie’ has been received; and notwithstanding the precautions taken to disguise the hand, the supposed unknown author may rest assured that, by internal evidence, he is known to us—But in our hands he is safe. It is really a terrible production, and the more terrible because we have reason to believe the allegations it contains to be true—But, to publish, or not to publish? ‘that is the question!’ We consider ourselves tolerably independent, as to principle at any rate—Yet a three years’ study of the Law of Libel, and an occasional trip or two towards the confines in order to try the ground has gone far to convince us that Lord Mansfield’s definition of libel (if any definition can be given) was about right; ergo, if this letter is full of truth, it is full of libel; and with another ergo, it may be quite as well not to try, on the present occasion, how far a Canadian Jury may consider themselves judges of the law as well as of fact; especially as we are ignorant of the provocation given. The author, however, has our thanks for his well-written, Junius-like production, which we shall take leave to retain, not absolutely refusing to publish it at some future period, the occasion fitting—It is a capital letter, and with many other productions of the like nature augurs well for the reputation, and rising character, of this promising country.”

“ *To the Printer of the Upper Canada Gazette.*

“ York, 6th November, 1824.

“ In the Colonial Advocate of the 14th October last, published at Queenstown, there appeared a communication under the signature of ‘A Spanish Freeholder,’ containing an accumulation of slander respecting the Chief Justice of this Province.

“ Calumny in that Journal is considered as quite innoxious, and the Chief Justice, to whom this publication was this \_\_\_\_\_, for the first time, shewn, treats it as it deserves; but the printer of the Government having in an unofficial journal published in the same sheet with the Gazette of the 7th October last, thought proper to stamp this libel with all the credit he could give, it does appear to



be such a breach of decorum, considering the relation of the Chief Justice to his Majesty's Provincial Government, as might justify notice and censure from its highest authority.

(Signed) " W. D. P."

" 6th November, 1824.

" SIR—I enclose copy of a communication which I have this day made to the printer of the Government Gazette upon occasion of an editorial paragraph in his Journal 7th October last, published and distributed with the Gazette. This is the first notice I have taken of Newspaper scurrility, which I respectfully submit for the consideration of His Excellency.

" I have the honour to be, Sir,

" Yours, &c.

(Signed)

" W. D. P.

" Major Hillier, &c. &c. &c."

" Government House, November 13th, 1824.

" MY DEAR SIR—The Lieutenant-Governor had, before he came over, desired me to instruct the Attorney-General to take the proper official notice of the publication which has lately appeared in the Colonial Advocate, and which, His Excellency feels, ought not, for obvious reasons, to be suffered to pass without prosecution. I find, upon His Excellency's arrival, that subsequent reflection has suggested to him that you ought to be made aware of the intention before any steps are actually taken.

" My dear Sir,

" Your faithful Servant,

(Signed)

" G. HILLIER.

" The Hon. the Chief Justice."

" Saturday Evening, 13th.

" DEAR SIR—I received your letter of this date, and lose no time to request you to offer to His Excellency assurances of the lively sense I entertain of his gracious intention of taking official notice of the publication which has lately appeared in the Colonial Advocate.

" The poison disseminated in the publication under signature of a Spanish Freeholder, would not be neutralized by a conviction of libel which the printer of the Upper Canada Gazette

shrewdly remarks upon this occasion, is aggravated in proportion to the truth it contains.

"The slander is grave, and stains the whole progress of an active, I might almost say, a public life of half a century—the refutations must be pointed and supported by documents or appeal to living witnesses, which I purpose to attempt before the next sitting of the Legislature, in the hope to vindicate His Majesty's Government from the opprobrium of retaining in the highest seat of the Provincial Judicature and Council, a character so spotted and debased.

" I am, dear Sir,

" Your obedient humble Servant,

(Signed)

" W. D. P.

" Major Hillier."

" November 16th, 1824.

" DEAR SIR—I acquainted you that the Lieutenant-Governor had directed me, in consequence of your letter of the 6th instant, to address Mr. Fothergill on the subject of his editorial paragraph of the 7th October. I am now to acquaint you that this gentleman has, in vindication of himself, transmitted to me, for His Excellency's consideration, the copy of his letter to you on that subject. I need scarcely add, that the explanation it professes to render is not of itself satisfactory to His Excellency. The Lieutenant Governor is surprised that Mr. Fothergill has not adopted the obvious course of producing to you, in its original handwriting, the distinct article to which he states his paragraph of the 7th October to have reference; and I am desired to ascertain if it would be satisfactory to you that he should now be called upon to do so.

" I have the honour to be,

" Dear Sir,

" Your faithful and obedient Servant,

(Signed)

" G. HILLIER.

" The Hon. Chief Justice."

" York, 17th November, 1824.

" DEAR SIR—The communication I had the honor to make to you on the 6th instant, resulted from no personal feeling towards the printer, but from a sense of what was due to His Excellency the Lieutenant Governor.

Had resentment to Mr. Fothergill's interference then existed in my mind, it certainly would not be diminished by his letter to me, of which you have a copy. But as I consider his pledge of faith to the libeller (who had not confided to him his secret) the only redeeming quality of his paragraph, I could receive no satisfaction from a breach of that promise: in truth, I have no wish to know the authors of the libel, who must bear sufficient punishment in the wicked disposition which produced it.

"I have the honor to be,

"Dear Sir,

"Your obedient and humble Servant,

(Signed)

"W. D. P.

"Major Hillier."

"Government House, November 17th. 1824.

"SIR—I am directed by the Lieutenant Governor to acquaint you, that Mr. Fothergill having enclosed to me a copy of his letter in reply to your communication to him, it appeared to His Excellency, that the mere affirmation of Mr. Fothergill that the articles were distinct, was by no means likely, under all the circumstances that existed, to be received by you as satisfactory. By your Note of this morning it is implied that in fact so far from being so, it rather aggravated the charge. Considering the relation in which Mr. Fothergill stands to the Government and your own situation, it seemed not unnatural to His Excellency to suggest that you should be furnished with the only proof that could be perfectly conclusive in favor of Mr. Fothergill's statement.

"Whether any step that Mr. Fothergill might take in consequence would have the effect of acquitting him perfectly in the eye of the Government, even though the paper might not have proved to allude to any of its officers, would necessarily remain for His Excellency's consideration, and upon that head I was not directed to express any opinion.

"But as Mr. Fothergill declared the paper to which his article refers, was a production very dissimilar from that which occasioned your representation that it was written by and addressed to different persons, and was moreover written in a disguised hand. His Excellency considered he should not be exacting too much from Mr. Fothergill to require its production. It would have been to little purpose to institute an inquiry without desiring to receive the only explanation that could be decisive. His Excellency did not apprehend the possibility of any person being prejudiced by

the exhibition of a paper so described, independently of the strict confidence necessarily implied in a communication made under such circumstances and for a purpose so perfectly understood. The Lieutenant Governor directs me now to say, that he has only to regret, that in his desire to place this matter on the most just footing with respect to you, he should have subjected himself to a reply betraying an evident and entire disregard of his Excellency's honor and feelings.

"I have the honor to be, Sir,

"Your most obedient humble Servant,

(Signed)

"G. HILLIER.

"The Hon. Chief Justice."

"York, 18th November, 1824.

"SIR—I answer your letter of yesterday's date, to protest against such a construction of any expression from my pen, as betrayed an evident and entire disregard to the honor and feelings of Sir Peregrine Maitland.

"I may want the tact, the polish, and the exquisite refinement of modern education, but I avow an inherent unacquired principle, which may as well dictate what is becoming a gentleman.

"It has enabled me to admire and respect in His Excellency all the graces and Christian charities, and a heart glowing with the love of truth and abhorrent of mystery and intrigue.

"During the painful occurrences of the last three years that respect has never been violated; and I invoke His Excellency's recollection of any sentiment from me on the numerous topics, which may have elicited my opinions and advice to discover the least deviation from what became my relations to his person and government, or my duty to my Sovereign.

"I have the honor to be, Sir,

"Your obedient humble Servant,

(Signed)

"W. D. P.

"Major Hillier."

"Government House, November 18th, 1824.

"SIR—I am commanded by the Lieutenant Governor to acknowledge your letter of this morning, and to add that your letter of yesterday appeared to His Excellency to be capable of no other construction than that you received and rejected the suggestion of His Excellency, contained in my former note to you, as designed

to lead to a violation of honor and to a breach of promise on the part of the individual you had complained of, which you could not countenance although the Government might. Expressions conveying this meaning, and accompanied by no qualification of doubt as to your own view of the proposition of deference for that of his Excellency, could scarcely fail to excite astonishment, and they seem to His Excellency difficult to reconcile with those sentiments of respect for the Lieutenant Governor which your last note expresses.

“ I have the honor to be, Sir,  
 “ Your most obedient humble servant,  
 (Signed) “ G. HILLIER.

“ The Hon. Chief Justice.”

“ York, 19th November, 1824.

“ SIR—I have the honor to acknowledge your last letter of yesterday's date, and can only lament the conclusion.

“ I have the honor to be, Sir,  
 “ Your most obedient humble servant,  
 (Signed) “ W. D. P.

“ Major Hillier.”

“ York, 22d November, 1824.

“ SIR—In 1819 I had the honor to address His Excellency the Lieutenant Governor on the subject of the office of the Clerk of the Crown and Pleas.

“ The tenor of that communication is become important to me under the pressure of malignant report, but I have in vain sought for the draft among my papers.

“ Will you have the goodness to lay before His Excellency my respectful request, that I may be furnished with a copy of that address.

“ I have the honor to be, Sir,  
 “ Your obedient and humble servant,  
 (Signed) “ W. D. P.

“ Major Hillier.”

“ Government House, November 22d, 1824.

“ SIR—Upon my offering to lay before the Lieutenant Governor your letter to me of this date, His Excellency was pleased to

say, that before he can feel justified in attending to any communication from you, he insists on my letter of the 18th instant being answered by such a distinct and satisfactory explanation as you cannot be ignorant it requires.

"I have the honor to be, Sir,

"Your most obedient humble servant,

(Signed)

"G. HILLIER.

"The Hon. Chief Justice."

"23d November, 1824.

"SIR—A night's consultation on my pillow has not abated the consternation I experienced from the receipt of your letter of last evening, when I protested against the construction given to my answer to your suggestion of satisfaction from the printer, that protest was designed to disavow the intention of wounding the honor or feelings of His Excellency.

"I further declared the highest respect for his Excellency's person and character, and that such respect had never been violated.

"When I found by your letter of the 18th, that my protest and declaration had not the effect of removing the impression, I despaired of being able to effect it, and answered your letter merely to acknowledge its receipt and my sorrow that I was not believed.

"Next to the scandal of a direct lie, I consider equivocation most base and contemptible. If, then, such appears to His Excellency in my protest and declaration, I may lament but cannot resent the error;—therefore, if you will have the goodness to dictate that which will afford a distinct and satisfactory explanation, I shall have great pleasure in adopting it.

"I have the honor to be, Sir,

"Your obedient and humble servant,

(Signed)

"W. D. P.

"Major Hillier."

"Government House, November 23d, 1824.

"SIR—The Lieutenant Governor having had ample reason, in the plain and natural sense of your letter of the 17th instant, to consider his honor and feelings disregarded by the Chief Justice, could not receive a reply vindicating instead of explaining, the expressions you had used, though accompanied by general and unnecessary professions of respect, as a satisfactory explanation of

your highly objectionable letter; and he therefore directed me to express to you in precise terms, the only construction that letter appeared to him capable of bearing.

“Under these circumstances, His Excellency could not but be persuaded that any person well disposed towards the party whose honor and feelings had been offended against would have readily and heartily embraced such an opportunity of disavowing explicitly the obnoxious though obvious construction, and of stating the sense his words were intended to bear. Your letter made it right that the Lieutenant Governor should expect such an explanation, and, in calling for it, His Excellency had no intention of hurting your feelings.

“The Lieutenant Governor desires me now to add, that he can have no inclination to avail himself of your offer of ready submission to any explanation that may be dictated; but in receiving it as an acknowledgement, His Excellency cannot forbear expressing his regret at the absence of that disposition on your part which would more naturally have dictated the explanation required, than a declaration of compelled and unqualified submission to any that might be suggested.

“The Lieutenant Governor has no desire to protract a correspondence, which an unwillingness to depart from the line of forbearance he had prescribed to himself in his intercourse with you could alone have induced him to extend so far, and which a few unstudied words, requiring no sacrifice of proper feeling on your part, and obviously consistent with every sense of propriety and duty, would have brought at once to a satisfactory conclusion.

“I have the honor to be, Sir,

“Your most obedient humble servant,

(Signed)

“G. HILLIER.

“The Hon. Chief Justice.”

The morbid sensibility disclosed on this occasion naturally disposed the parties to want of confidence and mistrust, which could not fail to cause uneasiness and jealousy with reference to many, even past transactions.

Some years before, in 1821, about the time of the correspondence referred to in the remarks, &c., the Refugee perceived a spirit of intrigue had obtained access to the Legislature, and had been constrained to enter on the Journals his dissent to certain measures carried in opposition to him by his zealous friend, who had induced

him to violate his principles and proceed to England to solicit confirmation of the Chief Justiceship proposed to him.

The various dissents so entered on the Journals are here transcribed, that they may speak for the truth and justice of the Refugee, who in the conflict of opinions stood almost alone in the House he presided in. His chief opposer was the Reverend friend who had influence to persuade the Governor that the measures dissented to by the Speaker on the Journals were most wise, useful, and loyal; and that the Speaker was moved thereunto by base and personal considerations, reflecting not only upon the majority in both Houses, but on His Excellency and his legal advisers, who signified his assent to the Law; but as the Journals were transmitted to the Secretary of State, it was thought proper to remove from them the obnoxious dissents, lest they might have more influence in Downing Street than York; and as inducement to remove them before they reached England, His Excellency was persuaded to command the Speaker to withdraw from the Journals the several dissents which he had entered whilst Speaker, as being a breach of privilege of that office, to oppose the majority of that House whose servant he was.

The Refugee having discharged his duty, as he thought, in those dissents, consented to their abolition rather than quit his station as Speaker and Chief Justice—the threatened penalty of his refusal, and the Governor engaged two Members to move and second their removal from the Journals, which was carried without opposition.

Such a transaction, it may be supposed, did not conduce to harmony or kind feeling among the leading parties; but the Refugee, conscious of no offence to his King or Country, still struggled to preserve his station to the age of seventy, to which he had ever limited his public services, and which was fast approaching.

#### DISSENTS OF 1821.

*Dissentiel*—From the Bill passed yesterday, entitled “An Act to repeal the Laws now in force granting poundage to the Receiver General of this Province, and to provide a salary for that officer in lieu of such poundage.”

(Signed)

W. D. P.

Entered on the Journals 21st December, 1821.



*Dissentiet*—To the Bill entitled “ An Act to appoint Trustees to the Will of William Weeks, late of York, Esquire, deceased, to carry into effect the provisions thereof;” because there is not before the House sufficient inducement to justify such an Enactment.

(Signed)

W. D. P.

Entered on the Journals 14th January, 1822.

*Dissentiet*—From the vote to concur in the Resolution sent up to this House from the Commons House of Assembly, to address His Excellency the Lieutenant Governor to transmit, by a particular individual, to the foot of the Throne, the joint Address of the Legislative Council and House of Assembly to His Majesty; because, however glossed, I consider it an undue interference with His Majesty's Representative in the exercise of a Right admitted and declared to exclude all participation by any other branch of the Legislature.

(Signed)

W. D. P.

Entered on the Journals 8th January, 1822.

*Dissentiet*—To the Bill entitled “ An Act to authorize the appointment of a Commissioner for the purposes therein mentioned;” because the provision of the Bill is unusual, and unnecessary to enable the Executive branch of the Constitution to exercise its powers in such manner as its own discretion may direct.

(Signed)

W. D. P.

Entered on the Journals 16th January, 1822.

*Dissentiet*—To the Bill entitled “ An Act granting to His Majesty a sum of Money to provide for the appointment of a Commissioner for the purposes therein mentioned;” because it is unasked, and unnecessary to enable His Majesty's Representative to transmit duty to the foot of the Throne the sentiments of the other branches of the Legislature.

(Signed)

W. D. P.

Entered on the Journals 16th January, 1822.

A prior occurrence of deep interest to the Province had exposed the equal tenor of the Refugee's conduct to censure on all sides. That, on the part of the Peer of the Realm was embodied in a complaint to the head of the Colonial Department, of which, inasmuch as related to the Refugee, he was acquitted by the Secre-

tary of State. The notice of this Nobleman's libel, addressed to the Governor, was recognised as a satisfactory refutation, and therefore accompanies his letter to Sir Peregrine Maitland.

“ York, 16th October, 1719.

“ SIR—Since I had the honor to address to Your Excellency a notice of such legal proceedings against the North-west Company and the Earl of Selkirk as I was acquainted with, I have seen a libel published by that Nobleman, in the shape of letters from a Mr. Halkett to Earl Bathurst.

“ There occurs in such parts of this libel as relate personally to me, such a confusion of truth, verisimilitude, and absolute falsehood, as may not easily be separated and appreciated.

“ May I beg Your Excellency's indulgence to lay before you a more diffuse notice of those passages than I thought necessary, on first receiving from Your Excellency his Lordship's letter to the Earl of Liverpool, and the desire of Earl Bathurst to hear both sides.

“ In page 113 of the libel is related his Lordship's call upon me as Chief Justice, to receive his surrender, and to admit him to bail on a supposed warrant from the Magistrates of the Western District. I had reported this visit to Your Excellency, and, as I thought, truly.

“ I did not deem it necessary to inform His Majesty's Ministers that Earl Selkirk had been long known to me; that on his first visit to Canada he had frequently honored my table and domestic circle with his presence; and that subsequently, in Europe, he had acquired claims to my personal gratitude and attention.

“ I did not think it necessary to state, that his forlorn appearance and humbling agitation, when he offered to surrender himself, gave him a further hold on my sympathy. I saw before me a Peer of the Realm,—a man of elegant acquirements, apparently sinking under consciousness of misconduct, which in my mind I referred to the report of the transactions at Fort William. That I declined any interference as a Magistrate is correct: there was no charge before me; and a confession of felony, or of an escape from an arrest on the charge of felony, I explicitly assured his Lordship, I would not bail.

“ When I learned from his Lordship, as complaining of hardship, that, in order to surrender himself to me at York, he had made a vast and dangerous detour through the uninhabited territory of the United States, I did express regret that his Lordship had not

The colour given to this sentiment, expressed by me as gratuitous advice, to elude the hand of Justice, is like his Lordship's usual perversion of the truth on this occasion. I did indulge a feeling no longer excusable by friendship or personal esteem, but arising from a feeling I must leave others to define.

"At the moment my dinner was announced, his Lordship's friends arrived to surrender also, and, with his Lordship, were asked to partake of it. The presence of Mr. Baby, the senior Executive Councillor of the Province, from a few minutes after his Lordship's arrival till his departure, would seem to be a guarantee that I did not gratuitously commit myself either as knave or fool. In the course of the dinner, reflection on the situation of my guests, and the jealousy which it might occasion, induced me to send a servant to the Attorney General, to inform that officer that the Earl of Selkirk was with me, and desired to wait upon him.

"The next day the subject was mentioned in the Judge's robing-room; and it was agreed that the surrender should be to the Magistrate who had issued the warrant. On the following morning I understood that his Lordship proceeded to Sandwich, accompanied or followed by the son of the Attorney General.—I have but one observation further to make on his Lordship's statement of this transaction; it is, that if he thought that the advice which I gave to him proceeded from friendship to him, and was derogatory from my character as a Magistrate, it was base to publish it;—it, on the contrary, he thought it proffered as an enemy to betray him, no consideration should have induced a gentleman to break bread with such a wretch as I must have appeared to his Lordship.

"In page 130 of the libel, it is insinuated that, on application to reform the Grand Jury on account of interest on the part of the Jurors, the Chief Justice acceded, contrary to his own opinion. So base an insinuation can only be refuted by its improbability. No suggestion was offered of other interest than that of a commission as Commercial Agents of the North-west Company.

"This objection was founded, as the Court thought, on too remote an interest, if any, to justify the exercise of a high and delicate authority, to reform the Panel of Grand Jurors; but the Chief Justice gave liberty to the two gentlemen to decline their attendance if they thought proper.

"In the next page it is stated that the Grand Jury wanted information on the subject of conspiracy, and applied to the Court, but that Chief Justice P——'s explanation was not very likely to enlighten them. The truth is not exactly so. The charge to the

Grand Jury was predicated upon the Calendar, and did not notice the matter of conspiracy, concerning which there were no depositions or other documents before the Court when the Grand Jury was sworn. Upon discovering that they had before them an indictment for conspiracy, the Chief Justice took occasion, from their presence in Court, on the subject of admitting the prosecution, to marshal the evidence,—to remark to the Grand Jury, that not having adverted to such an enquiry in his charge, he now informed them, to the best of his understanding, of the nature of the offence of a conspiracy. It is possible that, in attempting to explain a very simple position, that a conspiracy was the concert of two or more, to injure another, or the public, by unlawful means; and that the fact of confederacy might be made appear satisfactorily to the Jury by overt acts and circumstances, without direct proof of the confederates being present together; and that the gist of the offence was the conspiracy to do the injury, and not the consummation of it, I may have confused the Jury, but they appeared to comprehend my meaning.

“ In page 133 it is falsely asserted that the Chief Justice adjourned the Court without day, without notice to, or sending for the Grand Jury, with expressions of warmth and resentment.

“ I had the honor to assure your Excellency, in my letter of the 2d October, that this assertion was false. In the same place it is asserted that the Chief Justice appointed the Assizes at Sandwich to be held, contrary to custom, the last on the Circuit.

“ The Circuits are taken by the Judges in rotation. The Western Circuit was taken by me in 1809, 1811, 1813; my absence interposed at the next Term; and in 1818 I again took that Circuit, and uniformly I named Sandwich for the last Commission day. This unprovoked misrepresentation of fact happens to be ascertained by an Official Record in the Crown Office.

“ The other assertion, that no animadversion was made on the tardiness of the Grand Jury before the adjournment on Saturday, has as little truth. The Grand Jury was asked the cause of delay, not by way of reproach, but to afford instruction; and upon the foreman representing to the Court that they could not agree either to find or to reject the Bill before them, the Chief Justice observed that if, after a reasonable time for deliberation, twelve of the Jury did not concur in finding the Bill, it should be ignored. That it was no Bill if twelve did not agree to find it true, upon due call of the foreman.

“ On the Sunday the Chief Justice, satisfied that the Grand Jury had pursued a very irregular course in examining witnesses

against the Bill before them, but on the Monday expressed no warmth, but after the Court had sat some time, sent the Sheriff to inform the Grand Jury, that if the Jury or their foreman did not come into Court before noon and account for the delay, the Court would adjourn, not to sit again.

“The Sheriff reluctantly reported that the Grand Jury would allow no answer to be made to the Court: when having continued on the Bench till one o'clock, having called upon the Bar to inform it, if they had knowledge of any such precedent, and being unanimously answered in the negative, the Chief Justice, with the full concurrence of the Counsel for the Crown and for Earl Selkirk, left the Bench without adjournment. In so doing, he then thought, and thinks still, that he did his duty.

“I cannot condescend to repel what I must call the infamous insinuation, that the Chief Justice ingeniously stepped in to shield the Attorney General from the mortification of losing a second Bill.

“I will not compare the purity of the Attorney General with that of Earl Selkirk. The former is respected for the qualities of his heart as well as his premature talents; the latter was venerated for his birth and rank, and admired for splendid talents wherever he passed in Upper Canada, until the transactions at Fort William opened his true character.

“The evidence on that indictment was so powerful, that it is now well known that as to his Lordship it could not be resisted; and no person then present now doubts that his Lordship was at the moment of the adjournment informed that he was to be exposed if that Jury had come into the Court, and that his exultation at the event he now affects to deplore was then extreme.

“In page 153 it is stated, that although the Law officers of both Provinces agreed upon a point arising on the Act of Parliament, the Chief Justice seemed disposed to differ from them both; and that the liberation of the prisoners would have been the probable consequence, if the opinion of the Chief Justice had not been overruled by the other two Judges.

“The insinuation in the above paragraph is, that the Chief Justice gratuitously offered his opinion on this subject, and was overruled by the other Judges. The fact is, that the Chief Justice's opinion on this occasion was judicial, and entirely concurred in by the other Judges.

“Two prisoners in Lower Canada, charged with murder in the Indian territories, were transferred to the goal of York, in Upper Canada, by warrant under the Seal of the Province, in

Lower Canada, and signature of the Governor, who had no more privity with the gaoler than the Governor of Nova Scotia.

“ An application was made to the Court of King’s Bench, on their behalf, for a writ of *Habeas Corpus*; and on the return of that writ the discussion took place which is so flippantly represented by the libeller.

“ The Counsel for the prisoners contended that there was no legal commitment in Lower Canada, as the Magistrate who committed them on charge of offence done in the Indian territory was not a Justice of Peace under the 43d of the King, and had no power to commit for offences done out of the District of Montreal, of which he was a Police Magistrate;—that even if they had been legally committed there, the warrant of the Governor of Lower Canada to the Sheriff here, was of no authority to detain them, and that no Magistrate in this Province had jurisdiction to hear and commit offenders for offences in the Indian territory; and that therefore the prisoners ought to be discharged.

“ The Court decided unanimously that the commitment by warrant from the Governor of Lower Canada was of no force, and the prisoners must be discharged from imprisonment thereon.

“ But the Court was of opinion, that the instrument under the Seal of Lower Canada, conforming to the Statute, gave cognizance to the Courts of Upper Canada, as if the crime had been committed here; and the depositions being resworn and read in Court in presence of the prisoners and of their Counsel, which charged them severally with felony and murder, to which nothing was said but that the Magistrate who received the depositions was not a Magistrate for the Indian territory, a rule was made to commit the prisoners to the gaol of the Home District, until discharged by due course of Law.

“ Such was the proceeding represented by the libel as the idle opinion of the Chief Justice overruled by the other two Judges.

“ It is not a little surprising that a person of Earl Selkirk’s powers of mind should have subjected himself to so many convictions of misrepresentation of matters, transacted in the face of the public, and susceptible of judicial proofs; but when we observe that from whatever cause such misrepresentations have been made and refuted, others which must depend solely upon his Lordship’s credit, such of his account which is otherwise unimpeached cannot be expected to make a deep impression.

“ I trust that Your Excellency will meet satisfactory proof from other quarters, to confirm the general truth of Mr. Halkett’s letters to Earl Bathurst as false, wicked, and malicious libels;

against the poison of which there can be no antidote so powerful as Your Excellency's declared disbelief communicated to His Majesty's Government.

“ W. D. P.”

In a small society of equals, it is much in the power of one irregular mind to disturb its peace. The claim of the Attorney General to reimbursement of a sum of money, which he was conscious of no authority for, began the first interruption of a friendship, if such may be called the daily intercourse of benefits on one side, and the grateful acknowledgment of them, for ten years, Nothing but a sense of duty could have induced the Refugee to such a risk; but the slightest breach once effected, there was the less chance to restore the broken tie.

Its consequence merits a fuller account than this, and shall have it, with all its bearings.

The favored youth and the zealous friend found cause, as they imagined, to abet the most cruel insult of a suit at law instituted against the Chief Justice, in the Court in which he had presided for many years, with distinguished credit for honor, and integrity, on charges the most base and demeaning.

When the Refugee accepted the honorable office of sole Judge in the Western District of the Province of Quebec, he left at Quebec his note of hand to a friend for the sum of £413 5s. 2d., which bore date the 3d April, 1789.

This debt had been occasioned by the purchase of a small but beautiful estate on the mountain of Montreal, on which he had imprudently expended much more than the cost of the land, which much exceeded the amount of the note. Before he left Montreal for Detroit, he, at the request of his friend, converted the note of hand into a notarial act, operating as a mortgage on his mountain villa. By a neglect inexcusable among the closest friends, the note was left in the honor of the holder, to cancel on receipt of the second security. Within six months of the date of either note or bond, a payment of £170 was made to the holder, on account of the bond: that receipt was acknowledged on the back of the note of hand, presented to the Agent who paid the money, without suspicion that the receiver held back a second and more important assurance of the debt. So soon as that fact was made known to the debtor, the Agent was forbidden to make further payment, until the note of hand was cancelled, and the first receipt duly indorsed on the bond. It was not done, and the balance accumulated by interest for years.

In 1794, the holder of the bond, thus in part paid, but not acknowledged on the instrument, became Chief Justice of the Court of Montreal, in the jurisdiction of which the mortgaged land was; and he might apprehend difficulty, under the French Law, to establish his claim to it by a Judgment in which he might be a party. Dates will show that the debtor on that bond was an absentee from Montreal, the District and Province, and had been so since 1779.

The Refugee does not pretend to judge of the mind of his creditor in the course pursued, which he must have known to be against Law, and fraudulent in effect, if not by design. The first intimation of the bond being in suit was notice of the Judgment, Execution, and sale of the land by the Sheriff to the Judgment creditor, for one-third of the price paid for it, and less than one-fifth of the money expended upon it by the debtor.

It is not the design, at this distant period, to call in question motives which governed forty years ago; but the Law is stationary, and all concerned in this outrage of it well know that they ministered to an atrocious fraud.

The Law required that all process should be personally served on the defendant, and so returned to have been done, by the Sheriff.

The plaintiff and all the ministers of the Court knew the legal process to bring a defendant into Court; and all knew that the defendant was not an inhabitant of Montreal, but stationary eight hundred miles from it, and so had been more than four years. It might be supposed that the return of service had escaped all these functionaries, but the Judgment contains a correction of such an error, for it awards, that the service not having been personal, as the Law required, on the defendant, no Execution should issue on that Judgment, until responsibility shall be lodged in that Court, to answer to the defendant any damage for that irregular service of process, otherwise than on his person or place of abode;—and, in conformity, Execution did not issue until the bond of a wealthy citizen was filed, the effect of which limited the responsibility to one year.

The amount of the Judgment being less than was required to appeal to the King in Council, and the term for appeal to the Provincial Court of Appeal having expired before the defendant had knowledge of the transaction, no hope remained to recover the property thus taken from him fraudulently for more than forty years, when, after the breach of friendship between the Refugee and the Attorney General he had brought so prematurely



forward, that gentleman proceeded to England ; and it is not said how he acquired so unexpected a commission, but on his return to York he gave notice to the Refugee that he was authorised to recover from the Chief Justice the balance of the Judgment obtained against him in Montreal, but proposed a submission of the demand to the award of arbitrators. This was readily acceded to by the Refugee, in hope at last to recover the property of which he had been plundered.

Bonds to that effect were executed, arbitrators named, and were, as the Refugee thought, prepared to give judgment, when a lay agent for the party who had signed the Bonds of Arbitration, declared that he did not understand their purport, although drawn by the Attorney General, his Counsel. No opposition was made to this declaration, and the Attorney General restored the bonds to their makers, and not to the obligees, whose property they legally were.

However a sense of his high station in the Court, and a sense of former obligation to the Refugee, might operate upon the delicacy of the Attorney General to decline the ostensible conduct of an action against the Chief Justice, such an action was immediately undertaken by the Solicitor General, and a declaration of several counts was brought into his own Court.

1st—On the Judgment recovered in Montreal thirty years before.

2d—On the identical bond on which that Judgment had been pronounced.

3d—On the notes of hand on which the part receipt had been given thirty years before.

4th—On the account of sundries for which that note had been given.

The proper legal pleas were proposed and overruled, as was a call upon the Jury to declare on which of the counts they gave their verdict.

A rule was however acceded to, for argument of the points of Law taken in objection to the verdict ; and these points, six in number, were argued adversely to the defendant by Mr. Attorney General, and decided against the Chief Justice by the *Passive* Judges.

An appeal was entered and large security given by the appellant, so as to engage from intermediate use a large amount of landed property. The utmost assiduity of Counsel could not procure

a judgment for or against, from 1824 to 1831, which being confirmatory, and of amount to carry before the King in Council, is now there. The appellant, being rather a sensitive man, certainly received some annoyance in the progress of this suit—charging a person of his station, and liberto character in life, with declining payment, for thirty years, of a just debt, which it was universally known he had assets to discharge.

An important question on the Appeal was likely to be agitated in the Court of Appeal; and although it was not supposed by the appellant to affect their judgment, he entertained great expectation of its being decided before the King in Council:—it was as to the legal existence of a Quebec ordinance relating to the Court of Appeal, which was supposed to have been continued by the Upper Canada Charter, to have force of Law in Upper Canada, until finally repealed by that Legislature. On that construction of the words and sense of the Charter, the appellant had brought a bill into the House to declare, that being unrepealed, that ordinance was still Law to govern the Court of Appeal. The bill was thrown out without argument, and the next day a bill was introduced by the Chief Justice to repeal all the ordinances of Quebec, and declare them to have, one and all, no force of Law in this Province, admitting by that expression their actual existence as Law until repealed.

This repeal served the purpose of protecting the Court of Appeal in the rejection of an order expressly continued by Act of the British Parliament to govern that Court. The whole proceeding has been some time before the King in Council; but it is difficult to represent the effects of conduct so atrocious in our Colonies, nor can the honorable minds of gentlemen, on the fullest explanation, comprehend the depth of baseness to which the bad feelings of some persons will induce them.

The same Term of the Court of King's Bench, at York, Upper Canada, where the ancient Refugee still presided, presented the second rare instance of an action against the presiding Judge, the Chief Justice, the acknowledged Minister of the Province.

This action was founded on a charge of the basest calumny—that of declining to perform an act of duty,—without just cause, and from personal malice.

It was the refusal from such motives to obey a *mandamus* of the Court of King's Bench to swear into office the plaintiff appointed to it by lawful Commission. The Court sustained the action without requiring the slightest evidence of the important fact, the gist of the action; and commanded the Jury to presume the

demand and refusal, in contradiction to the fullest evidence of the contrary. It was one of the few cases where the Law requires direct and positive evidence of the act, and admits no presumption.

The Jury was directed by the Court to suppose the facts which would have entitled to a verdict, and to give a verdict for damages calculated by the Judge.

The sum of the Judgment not amounting to £500, would not enable the defendant to seek redress by appeal to the King in Council, and he had too recent experience of the folly of seeking justice in the then state of the Provincial Court of Appeal.

It therefore hangs over him and his posterity as a charge on his real property, which can only be removed by discharge of the Judgment. That, the unhappy plaintiff has offered to do, if the costs were paid to his Attorney, now one of the Judges; but which offer was rejected as a tacit admission of the justice which it would be dishonor to acknowledge.

The Refugee has inserted in his tale of his life and adventures the disgraceful events of these Judgments,—not to excite an adverse feeling towards those whom he believes to have influenced them, but to justify himself on either occasion for having persevered in the duty he, according to his station, owed to society, and only on that account proposes to enlarge thereon in another place.

In the midst of these prosecutions, the Refugee had attained the age of seventy, and, in conformity to his constant declaration, desired retirement from office, but as during forty years he had not acquired means to live without labour, he respectfully petitioned permission to retire upon a pension.

His pretension on the part of long service was referred for advice to the Executive Council, of which Messrs. Baby and Strachan reported to the Governor that the conduct of the Chief Justice, for the last four or five years, appeared to them not to entitle him to that grace. His Majesty thought otherwise, and, on receipt of the petition of the Refugee, instantly granted the prayer of it, and a pension of one thousand pounds sterling for life, in consideration of his long and useful services.

The Refugee was grateful for this Royal indulgence, and sought refuge for his old age in Britain. But his ardent mind could not admit of enjoyment whilst the stigma upon his past life and conduct remained recorded in the Executive Council of Upper Canada. Therefore, as soon as the offended Governor was promoted, he sought permission to vindicate his character from the opprobrium of that cruel report; which however, from the exercise of His Majesty's justice, could have no effect upon himself, but ex-

posed his descendants to painful reproach by continuing on record. He therefore sought permission, when the removal of the unfriendly ruler took place, to inquire into the truth and justice of that report, that if found altogether false and calumnious, it might be removed from the historic page of the land of his children. It was not judged expedient to assume inquiry, after such length of time had elapsed; and the Refugee sought to compose himself in his retreat; but the interests of the Colony and of his fellow refugees still occupied his mind, and a measure being threatened that he thought unjust and conducive to evil, he addressed to the Secretary of State the following letter:—

“**SIR**—I feel that my actual situation may not justify the liberty, but the deep interest I have in the subject impels me to this intrusion.

“The public journals announce meetings in Canada of the Presbyterians attached to the Church of Scotland, in order to prefer to the three estates in Parliament, claims to which they are said to entertain, in exclusion of all other dissenters from the Church of England.

“There is no doubt that this measure is connected with the proposition of Mr. W. Horton, to sell the lands reserved for the support of a Protestant Clergy in Canada, and to admit the Scotch Presbyterians to a partition in the proceeds, with the Church of England.

“Such a measure cannot fail to produce alarming consequences in Upper Canada.

“The combined numbers of the Churches of England and Scotland do not exceed one-tenth of the population of that Province.

“At present, that vast majority of Dissenters submit respectfully to the appropriation of the Clergy Reserves for the sole use of the Clergy of the Church of England, because they know that by an Article of the Union with Scotland, that Church is to be established in all the Colonies of Great Britain; and that by the Constitutional Charter of Upper Canada those Reserves are expressly and exclusively devoted to the endowment of the National Church in lieu of its legal right to Tithes. With this knowledge, they are content silently to submit to the distinction in favor of the National Church, and to support their own teachers; but as soon as that line of demarcation is passed, and the national funds are applied to the maintenance of the tolerated Church of Scotland,

they will affect to see no favorable cause of distinction between that sect of Presbyterians and any other sect of Christians equally tolerated.

“Nine-tenths of the people would thus become dissatisfied and murmuring, none of whom would deem it a privation to be excluded from the benefit of the Reserves, so long as they are enjoyed exclusively by the Church of England, for which they were set apart; but all would deem it a grievance to be postponed by any other sect of Christians.

“The feeling would grow and spread until it became a source of angry jealousy, and by degrees a charge and reproach to the Government, from the Methodists, the Baptists, and the Independants, and a long list of tolerated sectaries.

“Forty years’ residence among this people have taught me to apprehend more danger from this source of discord than any other, and to deprecate any tendency to religious altercation.

“So impressed, and misled by an omission in the printed Statute (31 Geo. III. c. 31.) of that provision, established the reserved land in lieu of Tithes, I was induced, when I had some influence in the Province, to move, and principally to effect, a legislative enactment, to supply that supposed omission, and thereby, if Mr. Wilnot Horton’s bill passes into a law, shall have become a prominent instrument of an act of injustice to the National Church, and possibly the remote cause of future religious discord in the land of my children.

“To obviate, as much as in me lies, such a result, I have thus imparted to you, Sir, as head of the department from whence it is supposed to proceed, my idea of possible inconvenience from this measure, in hope that you, Sir, may countenance a short pause for inquiry into all its bearings; and when, after his return to Upper Canada, at the age of seventy-seven, finding the supposed unjust application of the Clergy Reserves encouraged, and partly sanctioned, he stood alone in praying a repeal of the Law he had formerly introduced—to declare Tithes not payable, receivable, or demandable in the Province of Upper Canada. He stood alone; no one would second him;—but if this notice survives him, he will be admitted to have foretold truly the misery entailed by fraud.

“The Refugee has given place in this narrative of his progress up and down the hill of life, to divers reminiscences which may be thought not to belong to the subject; but as his object was to redeem his memory from the odium attempted to be imposed on it by the several published calumnies affixed to it, he

has thought it excusable to enliven the narrative with foreign matter which had the slightest reference to any act of his; such as the Indian warfare, and sale of prisoners; the provision for the Altar; and the abuse of Justice, under the name, if not the garb of Law.

THE END.

## APPENDIX.

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ARK, 13th July, 1823.

MAY IT PLEASE YOUR EXCELLENCY,

The peculiarity of my situation will, I hope, justify the presumption of passing by your private Secretary, to address myself directly to your Excellency.

Being called upon by Mr. Hillier with the last Dispatch from Earl Bathurst, on the subject of claims for loss by the war, he read to me a list of names intended by your Excellency to be inserted in the Commission of Enquiry referred to in the Dispatch, and said that it was your Excellency's pleasure that I should be consulted if there was any objection to the persons named.

I thought that there could be none, and said so; but observed that the Attorney-General would probably wish to be excused from such a duty.

Some time after, I saw in the Gazette Appointments of the Commissioners named, that in place of the Attorney-General's, that of Mr. Alexander Wood was inserted.

I was surprised, and enquired of Major Hillier if Mr. Wood's name was in the list which he read to me. Mr. Hillier instantly replied that it was not; but that as your Excellency approved the remark in respect to the Attorney-General, his name was left out, and that he was directed to find another person, and that he had consulted Dr. Strachan, who mentioned Mr. Wood, to whom he considered that there could be no objection, and therefore had not referred to me, which I desired the Major to bear in remembrance.

The Major then said, that he hoped that there was no objection; to which I answered, there was such a one as did not admit of my silence if called upon by his Excellency to approve.

There was then no specific cause shown; but Major Hillier observed, that your Excellency doubtless expected that I was consulted, and that he would explain the reason why I was not.

Some days afterwards, Major Hillier told me that he hardly knew what to say, without something specific to act upon.

*his / according /* I put into his hand the Correspondence (No. 1-11) accompanying this.

The next visit of Major Hillier to me was to say, that the expression of my feeling to Mr. Wood in that Correspondence was very strong, but still there was nothing tangible. I then put into his hand the detail referred to in the Correspondence, which I forbear to transcribe, not to offend your Excellency's moral sense.— Upon the perusal of that paper, the Secretary was pleased to say, that your Excellency could not permit Mr. Wood to sit on the Commission with those Gentlemen; but that it would be painful to him to discuss the matter with your Excellency; that he would adopt means to induce Mr. Wood to decline; and expressed a hope that he was at liberty to use the Communication which I had made to him.

I certainly thought that the Correspondence between Mr. Wood and myself, although so long past, might have sufficed to account for my declining to approve his nomination when consulted by your Excellency; but when that was questionable, would not withhold the last document.

It is here proper to remark to your Excellency, that, notwithstanding my strong expression to Mr. Wood in answer to his note of the 6th July 1810, I had met Mr. Wood, since his return, in all places and societies as before the knowledge came to me; and no public prosecution having followed, treated him as before, except that his personal visits at my house and table, which had been very frequent for eight years before, were entirely dispensed with for twelve years since.

Thus things remained when accident recalled notice.

At the Gaol Delivery during the last Session of the Legislature. Mr. Justice Campbell had kindly offered to relieve me from that duty, as I was engaged in the Legislative Council.

The usual associate Judges not being able to attend, Mr. Baby being absent at Quebec, and Mr. Allan in domestic affliction, I requested Mr. Campbell to name his associate, and the name of Mr. Wood was by him transmitted to me to insert in the Commission. I felt it to be beyond all power of complaisance or friendship, and declined it, with a verbal message by the Clerk of Assize, that I would offer my reason for so doing, at our first meeting.

We met at the Court-house; and Mr. Justice Boulton, who was conversant with the whole matter, was present when we explained to our Brother Judge the conversation for not putting Mr. Wood's name in the Commission.

Whether my conduct, in all this, was right or wrong, I put it to your Excellency to say, what would have been your opinion had I, being consulted by you, allowed to pass unnoticed that which, with respect to Mr. Wood, had induced me to decline inserting his name as an associate in a Commission of Gaol Delivery.



I ask no other Judge than your Excellency's discrimination on such an event.

Before Major Hillier had informed me of your Excellency's decision, the Commissioners waited upon me, without notice, to be sworn in.

I was surprised to see Mr. Wood with them, and hesitated how to act; but finding, upon enquiry of Colonel Wells, that he had seen Major Hillier that morning, I assented to mention to Mr. Wood himself the objection; and going with him into my closet, expressed to him a hope that he would withdraw for the present, on any excuse, as I had found myself obliged to refer to former matters on the occasion of this appointment.

Mr. Wood was indignant, and vehemently refused to withdraw, with so much personal acrimony, that I was obliged to return with him to the Commissioners, where, much agitated, I requested their patient indulgence whilst I dispatched a note for Major Hillier.

As I went to the door to the servant, with the note requesting Major Hillier's immediate attendance, Mr. Wood asked me if the note was to Major Hillier, and said that he would go with the servant, and left my house.

On my return to the Commissioners, I administered the oath, and reserved the blank certificate for Mr. Wood when he should return to be sworn.

The Commissioners left my house, without the least knowledge from me of the cause of my agitation or proceeding.

Mr. Wood returned with Major Hillier, and much warm reproach ensued, without any request to be sworn, and certainly without any refusal on my part; but, on the contrary, he declared that he would not act.

Major Hillier since told me that Dr. Strachan had advised an appeal to the laws for redress; but I heard no more of it until Saturday last, when Mr. Macaulay told me that a Writ of Mandamus would be moved for on Monday, and that other proceedings were resolved upon in consultation, which he was not at liberty to specify.

I then declared to Mr. Macaulay, that when it came, it would be obeyed; but that I had never refused to swear in Mr. Wood.

On the Monday morning before the meeting of the Court, Mr. Macaulay and Mr. Wood were announced in my drawing-room, where my son, who attended as my physician, then ~~was~~ present.

I asked their commands, and it was intimated by Mr. Macaulay that it was not his request, but Mr. Wood's, that we should be left.

I desired Mr. Powell to withdraw; observing that such a visit was, I believed, unusual for an attorney and his client to a defendant, but certainly more so from the retaining a witness on one side, and declining a fourth person on the other; but that I was a public man, and it appeared exempt from ordinary decorum, and again asked their commands.

They requested to know my ~~inducement~~ <sup>reason</sup> for refusing to swear in Mr. Wood; and upon my explicitly declaring that I had not so

Did not this correspondence better appear either by note or  
in the appendix? - an apology for the omission, that it is  
of such nature as unfit to meet the public eye?

4

refused, I was requested to state my inducement for what I had said to Mr. Hillier; and especially requested to see the papers which they understood I had shown to Major Hillier.

The answer was, to place the papers in the hands of Mr. Macaulay to read aloud; observing, at the time, that it was not usual to open to a prosecutor the means of defence; but that I considered myself in the hands of men of honor, and had no concealments.

The Correspondence with Mr. Wood of 6th and 7th July, 1810, was then read, and Mr. Wood admitted that he had received my letter. They then requested the other paper, which Mr. Macaulay read until he came near some names; on which I put my hand, saying that I could not allow him to go further, unless he would declare that the names of any persons should not be repeated, or in any wise made use of.

Mr. Macaulay then declared that he had accompanied Mr. Wood professionally, to report all that should pass, and could not undertake to conceal any thing.

I took the paper from him, and declared that I was sorry, on Mr. Wood's account, that this business had taken such a course; but that for myself, I was equally ready to repose my defence on the public at large, a jury of twelve Dutchmen, or any twenty Gentlemen of York.

The same day, in the robing-room, I found Mr. Justice Boulton, the Attorney and Solicitor-General, and mentioned to them the expected motion for a Mandamus, and expressed to his Majesty's Attorney-General a hope that I might have his aid to make my Return; but I understood from him that, on his arrival at New York, Mr. Wood's case had been stated to him, in hope to retain him, which he had declined, but could not be against him.

The motion was made for a Mandamus, on the usual affidavit of a right, and the refusal to administer the oath; and it was served upon me on Tuesday; and the same day a declaration in damages to the amount of twenty thousand pounds, for the supposed injustice of such refusal, without probable cause, but from malice and wickedness of heart.

Your Excellency may perceive, from the accompanying certificates of the three Commissioners and Major Hillier, that there is no foundation in fact for the affidavit on which this Mandamus issued; for I never saw Mr. Wood on that day but in presence of those persons, except whilst we were by ourselves in my study, where I urged him to decline for the present to be sworn in; but on his persisting, I accompanied him into the presence of the other Commissioners, determined to require the presence of your Excellency's Secretary at the administration of the oath of Mr. Wood.

However misguided this gentleman is in this affidavit, I have fears that it may lead to ulterior measures, which may compel a disclosure to the public which I have ever deprecated from motives, I persuaded myself, of the purest philanthropy; but others may not think so, and the array against me is formidable in talents and influence.

alluding to Macpherson  
which is located by me with  
nothing.

Whatever may have conduced to my present state of humiliation, of which I have drained the cup to the very dregs, I trust that your Excellency will perceive, in the above relation, that my present crisis arises from a confidence in your Excellency's Private Secretary, on an occasion which I was justified to suppose required that confidence as a duty of respect to your Excellency, as the Representative of his Majesty.

I have the honor to be,  
Most respectfully,  
Your Excellency's Servant,

WILLIAM DUMMER POWELL.

The following is Major Hillier's explanation, received through His Excellency Sir Peregrine Maitland :—

YORK, July 23th, 1823.

MAY IT PLEASE YOUR EXCELLENCY,

Your Excellency having desired me to afford an explanation of certain circumstances detailed in a letter lately addressed to you by the Chief Justice, I take the liberty to submit the following statement :—

9th May, 1823.—In a note dated the 9th May, your Excellency desired that I would confer with the Chief Justice and with Dr. Strachan, on the subject of the appointment of Commissioners for the investigation of the Claims, &c., which a late Despatch from my Lord Bathurst rendered immediately necessary.

10th May.—I carried that Despatch to Mr. Powell for perusal, and showed him the names of five gentlemen who had occurred to your Excellency as eligible for the office of Commissioner :— these were Colonels Wells and Foster, the Attorney-General, Messrs. Robinson and Allan. In the eligibility of all these, Mr. Powell fully concurred ; but expressed his opinion that the Attorney-General would probably much rather decline the appointment ; in which opinion I entirely agreed. I went from the Chief Justice to Dr. Strachan, whom I found to agree entirely with Mr. Powell's sentiments, and especially so with regard to the Attorney-General. We had much conversation on the subject, and at length it appeared suddenly to occur to Dr. Strachan, that Mr. Alexander Wood would be a very fit person for the Commission ; but at the same time he expressed a doubt whether Mr. W.'s stay in the Province would be of sufficient duration to admit of his taking on him

such an office. I agreed with Dr. Strachan that he should ascertain from Mr. Wood the probable length of his stay in this country, without communicating to him the particular object of the enquiry; and Dr. S. informed me, when I next saw him (12th May), that Mr. Wood was likely to be detained in Canada a year or more. As that gentleman, from all I knew of him, appeared to me to be a person in all respects qualified for the situation in question by talents as well as by character, I confess it never occurred to me to be necessary that I should return to the Chief Justice to consult him on the point; but, without hesitation, I decided on suggesting Mr. Wood to your Excellency as a fit person to be substituted for the Attorney-General in the proposed Commission. Dr. Strachan's last communication to me, *i. e.* of the probable length of Mr. Wood's stay in the country, was made on Monday the 12th May; on which day I embarked to join your Excellency at Stamford, and proceeded with you to Kingston, without returning to York. During our absence, I laid this suggestion before you, and your Excellency was pleased to approve of Mr. Wood's being substituted for the Attorney-General, and direct that the necessary steps should be taken as soon as possible.

24th May.—On the morning of Saturday the 24th May, your Excellency landed at York from Kingston. The Commission for the Claims, which had been prepared in blank, was brought to you by Mr. Cameron, signed by you at the Government House, and the names given to Mr. Cameron to insert in it. On Thursday the 29th the Appointments appeared in the Gazette.

31st May.—On Saturday morning the 31st, your Excellency arrived at York, to preside at the meeting of the Bible Society, which was held at 2 o'clock, *p. m.* that day; and it was whilst the subscribers were assembling in front of the School-house, that the Chief Justice took occasion to ask of me whether the name of Mr. Alexander Wood, whom he had seen in the Gazette as appointed to the Board of Claims, had been in the original list of persons proposed for that situation, which I had formerly shown to him. I immediately replied that it certainly had not;—that Dr. Strachan, whom I had likewise been desired to consult, and who had agreed in his sentiments about the Attorney-General's probable desire to be excused from the office, had suggested in his room Mr. Alexander Wood;—that as Mr. Wood was a person of whose fitness in all respects I could entertain no doubts, it had not occurred to me to be necessary to return and consult him about it, but had submitted the name to your Excellency, and had received your orders thereon. The Chief Justice begged that I would bear in mind these circumstances, which I of course said that I would do, and that I would explain to your Excellency: and here the conversation broke off. It however naturally struck me that the anxiety manifested by Mr. Powell that he should be understood as not having been instrumental in Mr. Wood's appointment, could proceed from no other cause than a knowledge of some unfitness on

the part of that person to discharge its duties; and I felt fearful that I might have acted imprudently in not recurring to him on the point when Mr. Wood was first thought of. I therefore took the first opportunity when I saw Mr. Powell not engaged in conversation, to draw him aside, and to express my hope that there were no objections of moment, to Mr. Wood. He replied that there were such as had he been consulted on his appointment would not have permitted him to approve it; and on my pressing him to know their nature, he put into my hand two papers—the one a letter from Mr. Wood to himself, of a very remote date, purporting to decline an invitation he had received from Mr. Powell, and requesting advice on the subject of some dilemma in which he (Mr. Wood) found himself involved, the nature of which, however, was not defined, and which he feared would expose him to much derision: the other paper was the copy of the Chief Justice's reply; it referred to proofs of friendship formerly given, expressing great distress at the situation in which Mr. Wood had placed himself, warning him that worse than derision must attach to it, and not encouraging him to brave investigation. The nature of the business was not expressed, though something very bad was pointed at. The letter began—"DEAR SIR," and was subscribed "Your faithful Friend." I returned the papers to the Chief Justice with a remark that there was evidently something very wrong, although there was nothing defined; and we were interrupted by a summons that the business of the meeting was about to commence.

I have already explained to the Chief Justice, on his reading me a part of the statement now before your Excellency, that there could not have been a longer interval between the two conversations above detailed than a few minutes. The Chief Justice, nevertheless, I observe, states there was one of "some days."—The dates will show that only *one* day intervened between the appearance of the Gazette, from which Mr. Powell first learned Mr. Wood's appointment, and the meeting of the Bible Society; and I feel very confident that I had no conversation with the Chief Justice, either on Thursday the 29th, after the appearance of the Gazette, or on Friday the 30th, the only intermedial day, or on Saturday the 31st, until I reached the neighbourhood of the Schoolhouse, a little before 2 o'clock, P. M., when he first addressed to me his enquiry on the subject of Mr. Wood's appointment.

At the closing of the meeting of the Bible Society, I told the Chief Justice that I was then obliged to attend your Excellency to an inspection of the troops; but that I should be anxious to renew the conversation. I took occasion to call on him the next day, (Sunday the 1st June, about 3, P. M.,) for that purpose. I found him walking in his garden. I repeated what I had said before, that there was evidently something very bad about Mr. Wood, and which I felt I should have to communicate to your Excellency as an objection to his continuing in the Commission of Claims, but that still there was nothing defined or tangible in what I had

seen, and that I should desire, in order to act on it, to know further particulars. The Chief Justice then produced from his pocket a note apparently made at the time of the occurrence to which the letters I had before seen alluded, and which contained details of a very disgusting nature, and disclosed conduct on the part of Mr. W. which, unless most satisfactorily disproved, must unfit him not only for offices of public trust, but for admission into society. I felt this very strongly, and, I have no doubt, expressed myself so. I was confident that if such things were known to your Excellency, you would not suffer Mr. Wood to continue in the Commission; and I felt that, knowing them myself, I ought to take every measure to prevent it; though, I confess, I shrunk from the idea of having to lay such details before you. I therefore resolved, (and I told the Chief Justice my resolution,) in order to avoid this necessity, to take the first opportunity of seeing Dr. Strachan, who had suggested Mr. Wood's name to me, and through him (for, I felt an equal horror of going direct to the party) endeavour to induce Mr. W. to withdraw from the Commission. In this intention I left Mr. Powell; and here I will not omit to observe that Mr. P. bore the highest testimony to the character of Mr. Wood in all other respects to his honor, integrity, and benevolence; and evinced much feeling at having to disclose such circumstances respecting him.

The following morning, (Monday the 2d June,) I was in close attendance on your Excellency, who were to leave York early the following day; and it was necessary I should receive your commands on many subjects of public business which had accumulated during eleven days' absence on military duty, in the recent inspections. About 3 o'clock, P. M., I was called from your presence by Mr. Wood, whom I found standing near the door, and who delivered me a billet from the Chief Justice, which merely said, "Mr. Wood is now in my parlor with the other Commissioners, waiting to be sworn—Can you step over?" This application was entirely unexpected by me, as I know it was by the Chief Justice; for it is within the knowledge of each of us that his being applied to on the occasion was purely accidental. I went immediately to Dr. Strachan with Mr. Wood; hoping, through the Doctor's intervention, to prevent an attempt at further proceeding. Dr. Strachan had unfortunately gone to Niagara early in the morning, and I followed Mr. Wood to the Chief Justice's, to whom we were admitted, and whom we found alone; the other Commissioners having in the interval taken the oaths and retired.

Mr. Wood, on his entrance, warmly reproached the Chief Justice with an unfriendly proceeding, and stated with many words how much more friendly it would have been, had he warned *him* that after this long interval he meant to bring forward such an objection to his holding an office of honor, as such a course would have prevented the present difficulty; on which I thought it right to observe to Mr. Wood that his secret was safe with me, and that

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any course he might have thought it right to take, had the Chief Justice done so, it was still perfectly in his power to pursue. Mr. Wood continued his reproaches to Mr. Powell, and with much warmth attributed his conduct to a feeling of hostility to the person by whom he had been suggested for his present appointment. The Chief Justice, with much composure, reminded Mr. Wood that he would not submit to insult in his own house;—that as Mr. Wood had advanced such an imputation, it became necessary that he should cause the persons who had formerly brought allegations against Mr. Wood, to take their depositions before a Magistrate, and to add to these his own affidavit of Mr. Wood's admissions to him made at the time. Mr. Wood, on this, with a very changed tone and manner, denied all intention of insult, &c.

I here again interposed. I told Mr. Wood that, placed as I was I had only one course to pursue;—that I had hoped to spare him and myself the pain of a personal explanation by communicating with him through Dr. Strachan, who had first suggested his name for the present appointment; but that as this was no longer permitted by what had taken place and the Doctor's absence, I begged him to understand that I must be under the necessity of laying all that I knew before the Lieutenant-Governor, distressing as it would be to me to have to submit to him a subject so disgusting, unless he, on any pretext he might choose, should, before the evening of the next day, signify to me a wish to be allowed to withdraw from the Commission. Mr. Wood admitted the peculiarity of my situation, and added that he should certainly withdraw from the Commission, and left the Chief Justice's house.

Though many more words passed, these were the leading circumstances of this very painful scene. Mr. Wood made no application to be sworn into office in my presence, of which I have given the Chief Justice a certificate; on the contrary, he went away with a professed intention of withdrawing from the Commission.

In the evening, I received a note from Mr. Wood, begging me to take no steps until Dr. S. returned from Niagara; and as I knew the Doctor could not be more than a few days absent, no objection occurred to me, and I signified my assent through Mr. Allan the next day.

Mr. Wood's subsequent communications to me have been duly submitted to your Excellency, as well as Dr. Strachan's letter to me, explaining his having suggested him for the appointment of Commissioner.

The Chief Justice's first remarks to me I understand to have arisen from his desire to be considered by your Excellency as not having been instrumental in Mr. Wood's appointment to the Board of Claims. I am confirmed in this conception of them by his recent declaration that he would not mind if Mr. Wood were made Chancellor, and that he, the Chief Justice, were not instrumental in the appointment. The enquiries I addressed to the

Chief Justice arose from a desire to prevent some evil to the public service (the extent of which I could not tell), if Mr. Wood continued in the Commission.

With reference to the Chief Justice's statement to your Excellency that I informed him that Dr. Strachan had advised an appeal to the law for redress, I certainly remember perfectly to have told the Chief Justice that I had ascertained to my satisfaction that Dr. Strachan had never known the extent of what was imputed to Mr. Wood; and that on the present occasion he had plainly told him that if "he did not clear himself of these charges, he, Dr. S., must clear himself of 'im.'" It must be to this the Chief Justice has given the above interpretation; but as by a similar latitude it might be inferred that I had denounced Dr. Strachan to the Chief Justice as the instigator of a prosecution designed to ruin him, I hope to be forgiven for remarking that my knowledge of your Excellency's desire of effecting harmony and unanimity, and the discomfort I have already experienced in the necessary official intervention where discordant feelings unhappily prevail, would, as well as common sense and honor forbid any intention, on my part, to excite feelings which I have ever seen your Excellency so desirous to allay; and it would little accord with a remark I remember to have made to your Excellency, of the light in which I view Dr. Strachan's conduct on the present occasion.

I have the honor to be  
Your Excellency's most faithful and obedient Servant,  
J. HILLIER.

I certify that this writing and signature upon this paper is in the proper handwriting of Lieutenant-Colonel Hillier, late Secretary to Sir P. Maitland.

EDWARD McMAHON.

York, 10th Jan. 1831.



