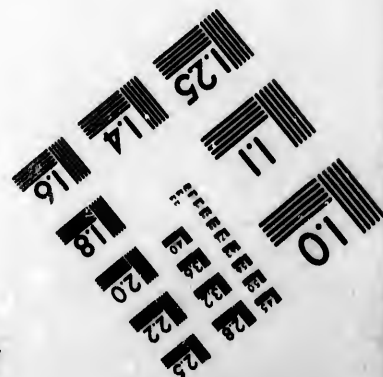
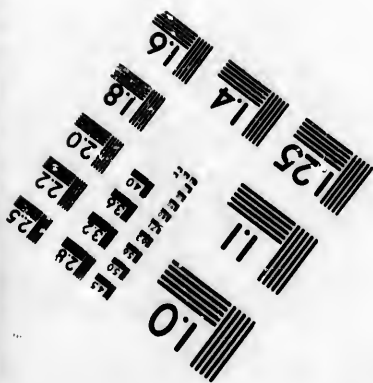
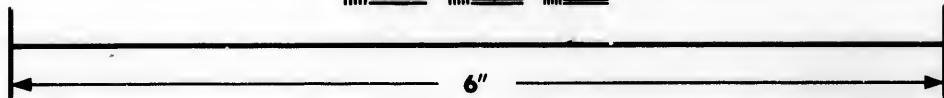
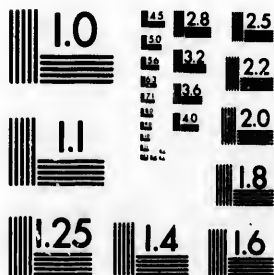


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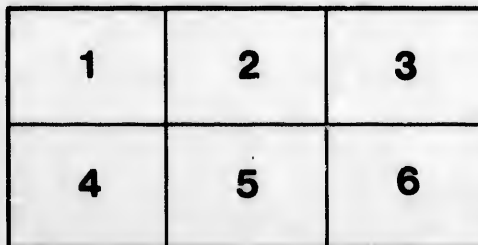
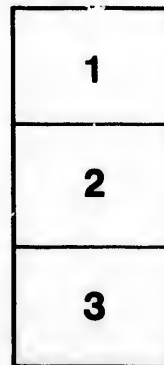
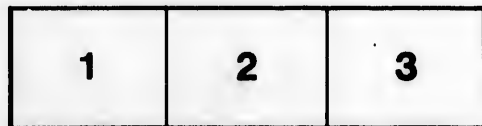
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A

FAITHFUL REPORT

OF THE

TRIAL AND ACQUITTAL

OF

ROBERT RANDALL, Esq.

A MEMBER OF THE COMMONS HOUSE OF ASSEMBLY IN
UPPER CANADA,

Accused of Perjury,

And tried at NIAGARA, on Wednesday the 7th of September, 1825.

——
“*Vox Populi, vox Dei.*”
——

——
FROM STENOGRAPHIC NOTES

By FRANCIS COLLINS,

Reporter of Parliamentary Debates, in the House of Assembly.

——

——
YORK:

PRINTED BY F. COLLINS, AT THE OFFICE OF THE CANADIAN FREEMAN:

1825.

To the Lovers of equal and impartial
Justice, and the intrepid Advocates of Free-
dom and Independence in Upper Canada,
this Pamphlet is respectfully dedicated, by

Their most unfeigned,

And ever devoted

Humble Servant,

FRANCIS COLLINS.

INDICTMENT.

*District of Niagara, } THE Jurors for our Lord the King, upon their oath
to wit. } present, that according to the Laws and Constitution of
this Province, a new assembly was in due form of Law summoned and called
together to meet at the town of York, in the Home District of this Pro-
vince, on the ninth day of August, in the fifth year of the Reign of our Sovereign
Lord George the Fourth by the Grace of God of the United Kingdom of
Great Britain and Ireland, King, Defender of the Faith, and that the County of
Lincoln, in the said District of Niagara, ought, and is, by law, entitled to be re-
presented in the said Assembly, by four Members, to be for that purpose duly
qualified according to the Laws and Constitution of this Province, and that on the
twenty-sixth day of July, in the fifth year of the Reign aforesaid, an election of
four persons to serve as Members for the aforesaid County of Lincoln, in the As-
sembly of this Province, so summoned and called together to meet on the ninth
day of August then next, came on, to wit, at the Township of Stamford, in the
said County of Lincoln, in the said district of Niagara, and thereupon one Ro-
bert Randall, late of the Township of Stamford, in the District of Niagara, aforesaid,
Esquire, did appear as a Candidate, and did propose himself, and was pro-
posed by other persons then there present at the said Election, to be elected to
serve as a Member for the said County of Lincoln, in the said Assembly.*

And the Jurors aforesaid, upon their oath aforesaid, do further present that
the said Robert Randall, being thereto required at the time of such election,
that is to say, on the said twenty-sixth day of July, in the year aforesaid, at the
Township of Stamford aforesaid, in the said District of Niagara, by William
Johnson Kerr, Samuel Street, Peter Mann Ball, and other persons having a right
to vote at the said Election, did on the said twenty-sixth day of July, in the year
aforesaid, at the Township of Stamford aforesaid, in the said District of Niaga-
ra, in his own proper person come before Richard Leonard, Esquire, then being
the Returning Officer, to whom it appertained to take the Poll and make the
return at such Election for the said County of Lincoln, and was then and there
duly sworn, and did take his corporeal oath upon the holy Gospel of God, before
the said Richard Leonard, (he the said Richard Leonard being such Return-
ing Officer, and having competent authority to administer an oath to the said
Robert Randall, in that behalf,) and the said Robert Randall being so sworn,
and not having the fear of God before his eyes, and having no regard to the
Laws and Statutes of this Province, nor fearing the punishment therein contain-
ed, then and there, to wit, on the said twenty-sixth day of July, in the year
aforesaid, at the township of Stamford aforesaid, in the said district of Niagara
before the said Richard Leonard, on his oath aforesaid, falsely, wickedly, mali-
ciously, wilfully and corruptly, did, amongst other things, say, depose, swear
and make affidavit, in writing, in substance and to the effect following, that is to
say, that he the said Robert Randall, at the time of taking such oath, and mak-
ing such affidavit in manner aforesaid, truly and bona fide had such a freehold
Estate situate in the following places, the place known by Bridgewater Works,
(meaning the place known by the name of the Bridgewater Works, on the wa-
ter of the Niagara River, between the mouth of the River Welland and the
great Fall in the Township of Stamford, District of Niagara, (meaning in the
said District of Niagara,) four framed dwelling houses under two stories, with
not more than two fire places, twelve hundred acres of land, being the north
part of lots number fifteen, sixteen, seventeen, eighteen, nineteen and twenty, on
the south side of the River Welland, in the Township of Wainfleet, District of
Niagara, (meaning the said District of Niagara,) compensation, allowance
(meaning an allowance in money made by His Majesty,) for the destruction
of the Bridgewater Works in the late War with the United States of America,
detained in the hands of this Government, (meaning the Government of this
Province,) by my order (meaning by the order of the said Robert Randall,)
four thousand pounds—seven hundred and seventy-six acres of land, lots num-
ber thirty-eight, thirty-nine, and forty, in the first concession from the Grand
or Ottawa River, and the broken fronts of the said lots in the Township of Na-
pean, in the County of Carleton, District of Bathurst, (meaning in the County of
Carleton, in the District of Bathurst,) four hundred and fifty acres of land, bro-

Ken lots, numbers ten and eleven in the first concession, lot number eleven and easternmost or front three fourths of lot number ten, in the second concession upon the River Rideau, Township of Napean, County of Carleton, in the District of Bathurst, (meaning in the Township of Napean, in the County of Carleton, in the District of Bathurst.) four hundred acres of land, lots number eleven and twelve in the eighth concession of the Township of Matilda, County of Dundas, Eastern District, (meaning in the County of Dundas, in the Eastern District,) four hundred acres of land, lots number ten and eleven in the sixth concession of the Township of Youge, County of Leeds, District of Johnstown, (meaning in the County of Leeds, in the District of Johnstown,) over and above all incumbrances, that might effect the same, and was otherwise qualified according to the provisors of the law to be elected and returned Member in the Commons House of Assembly, (meaning the Assembly of this Province, as aforesaid,) according to the tenor and true meaning of the Act of Parliament in that behalf, an Act that he had not obtained the same fraudulently, for the purpose of qualifying him to be returned Member to the Commons House of Assembly, (meaning the Assembly of this Province, as aforesaid,) whereas in truth and in fact the said Robert Randall, at the time of his taking such oath and making such affidavit, in manner aforesaid, had no freehold estate either in dwelling houses, or in any lands and tenements, at or in the place known by the name of the Bridgewater Works, on the waters of the Niagara River, between the mouths of the River Welland and the Great Fall in the Township of Stamford, in the said District of Niagara—and whereas in truth and in fact the said Robert Randall, at the time of his taking such oath and making such affidavit as aforesaid, had not any freehold estate in the twelve hundred acres of land, being the north part of lots number fifteen, sixteen, seventeen, eighteen, nineteen and twenty, on the south side of the River Welland, in the Township of Wainfleet, in the District of Niagara.

And so the Jurors aforesaid, upon their oath aforesaid, do say that the said Robert Randall, on the twenty-sixth day of July, in the year aforesaid, at the Township of Stamford aforesaid, in the said District of Niagara, upon his oath aforesaid, before the said Richard Leonard, being such Returning Officer as aforesaid, & having such authority as aforesaid, by his own act & consent, and of his own most wicked and corrupt mind, falsely, wickedly, maliciously, wilfully and corruptly in manner and form aforesaid, did commit, wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said Lord the King & his Laws, to the evil & pernicious example of all others in the like case offending, against the form of the Statute in such case made and provided, and against the peace of our said Lord the King his Crown and Dignity.

(Signed)

JOHN B. ROBINSON,
Attorney General.

J. B. M'AULEY, Esquire, on the part of the Crown, opened the Prosecution with the following Address:—

May it please your Lordship,

Gentlemen of the Jury,

MOTIVES of delicacy, owing to some private misunderstanding between the Solicitor General and the defendant, have induced that learned gentleman to decline prosecuting the present Indictment, and he has requested me to conduct the trial for him. It is a duty I approach, not with reluctance, but with diffidence and concern—diffidence of my own ability to conduct any important criminal prosecution, unpractised as I am in that part of the Law—concern, that it should be necessary to bring a person filling the high and honourable

ble situation of a Representative of the people of this Province before a Jury of his County for any crime, most particularly a crime so odious as that charged in this Indictment—no less than wilful and corrupt Perjury.

Of this diabolical character of Perjury I am sure I need not speak; of all the long catalogue of crimes, it is perhaps the blackest and most detestable; its very name shocks us; the imputation of it excites our distrust, and renders the accused the object of our caution. Many criminal acts that jeopardize the lives of offenders are more excusable.—The strong passions which nature for the wisest purposes has implanted in the breasts of men sometimes rise to ebullition, subdue reason, and drive unhappy individuals to commit rash and dreadful crimes, at the very name of which they would shudder in cool and dispassionate moments; but in perjury the active feelings are not excited, it is always committed with deliberation, upon reflection, and with full opportunity of considering its enormity and hateful character—it can only be committed by a low and sordid spirit, for low and sordid purposes.

Faith in the words and acts of others—confidence between man and man, are first principles in the organization of Societies; and in all well regulated governments where the lives and properties of the subjects are protected, the rights of individuals respected, wrongs redressed, and offences punished, the testimony of one neighbour on behalf of another must be received, and must be relied upon; wherefore every precaution has been taken calculated to bind the consciences of witnesses and ensure their rigid adherence to truth.—They are required to lay their hands upon the Holy Gospels, and appeal to God himself to witness their veracity, and a violation of the truth is visited with condign punishment, the most degrading and the most disgraceful; not only so, but the character is lost forever to the convict, he is treated as an outcast from society, he is never again received as worthy of credit, he is excluded in all time to come from giving testimony between man and man, and is branded with infamy that only dies with him.

Upon an accusation for so heinous a crime the clearest testimony should be adduced. In this case I fear it will prove too plain, and conviction must follow.

However painful it may be, you must as intelligent and honest men, discharge your duty firmly. The facts are simple, and the law will be ably expounded to you by the learned Judge who presides, and by the law and evidence you are sworn to govern your judgments. All here act under the same sacred obligations—the witnesses are sworn, the Judge is sworn, the jury are sworn, and a due respect to such solemn ties is as essential in the one as in the other. When they are properly respected, justice is purely administered; but when neglected, forgotten or disregarded by the Judge, the jury or the witness, when prejudice, or passion, or fear, or favour, or affection, are allowed to interfere, equal justice is no longer seen between the public and the prisoner, a dangerous example shows itself, confidence in this our boasted mode of trial is shaken, and a step is taken that leads towards anarchy and confusion.

"Purjury is by the common law, said to be a *wilful false oath*, by one who being lawfully required to depose the truth in any proceeding, in a Court of Justice, swears to the point in question, whether he be believed or not." The defendant now before you, is not indicted for any perjury committed as a witness in a Court of Justice, but rather for bearing false testimony in his own behalf, and in favour of his own estate and interest, upon another occasion.

Gentlemen, the indictment details at length the subject matter of the prosecution, it states that a new assembly was called to meet at York the 9th August 1824, that the County of Lincoln was entitled to return four Members duly qualified, that the Election was held at Stamford 24th July 1625, that the defendant appeared as a candidate, that he was required to take the qualification oath by Wm. J. Kerr, Samuel Street, P. M. Ball, Esqrs. and others, having a right to vote at such Election, that thereupon he corruptly swore by affidavit in writing before Richard Leonard Esq. the Returning Officer, in substance and effect, as stated in the indictment which you have already heard read.

I will now read to you one or two Sections of the Provincial Statute passed in the last session of the last Parliament respecting the qualification of persons to sit in the House of Assembly. By Section 6, it is enacted that after the passing of that act "no person or persons should be eligible to be proposed, chosen, or elected, as a Representative or Representatives of any County, City, Riding Borough, or other place of any description, then or thereafter sending a Representative, or Representatives to the House of Assembly of this Province, unless he should be possessed of an unincumbered freehold of Lands or Tenements in this Province to the assessed value of Eighty Pounds, lawful money of this Province."

Again by Section 7, it is provided upon reasonable request made to any Candidate at the time of such Election, by any other Candidate, or by any two or more persons having a right to vote at such Election, he shall take an oath in the following form, or to the following effect.

"I A. B. do swear that I truly and bona fide have such a freehold estate (here describe the estate,) over and above all incumbrances that may affect the same; and am otherwise qualified, according to the provisions of law, to be elected and returned to serve as a Member in the Commons House of Assembly, according to the tenor and true meaning of the act of Parliament in that behalf, and that I have not obtained the same fraudulently for the purpose of enabling me to be returned a Member to the Commons House of Assembly of this Province.—So help me God."

"And by Section 16 it is declared, that if any person or persons shall be guilty of false swearing in any Oath required by this act, he shall, on conviction thereof, suffer the like pains and penalties, to which any other person convicted of wilful and corrupt purjury is liable by the laws and statutes of this Province."

You are well aware, Gentlemen, that it is the landed interest of the country which is represented by the Members of Counties; no one can vote for any Candidate, unless he (the voter) has a freehold Es-

tate within the County, and the law has wisely provided that no person shall be eligible to Represent that interest unless he likewise possesses freehold property, unless he has an interest at stake as well as his constituents, and similar to theirs. At the same time that the Legislature have taken so wise a precaution, care has been observed not to exclude humble merit from our Councils by the requisition of any extravagant Estate, a freehold of the assessed value of £80, is alone necessary. How reasonable it is will appear when I inform you that the assessed value of an acre of uncultivated land is 4 shillings, of arable, pasture, or meadow land, 20s. and of town lots and buildings, probably lower; but the law requires that such Estate should be unincumbered, and bona fide the property of the Candidate. Were it otherwise, the whole object of the Statute would be defeated, for an Estate deeply encumbered, as respects the exigency of the Statute, is little, if any, better than no Estate at all.

I would here remark, that you are not now to try whether Mr. Randall, at the time of the Election was possessed altogether of a sufficient Estate to qualify him to be elected, but whether he has committed Perjury in having sworn to a freehold interest in certain premises in this District, specified in the Indictment and upon which the Perjury is assigned.

You must understand, Gentlemen, that in an indictment of this kind, many distinct acts of perjury may be alledged according to the separate facts sworn to, and that if the party is proved to have sworn wilfully false in any (material) one of them, he must be convicted of that one, though he go clear as to all the others. In the present case, perjury is not assigned upon every material fact, or in other words upon every independent tract of land sworn to by the defendant; the two first specified, and lying within this District are alone selected, namely, the Bridgewater property, and 1200 acres of land on the Chippawa. False swearing to either of these, (if proved) calls for conviction, they are independent assignments of perjury. At the same time, I should apprehend the defendant has a right to call for the reading in evidence, the whole affidavit, if he thinks it can benefit his case upon the principle that a witness indicted, (as he is,) may claim to have all his testimony proved, in case it should appear in the latter part that a mistaken statement in the first part (apparently wilfully false) has been subsequently explained and corrected; this I must apprise you, that as far as the specification of Estate goes, there can be no dependence of one part of the affidavit upon another.

It may be argued in the defence, Gentlemen, that although the defendant really had no freehold interest in the Premises upon which the perjuries are assigned, still he may have had ample estate in the lands contained in the latter part of his deposition; but a little reflection will shew its fallacy. The Statute in effect requires Candidates to be possessed of an unincumbered freehold, in lands and tenements, of the assessed value of £80, without any qualification whatever; it also imposes an oath upon them, (when exacted) that they truly and bona fide have such a freehold estate, over and above all incumbrances that may affect the same. Now it is evident that

the defendant meant to swear to a freehold sufficient to qualify him to be elected; he had no other object in view; and it is equally evident, that he meant to specify his estate as by law required. You must consider the object; read the affidavit, and construe it as men of common intelligence, and as all indifferent persons of sound minds would do, if you do, it must be evident he meant to swear to a freehold in the estates first specified, otherwise, there is no proof that he meant to swear to a freehold in any. The plain sense of the oath is, that he owned all the lands and houses enumerated; if not, why did he insert them? Most particularly, why did he insert the Niagara lands at the head, without any restriction, or any explanation as to his meaning, to distinguish them from the others? He might insert all his property, if incumbered, in order to argue, (should his qualification be questioned) that the excess of value, above all incumbrances, would qualify, but he must be understood, of course, to own a freehold interest in all he mentions, or he could not raise such an argument, nor could he say that he had sworn to an estate at all. Are you to be driven from Lot 10, as fast as you prove want of title, by the defendant's saying, "true, I inserted this one, and that one, the Bridgewater Works and the Welland tracts, though I did not mean to swear to any freehold in them, but in some others? Can any one so understand the affidavit? Is it common sense? He is called upon to identify his estate—that estate which has a freehold qualifying him to be elected, and to swear to it; if then he specifies an estate in which he has no freehold, yet still swears to it, is it not perjury? Look to the object of the oath, and the object of the party; supposing he had specified no other lands than those in the Niagara District, that he owned them in fee simple, and that they were not incumbered—would they not qualify? Certainly, and the affidavit would contain all the law demands; but if he did not own them at all, would the affidavit not be false! would it not be perjury? Could he say that he owned other estates elsewhere, but forgot to insert them? If not, with what better reason can he descend from one specified estate to another? What dependence have they as respects his oath to a freehold interest in them? Can his swearing to a freehold in Napean, qualify, in any way, his oath to a freehold in Stamford or Wainfleet? Can the truth or falsity of the one, in any way depend upon the other? Certainly not; as it respects title, there can be none; as regards value, an excess of value above incumbrances, it may be important to take the whole together, a freehold interest in all so taken must be previously proved or admitted.

The qualification act, and the qualification oath, in this country, differ materially from those applying to the British House of Commons. In England, Members are required "to have a certain freehold estate, in law or in equity, over and above (what will satisfy) all incumbrances that may affect the same within England or Wales, &c." And the oath then corresponds; the party swears "that he truly and bona fide hath such a freehold estate, &c. over and above (what will satisfy and clear) all incumbrances that may

affect the same, &c." The words (what will satisfy and clear) are left out in our Statute, and purposely omitted, for upon a reference to all the acts from time to time passed in this Province, upon the subject, the same language has been followed, and the same omission made. In Great Britain too, not only the amount of value is very different, but the mode of ascertaining it is equally variant; there the estate must be of a certain annual value, here it must be of a certain assessed value; there it is a matter of fact, here the legal consequence of a certain defined estate, there the value and estate are both matters of fact, here the latter is only a question of fact, (that is, whether the Candidate hath any and what estate,) the value is a matter of law determined by statute, there the real annual value is the object, here the assessed value, according to the extent and improvement of the premises: a freehold estate of a certain extent being proved, the value follows: uncultivated lands 4s. an acre, cultivated 20s. houses according to their dimensions &c. Again the estate here must be unincumbered: in England it may be incumbered, if the annual value exceeds the incumbrance to a certain sum. There is nothing in our statutes to shew that a partial incumbrance having an excess of value, will not affect the qualification; had it been so intended it would have been so expressed; the frequent repetition of the same restriction, strengthens the argument, and the mode appointed to determine the value, forbids a contrary construction. If incumbrances upon the estate, in right of which a Candidate claims to be qualified, are once tolerated, it seems impossible to ascertain their limit; the assessed value is made the criterion, and that rule necessarily contemplates an unincumbered estate. Four hundred acres of wild lands, are of the assessed value of £80, be the real value £10 or £500; but if 800 acres, worth £500, are incumbered to the amount of £300, how can it be said there remains to the assessed value of £80 above such incumbrances? It is a conclusion that cannot be drawn from any evidence, as to the real value. Mortgages and Judgments are incumbrances; the former attach upon specified estates, the latter bind all owned by the debtor; the agreements apply to all. It seems to me the Legislature intended Candidates to have some estate exonerated from all incumbrances of the kind, the smallness of the quantity, and the manifest propriety of their having a substantial interest in their country, tend strongly to prove it; the plain construction of the act and oath confirm it. The Candidate must swear that he truly and bona fide hath such a freehold estate. What does the word *such* mean? Such an estate, of course, as is mentioned in the 6th section of the act; that is, such an unincumbered estate—truly and bona fide such. The words of the statute are clear and explicit; not only must he swear to such an estate, but such a *freehold* estate; i. e. such an unincumbered freehold, over and above all incumbrances that may affect the same. What then *may* affect? A mortgage may and does affect an estate; a judgment binds it, and does affect it—nay, may affect it, even to the selling thereof. In short the oath meets the enacting clause fully, and is the same in effect, as if the words "that may affect the same" were entirely omitted. A recurrence to the British qualification

act will prove it, where a contrary intention is roundly and fully intimated. Our act evidently goes with it to a certain extent; but as to incumbrances not so far. The argument might be pursued much further, but this matter does not fall within your proper consideration; it relates to the qualification, and that is not within your province to determine.

The introductory allegations in the indictment will be proved, and then the most satisfactory evidence will be offered to show that the defendant had no freehold in either of those estates upon which the perjury is assigned. I shall produce the Government Patent to the Honorable Thomas Clark for the Bridgewater property, excluding, I believe, the possibility of Mr. Randall's having any estate at all in it, much less that freehold interest that could qualify him to represent a County in Parliament. I am astonished that any man possessing the prudence and circumspection that he, I believe, does, could have the audacity, or be so fool-hardy as to subscribe to an oath so palpably false. I know of no palliation for it—I can imagine no plausible excuse that can be advanced for so manifest a disregard of conscience.

With respect to the 1200 acres of land on the Welland, it is equally palpable. I shall submit exemplifications of judgments of record against him, to a large unsatisfied amount, upon which suggestions are entered of the issue of executions into this District against the defendant's lands, several of which executions, the Sheriff has felt it his duty to return as unfruitful, the defendant having no lands. Upon one of the executions, I shall further prove the public Sale by the Sheriff of these very 1200 acres of land, to the Plaintiff in the suit, who was driven to purchase them in his own defence, at a low rate, as no one would come forward to bid at all for premises to which it was, I believe, universally supposed that Mr. Randall had no title. At the same time, however, the Sheriff's conveyance will prove, that if he had a title, it was regularly divested and transferred to another by due course of law, long before the election last year. When to all this I add another Record in a suit brought some years ago, by the present defendant against a Mr. Phelps, in a case of covenant, the breach of which, on Phelps' part, Mr. Randall alleged to be the non-conveyance—1st, of a share in the Bridgewater Work, for a term of years; and 2dly, of the 1200 acres of land in Wainfleet; which solemn assertion of Mr. Randall in the pleadings cannot be controverted or denied. When you shall read that record, and find a judgment for the defendant Phelps, upon the ground that he had fulfilled his contract by transferring the same to Mr. Randall, or to his Assigns—if not to him, yet to his order—his appointees—when, I say, you receive all this testimony, can a doubt remain of the guilt of the defendant who stands indicted? You will have his own confession on the one hand, and ample proof on the other, that the estates in question are vested in others.

It is not for me to dwell longer upon the subject, or to aggravate the case; it speaks loudly enough of itself; it was my duty to endeavour to explain to you the subject matter of the prosecution and to point out what I thought your duty. If I have been understood,

I am so far satisfied—the rest remains with you. You will now hear what Mr. Randall has to say in his defence; you will receive the aid of the learned Judge upon the Bench, to guide you in your way; and it will be for you then to say whether the defendant be guilty or innocent. Do justice between the public and the individual—I ask no more. It is of great importance to the public in general, and this District in particular, that a full and fair trial be had; it is important to them to know, whether a Member of our House of Assembly has been guilty of base perjury. If you believe the evidence, however painful it may be to you, you must, I fear, convict him. It is for you to say however, whether he is to insult the majesty of the laws, or whether they are to be duly respected—the sanctity of oaths observed, and the purity of our Assembly preserved. Harken to the evidence—let him stand or fall by it alone; do your duty to your country, to him, and to yourselves; exercise your best judgments—conduct your inquiries with impartiality—acquit your consciences—if you find the offence established, convict him; if you find him innocent, let your verdict be not guilty.

EVIDENCE.

Richard Leonard, Esq. sworn.—Was Returning Officer for the County of Lincoln at the last Election—the Election was held at Stamford, July 26, 1824—Robert Randall, Esquire, was a Candidate—was required to take the qualification oath by Daniel Street, Wm. Crooks, and others—did take the oath. [Here the affidavit was produced in Court, and witness proved his own certificate of it, identifying the items of the Bridgewater Works, and the 1200 acres of land on the River Welland.]

R. Dickson, Esq. sworn.—This witness proved a Judgment in favour of the defendant, in an action of Covenant, Randall vs. Phelps, respecting the conveyance, from the defendant to the plaintiff, of the Bridgewater Works.—Other Judgments and Executions were produced, under which the 1200 acres of land on the Welland were sold at Sheriff's sale—witness had signed the Sheriff's deed for the same, which was produced and attested by him—it was executed the 4th of May, 1821—this property was sold for £40.

[Here Mr. Rolph, as Counsel for the defence, submitted to the Court, without avail, that as the Counsel for the prosecution had stated his intention to prove a freehold out of Mr. Randall, and the charge of perjury not being for defective qualification, he ought not to be allowed to prove incumbrances.]

P. T. Pawling, Deputy Sheriff, sworn.—Witness proved an official return of "no lands" in the District, signed by himself on the back of an Execution against the lands and tenements of Mr. Randall—was authorised by the High Sheriff to make such returns.

The Hon. Thomas Clark sworn.—Witness held a Patent from the Crown for the Bridgewater works.—[The Patent was produced]—It was dated 2d. January, 1816—it included the whole item sworn to by Mr. Randall, and 10½ acres more. Cross-examined by Mr. Rolph—witness visited Mr. Randall, while in gaol in Lower Wand-

da—saw him in Montreal gaol—asked him to transfer to him (witness) his (Mr. Randall's) interest in the Bridgewater Works—Mr. Randall had a claim on one third of the Bridgewater Works, under a Lease for 99 years, from General Simcoe—witness visited Mr. Randall in Montreal gaol for other purposes also.

Here the evidence closed, and JOHN ROLPH, Esquire, Counsel for the defence, addressed the Jury as follows :—

May it please your Lordship,

Gentlemen of the Jury.—If on this occasion I am borne down and almost subdued with anxiety, you, who are acquainted with the romantic history and eminent worth of Mr. Randall, and the malignity of the charge which his enemies have preferred against him, will readily find for me an ample apology. When I hear the crime of perjury imputed to such a character—when I see the power, influence, and talent, which have generated this prosecution, and carefully nursed it to its present stage—when I contemplate the magnitude of the duty which this defence has imposed upon me—how much I have to meet, to answer, and explore—I feel it necessary to solicit your most liberal indulgence.

The learned gentleman who opened this prosecution informed you, that His Majesty's Solicitor General, though present at this momentous trial, declines conducting it, from motives of delicacy. His motives I do not impeach; but when I recollect, that I have had to encounter his eminent abilities in making repeated, though unavailing, applications for relief for Mr. Randall in other matters, I had some reason to expect that he alone would engage against me in the great public inquiry now before us. The Crown, however, has otherwise arranged it, and I find myself constrained, in effect, to contend with the combined talents of three of the ablest lawyers in the Province; for, this indictment was originally framed by the Attorney General, nearly a year ago, (and as we ought to assume) with the consummate skill of the profession; from that time nearly to the present, it has been in the maturing custody of the Solicitor General, and after passing (if I may be allowed the expression) through the digestion of their great minds, it comes ready chylified into the hands of an Executive Councillor, acquiring, indeed, from him the weight of talents inferior to neither of them, and the influence of an address the most prepossessing to the public mind.

When this unfortunate gentleman beholds such a combination of splendid talents in operation against him, is it not enough to make him almost sink into the very earth? But no—he shall stand erect in the face his country—for I am not alone in this great struggle—I am assisted by my learned friend upon my right hand, and further aided by my truly worthy and learned friend Dr. Baldwin, nor least is the assistance which I have derived from my learned friend Mr. Baldwin, who inherits the intellect and the honour of his father.—Let us then with boldness enter upon the inquiry, though we must meet such champions in the field.

The learned Counsel assured you of the deep concern with which he approached the prosecution of such a man for such a crime—a concern which the whole country feels, and in which you, Gentlemen, cannot fail to participate. But compared with the solicitude of his friends, Major Randall feels nothing. Long accustomed to persecution—the child of misfortune, and the companion of troubles—this last effort to crush him, seems to awaken in him no emotion; for sad experience has taught him, that nothing is too bold to be attempted against his property, his character, or his person; and sensibility being exhausted by continued grief, leaves him without his native buoyancy, and he would with passive confidence repose himself undefended upon the integrity of his country. But his friends, and many they are, would stay the further progress of this last outrage against his character, and the country which he serves. They desire to witness a free and impartial investigation in the face of the community, that he may receive, on this trying occasion, that justice which he has so long needed.

It has long been the fashion, from motives the darkness of which I can scarcely penetrate, to cry down Randall—reduction from wealth to comparative poverty, has exposed him to the scorn of the proud and the influential; but in how estimable a view does the character of this people appear!—a people who have extended mercy to the merciful—protection to the oppressed—and who have generously continued their confidence to the calumniated veteran in the public service. Randall has tasted the bitterness of protracted imprisonment in a foreign gaol—and it is now proposed to make him suffer martyrdom in the pillory! For years he was immersed in a dungeon in Lower Canada, where he suffered privations, the detail of which would make humanity shudder. Engaged, as you are, in the active and diversified pursuits of life, there is much to occupy your attention, and divert it from a thousand vexations which are attendant on the fate of the most fortunate of men; and even when business has lost its interest, or brought fatigue, nature opens her exhaustless stores, to invigorate the body, to delight the senses, and to regale the mind; but in a gaol, there is nothing to fill up a tedious existence—it is there almost worldless as the grave—no important trifles to incite desire—no prospects of success to animate with hope! Randall's care-worn soul, vacant of employment, and harrowed up by thought, was there left to turn upon itself for years to witness its own forlorn wretchedness, to mourn the prospect it had lost, and brood over the miseries to come. It was thought that the poverty and wretchedness brought upon him, would break down the spirit of the man; that nature, however buoyant, could not bear up against such complicated woes. Many, many a man, thus made a prey to accumulated sorrow, is doomed to hang the head of despondency, and when ushered into prison, every remnant of former vigour, that might promise a successful struggle, is soon exhausted by despair. But Randall survived the wreck of his property, and the miseries of a prison. Instantly, upon his emancipation, he flew to his trusty, noble, and magnanimous District, with all the ardour of a patriot, the intensity of whose feelings had

accumulated under long and painful suppression. Upon his return to his fellow citizens, he was received with open arms, and almost all rejoiced to see delivered from jeopardy, one who never did an injury to any man, nor refused in his prosperity a benefaction solicited for suffering humanity. He who for years that were past, but not forgotten, had done good and dealt both honestly and liberally among you, was greeted on his return with the good wishes of a generous people, and public esteem and public confidence were eminently displayed by electing him a guardian of the public interests. This high confidence has been reposed again and again in him; and during the discharge of the important trust so confided in him, what has been his crime? I will not tell you—glean it from public opinion—read it in the journals of your Assembly—hear it in the reproaches of the wicked, the envious, and the disappointed.

Gentlemen, the indictment alleges that an election came on—an election at which it was hoped *by a few*, that this patriot senator would lose the generous patronage of a free and independent people. It was fairly presumed, that a man so placed, under circumstances not quite reasonable to name, could not be eligible under the new statute; and when invited as a candidate, by the general voice, he was required to swear to his qualification. For that purpose, he subscribed a deposition, and upon that deposition, the perjury is assigned. In order to shew the captious nature of the charge, let us dispassionately consider the nature of the oath required, and compare it with this bold accusation of perjury, on which they would put Randall in the pillory.

The substance of the oath required is, that the Candidate has a freehold to a certain value, over and above all incumbrances that may affect the same: "I, A. B. do swear, that I truly and *bona fide* have such a freehold estate, [here describe the estate,] over and above all incumbrances that may affect the same; and am otherwise qualified according to the provisions of Law, to be elected and returned to serve as a member in the Commons' House of Assembly, according to the tenor and true meaning of the Act of Parliament in that behalf; and that I have not obtained the same fraudulently for the purpose of enabling me to be returned Member to the Commons' House of Assembly of this Province.—So Help me God."—And here, gentlemen, I am constrained to make a painful pause at the recollection of the unconstitutional construction which the learned gentleman endeavoured to impress upon you. It never was—it never can be law, (unless the representation commit treason against their constituents) that a judgment of five pounds can so incumber an ample property of ten thousand acres, as to disqualify the owner from serving you in the Provincial Parliament. It is still more alarming to hear that the word *may*, in the oath required, can be so fearfully enlarged in its meaning, as to destroy the eligibility of a candidate, because he has given a *bond* that *may* affect his estate.—Let not your conviction of his learning, or your sensibility to his persuasive address, or the weight of his opinion as a member of the Executive Council, upon a great constitutional question, mislead you

to sanction with a verdict a doctrine so monstrous, that the establishment of it would, in effect, blot out the 31st of the late King. It is, be assured, equally our duty as your own, so to construe every statute as to enlarge & not to abridge—to expand & not to narrow the elective franchise. Recognise such a construction, and the right of representation is frittered away—we, who have hitherto boasted of being blest with British liberty, shall find ourselves only covered with its shadow—and that epitome of the English constitution, which has hitherto been the political idol of this Province, will be despoiled of its most endearing characteristics.

But why have they introduced into this prosecution evidence of incumbrances? The learned gentleman announced in his opening that he should prove the freehold of the Bridgewater property, and the land on the river Welland, to be in the Honorable Thomas Clark. He has done so, and on that very account, the existence of incumbrances was the more palpably foreign to this prosecution; for Randall stands accused of perjury, not for swearing to an insufficient freehold, but for swearing to a freehold in property in which it is alleged he had none. With great ingenuity, however, the incumbrances were first established, lest the previous proof of the freeholds being in other persons should the more unquestionably preclude such testimony as wholly irrelevant and inadmissible. I noticed it to the learned Counsel and to the Court, as an irregular proceeding, ill suited to a criminal investigation. He was, however, permitted to proceed; and the natural tendency of such a course is, to induce you to carry these incumbrances to other property mentioned in the schedule, and under the influence of an impression so unfavourable—an impression which I cannot, on this trial, be prepared to do away—you may be led to convict him in your minds of another perjury of which he is not now judicially accused. Such a prosecution, against such a man, needs no auxiliary prejudice, and it is a solemn duty which you equally owe to the king, the prisoner, and yourselves, to blot out from your minds every extraneous imputation of this kind.

Before reviewing the oath, and the circumstances under which it was taken, it will essentially conduce to a clear understanding of the question, to have in our view the definition of perjury, and some of the points which the law considers as essential to constitute the crime.

According to Hawkins, "perjury is a wilful false oath by one who, being lawfully required to depose the truth, in any judicial proceeding, swears absolutely in a matter material to the point in question, whether he be believed or not." From this definition you perceive that the oath must not only be false, but it must be *wilfully* and corruptly so. A man is not a thief, who by mistake assumes that as his own, which belongs to another—he is not a liar, who avers for a truth, what he believes, though it may happen to be false—nor should your representatives be branded as perjured, because the tenure to which they swear, happens not strictly to conform to the exquisite subtleties of legal definition. Were the issue of this trial to depend upon the construction which prejudice

might give to the deposition on which the perjury is assigned, a simple error might be mistaken for perjury, and mere misapprehension be called downright corruption. A citizen of London had his head severed from his body, as a traitor, for having jocosely said, that he would make his son heir of the crown, meaning the sign of the tavern in which he lived; and another suffered the same fate, because in a moment of vexation, he wished a favourite buck, which the king had killed in hunting, horns and all, in the king's belly.—In modern times, it would seem, that an honest representative of the people may be threatened with the pillory as fancifully guilty of perjury against legal definition, because he misapprehended the nature or quality of his estate according to the technical accuracy of a most learned profession! But happy for the prisoner, and happy for the Province in which we live, a jury interposes between the accusing and the accused—a jury whose intelligence will direct their inquiries not merely to the words, but to the heart from which they came.

Such, Gentlemen, is the distinction fully recognised by the law itself, and without it, the law would be agreeable neither to common morality, nor to common sense. Thus we find it observed in the same high authority which I have already quoted, that "none ought to be found guilty thereof, without clear proof that the false oath alleged against him, was taken with some degree of deliberation; for, if upon the whole circumstances of the case, it shall appear probable that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a *mistake of the true state of the question*, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is, of all crimes whatsoever, the most odious and detestable." In the case before us, Randall was called upon at the Hustings to make oath of his qualification, in a moment of hurrying anxiety, and amidst a scene of perplexity and confusion. What, Gentlemen, was the object of the oath? It was to meet the requisition of certain persons according to the statute to shew his eligibility. In doing so, he has not merely named as much property as would satisfy the exigency of the law, but chose, in the pride of his unmerited oppression, and the ostentation of his unjust poverty, to exhibit the remnant of his "little all," even after the spoils that had been made upon it. It is not therefore for you to enquire, whether in a long schedule of claims, and tenures, and estates, this unfortunate gentleman has made some technical errors; but whether, in fact and in truth, he was qualified, upon looking into the whole schedule, and not to select from the general statement, a solitary error upon which to hang a conviction for perjury. Who can bear up against such a system? Bring against any man an expression severed from the context—pick out, here and there, from the general conduct of his life, one or two incidents that cannot fully explain themselves—bring into distinct view whatever will naturally awaken suspicion of guilt, and throw into the shade whatever would palliate or explain—and there is not a king upon the throne, not a statesman in the cabinet, not a judge on the bench, or a representative of the

people, who might not be held up as an object of suspicion, or become the subject of public inquiry. It is, therefore, our duty to form our judgment from the whole, and not from fragments—to search after the intention of the deponent from the whole of the deposition, and the circumstances connected with it, just as we would judge of a man's character, not by a single incident, but by his life, taken altogether.

In this deposition, you observe many other estates, in other parts of the Province, on which he claimed a right to represent a Riding in this magnificent District. In the early part of the indictment, the whole deposition is set forth—in the latter part of it, perjury is assigned only as respects the Bridgewater property, and the lands on the River Welland; and therefore his right to the residue of the property is undisputed. What, then, is the ground of the perjury? What are the reasons for preferring such a charge, and nurturing it to its present stage? It is because he possibly *mistook* a leasehold for a freehold; and because his title to 1200 acres out of 3,200 acres, may be questioned! So that the crime, as it appears from the indictment itself, is not any deficiency of qualification, but because he is not literally qualified to the full excess to which he unnecessarily deposed! He is to be put into the pillory, not because he has not proved enough; but because he needlessly proved too much! I put it to your hearts, Gentlemen, I ask you, is this a righteous prosecution?

If in swearing to the dimensions of a field, a farmer should call it one acre, with what epithet would you denounce the charge of perjury against him, because upon an accurate mensuration of some skilful surveyor, it turns out to be one acre and one inch? What think you of the charge of forgery, or its affinitive crimes, against one of our most wealthy merchants, because in making a payment of a thousand dollars, one of them was discovered to be bad?—Should a man be degraded in the pillory, who swears, that he saw nineteen sheep committing a trespass, because some sharper will swear that one of them was a *ram*? [*General laughter.*] And shall every Member of Parliament be pelted with rotten eggs, who happens to give in a superabundant qualification, and erroneously includes a leasehold, with an abundant freehold estate?

Gentlemen, this indictment bespeaks its own shame and its own condemnation. The act requires a certain qualification—that qualification Mr. Randall possessed, and the very indictment admits it; yet, he is to be handed down to posterity as infamous, because one fact out of many is erroneous, and when even that fact might be effaced from the deposition, without affecting the object of it? No, the Bridgewater property, and the land on the River Welland, are not the whole of his qualification, but only a small part, which may be struck out from the schedule, as surplussage; and yet this unnecessary statement, which was not intended to mislead, and which caused no deception, they would magnify into wilful and corrupt perjury!

"Christianity is the Common Law," and it will not, therefore, surprize you, that I can turn over many a page of venerable autho-

rity to shew the true character of this prosecution. "That part of the oath, upon which the perjury is assigned, must be material to the matter then under consideration. As, for instance, if a witness be asked whether goods were paid for on a particular day, and he swears in the affirmative; if the goods were really paid for, though not on that particular day, it will not be perjury. So that if a man swears that J. S. beat him with a sword, and it turns out that he beat him with a stick, this is not perjury; for, all that was material was the battery." Let us apply this to Randall. He has sworn to his qualification, and specified several estates; yet he is not perjured, though his claim to one of those estates should be doubtful or even wholly unfounded; because, all that was material was his eligibility.

Gentlemen of the Jury—to prove that Mr. Randall had no title to the Bridgewater property, and that he knew it, the learned Counsel produced this exemplification of a record from the Crown office, in York, containing a judgment for £40, being itself, as you see, nearly 40 yards; but this record, if it proves any thing, proves the very reverse. You all heard it read, from the beginning to the end; and the earnest attention you paid to its contents, only requires from me now a brief summary of its voluminous matter. We know that a lease for the Bridgewater property was granted by the late Governor Simcoe, to McGill and Camby for 999 years. These persons assigned their term to Ramsay and Phelps, and Phelps undertook and covenanted to convey it to Randall. Randall, dissatisfied with the insufficient manner in which Phelps fulfilled his covenant, brought an action against him, which is fully detailed in this lengthy record. And what says the *postea*? "That Phelps did convey to Randall, according to his covenant." If, therefore, the first part of the record implies that Randall from his complaint enjoyed no right to that property under Phelps, the latter part, under the oaths of 12 men, declares that Randall was deceived, for that Phelps had assigned all his right and title thereto, agreeable to his covenant.

Having thus established for me, by the recorded verdict of a Niagara jury, the right of Randall to the Phelps share of the Bridgewater property, what was my astonishment to find produced by the Crown a subsequent deed, in fee-simple, for the very same property, to another person, the Honorable Colonel Clark? Let, then, Mr. Randall, enjoy his lease for 999 years, a term which must, nevertheless, be carved out of the perpetual interest, so unaccountably given in a subsequent grant under the Great Seal; for, we live under laws so happy and so just, that the leasehold is not lost or merged in the fee-simple since given to another person; because even the king himself is so far upon a level with his subjects, as to be bound in that respect by the same rules of common honesty.

The evidence on the part of the prosecution also furnishes us with additional proof of Randall's interest in this long contested property. Upon cross-examination, I asked the Hon. Thomas Clark, whether he had ever seen this unfortunate gentleman in gaol in Lower Canada? And you witnessed the activity and zeal with which the learned Counsel interrupted me, as if he really ap-

prehended the fearful disclosure of something which had better be forever concealed. After a little trouble, and a little argument, this portentous question was answered by the witness—"I did see him there." Did you then and there request him to convey to you his interest in the Bridgewater property? Mark his answer—"I did."—The explanation about Mr. Durand, leaves the matter enveloped in the same mystery. Gentlemen, you all know the Hon. Thomas Clark—a provincial nobleman—a man extensively engaged in, and intimately acquainted with, business—possessing too valuable and too large a property, to be making a *negatory* request upon such a subject. This is by no means a fit time or a proper opportunity for further investigating this extraordinary matter; but let it suffice that on this occasion we consider such a request, from such a person, as affording the incarcerated Randall a reasonable and additional presumption in favour of his claim.

It is alleged that Mr. Randall had no claim in the Bridgewater property, and having sworn to it, when his interest was only at most a leasehold, he is therefore guilty of perjury. This, however, is a misapprehension to which we are all liable. Not one man in a thousand could define a *freehold*, or distinctly state the quantity of interest necessary to create it. He who holds land only for his own life, or for the life of another, has a freehold; whereas, he who holds it for 999 years only, has merely a leasehold; yet no man's life, by the authority of the Bible, can extend to such a period. A man holding a deed for life, may safely swear to a freehold befitting him to represent the people; but a man holding a deed only for 1000 years, may have his ears nailed to the pillory for mistaking a more durable interest than a life estate for a freehold.

Now I ask you, Gentlemen, is this such a misapprehension as bespeaks corruption? Law is a profession of which Mr. Randall knows little, and by which he has suffered much; his mind has never been devoted to those legal niceties, and downright contradictory distinctions, which are the food and the glory of an attorney. His early life, and native energies, were wasted on the property of which he has been deprived, and for claiming which, it is now sought to jam him in the pillory; the remaining vigour of a useful, yet troubled life, is devoted to his country; and while a few are acquiring the exquisite subtleties of the law, his attention has been directed to the general interest and improvement of the Province.

From such a man, we have no right to expect, in the description of title, a precision and an accuracy, of which even every lawyer cannot boast. It is not a century since a member of this learned profession, in Upper Canada, solemnly deposed to a fact as true, which was utterly false; and his mistake arose from his attaching greater importance to the presence of a seal, than a seal always carries with it. Had any officious prosecutor stepped forward to prefer against him, a charge of wilful and corrupt perjury, the whole profession, as well as all liberal men, would have loudly expressed their abhorrence of it; and *illiberal*, *oppressive*, and *malicious*, would be applied, as terms of reprobation by no means too strong; yet a misapprehension more excusable, is to be magnified into corruption

against a man who has no other connection with the profession, than the injury it has done him, and who, on the principles of common sense, ventured to assume, that if an interest for life is a freehold, an interest for 999 years must certainly be such.

Pause, Gentlemen, pause a little, before you are hurried, under such circumstances, to affix by your verdict the stain of such a crime upon the hitherto unblemished character of a public man. Look into common life, and consider the daily misapprehensions to which mankind are subject, and the number that must ascend the pillory, if such misapprehensions can constitute perjury. One merchant will swear that paper currency is the ruin of a country; another will positively swear, that it promotes the commercial welfare of a nation. One farmer will swear, that wheat, from improper tillage, degenerates to drips; another, with equal solemnity, avers the impossibility of it. A philosopher would swear, that on a certain night he saw, in a marshy ground, the phenomenon called "Will with the Wisp;" while the superstitious peasant would run himself out of breath, and swear with his hair on end, that he had seen a ghost! The wisest men in Upper Canada would swear, that they saw the sun rise in the east, and set in the west; while a philosophical persecutor would indict them for downright perjury against astronomy. And while the astronomer described with accuracy the cause of a lunar eclipse, the pious, and untutored Indian might depose, that on a certain night the moon was overshadowed by an angel's wing.—While such misapprehensions are occurring every day, shall Mr. Randall alone be branded with infamy, because he is not exactly acquainted with the nature of legal estates, and imagined, that if an estate for life is a freehold, an estate for 999 years must assuredly be such?

Misapprehensions under oath occur every day; yet this is the first which has become the object of prosecution. Perhaps there is not a man in a public station, who has not sworn faithfully to discharge the duties of his office; and such is the frailty of human nature, that not one of them could bear the scrutiny of malice. How often have I seen and heard of complaints before magistrates, upon depositions which ought neither to have been preferred nor received; depositions grounded on misapprehensions which have occasioned oppression in this Province, to an extent perhaps not experienced from the same cause in any other country. Yet have I heard it said by public men in public places, "that such misapprehensions are errors of the head & not of the heart; that they must and ought to be overlooked, or who, unless sheltered in such cases under the wings of the Executive, would assume either to prefer complaints or to receive them." And who, I ask, will become your public servant—who will devote their time and talents to the public welfare, under your suffrages, if they are to be exposed in a pillory, for every little misapprehension of title, or for every flaw, which the cunning of a lawyer can detect? Shall these men who represent yourselves, (though they happen to be in opposition to the present policy)—shall they, and they only, be singled out for public opprobrium?—shall their errors, and theirs only, be magnified into crime, to inca-

paetate them for public life—to rob you of a public servant—to stain their representation—to agonize their feelings, and utterly desolate their expectations ?

Metlinks there is already rendered an almost impossible verdict—I hear from a few the screams of inordinate triumph—"Up with Randall to the pillory!--Nail his ears to it!--Jam his head between its pillars!--Pelt him with rotten eggs, and filth, and mire, and dirt! Load him with reproaches!--Behold Randall!--The friend of the people!--The choice of the people!--lately at the head of the Lincoln Poll, and now elevated to the pillory!" because he happened to assume, that if an estate for life is a freehold, an estate for 999 years must assuredly be such!

Good God! is it possible that you can feel indifference, when you see the very Hustings of your country, which ought to be free as the air you breathe, surrounded with legal quibbles, legal entities, lawyers nets, and lawyers cobwebs, in order to ensnare the unwary, and supply the pillories with food—so that no candidate can swear to his qualification—no voter enjoy the elective franchise, without first slyly, with a munificent fee to some hungry lawyer, to read his deeds, and examine his titles, lest some malicious informer—or some wary prosecutor shall entangle him in an error, subject him to the scandal of an accusation, and then hold him up as a public spectacle? Can you sleep contented, while a veteran in your public service in not only stript of his hard earned property, but literally caught in a lawyer's cobweb, as a proper step to the ignominy of the pillory? Can you repose with peace upon your pillow, while Randall is thus made a public sacrifice, because lawyers say that a lease for 999 years is not a freehold? If so, sleep on in your lethargy, till the time shall come, in the midst of your supineness, when the evening of your prosperity shall hasten on—when multiplied misfortunes shall involve you also in irretrievable embarrassments—when He "whose ways are past finding out," shall suddenly turn the tide which has hitherto borne you forward in its prosperous channel—when some unexpected cloud, pregnant with mischief and charged with malice, shall suddenly burst amidst the seeming serenity of your sky, and leave you, like my persecuted client, at the mercy of disappointed ambition—at the mercy of disappointed men, first grasping at your property, and then at yourselves, and the same cloud of misfortune, which has hitherto gathered over the head of the unfortunate Randall, shall accumulate on yours, till you shall fall victims in a less honorable cause, banished, like a Gourlay, or put in the pillory, like a Randall, without a country to pity your sufferings, and without a jury to redress your wrongs! All this, and more than this, to its fullest measure, is well deserved by those who can contemplate, without emotion, the degradation of a faithful public servant, or, with indifference, consign him to the triumph of his enemies, that he may drink the cup of bitterness to the very dregs!

Gentlemen, I beg your pardon; for I feel half convicted of indulging in the language of censure, so improperly applied to you, who fully feel the dignity of the station you are empannelled to fill, and the value of the character you are this day appointed to try.—

But I feel, and feeling I am constrained to speak as an Englishman, who knows, and loves, and idolizes his country, and it is my ardent desire to see realised and enjoyed in this Province, by the Almighty so highly favoured, those great and exalted principles of national liberty and enthusiastic patriotism, which have raised the British Nation above all the kingdoms of the earth. I am, however, happy and more than happy, in the persuasion of your noble sentiments, and that every feeling which can be dictated by a sense of duty or of justice, will move you, on this occasion, most faithfully to discharge the important trust which this day has imposed upon you.

Gentlemen, the claim of Randall to the Bridgewater property, is not, as you will recollect, the only ground on which they have endeavoured to support this unprecedented prosecution. It is represented to you that he is guilty of perjury, inasmuch as he has sworn to a freehold in the land on the River Welland, comprehending 1200 acres, the whole of which, it is alleged, is the property of Messrs. Clark and Street. To establish a freehold out of Randall, they produce the exemplification of a judgment roll, which we have already noticed. The amount of this judgment is £40. It is proved that execution issued, by virtue of which, the Sheriff sold this property to Messrs. Clark & Street; and a deed has been produced and proved, in order to throw all possible appearance of fairness on the transaction.

Let every thing remain for the present unimpeached, and assuming as true all which they have even attempted to prove, I will freely hazard the fate of my client upon its utter insufficiency. This property, as the evidence implies, Mr. Randall once owned; and it became vested in another, by a conveyance from the Niagara Sheriff. Have they produced any the slightest testimony to raise even a rational presumption that Mr. Randall was aware of the change? Have they called upon any of Mr. Randall's numerous friends who encircle this seat of justice with anxious solicitude, to prove that he ever knew, or ever heard of this conveyance, by which so fine a property was wrested from him for a trifle? Have they even shewn, that notices of sale were given in places so public and so conspicuous, as to afford a conscientious presumption of his knowledge of the transfer? Nothing of the kind has been attempted, because nothing of the kind could be established. The crime, then, as it is presented by the evidence, is the crime of not knowing the secret act of a third person; and it would ill become you to allow your imaginations to supply the deficiencies of such a prosecution. A man who himself executes a conveyance, is fairly presumed to remember it; but a wasteful sale made by another, without his presence or his concurrence, must be clearly brought home to his acquaintance, before it can be made a platform by which he is to ascend to the pillory. But suppose, for a moment, what is not proved, that Mr. Randall heard of the sale, by some floating rumour which might be presumed to credit; and, I ask, where is the crime of assuming that the villany which the evidence discloses, could not take property from one man and vest it another? Here is a case, where a valuable tract of land of 1200 acres, on the banks of the Welland,

is sold for £401. In this instance, as in too many others, to which my attention has been directed, Sheriffs, in the plenitude of their power, and hacknied in their office, expose for a small sum an extensive property, instead of dividing it into separate lots, that the debt for which the sacrifice is made, may be discharged with the least possible injury to the owner. A notice is given which can scarcely attract attention; three or four persons meet together, and go through the ceremony of an auction; thus, in a few minutes, a large and splendid property is fated by the hammer of an auctioneer to sell for little more than the price of a single acre. Fraud is well known to make void any transaction; and you, I feel assured, would not have considered it as establishing the charge of perjury, even had it happened that Mr. Randall apprised of the sale, pronounced it amidst his indignation at the injury, a species of *robbery* by which he could not be lawfully stript of his property to aggrandize another.

[Here Mr. M'Auley interrupted Mr. Rolph, observing that he could neither prove villany nor robbery in this transaction, and that Counsel should only state what they expected to prove. Mr. Rolph resumed.]

Gentlemen of the Jury: It is my duty to comment on the evidence, and to point out to you, that although Mr. Randall might have been apprised of the sale, yet, he might, without the imputation of perjury, have held it as nugatory; since from the evidence offered by the Crown, we find established a wicked and wasteful disposal of a man's property at an unwarrantable sacrifice, which must be reprobated, and not sanctioned by English Law.

[Here Mr. Rolph was again interrupted by the High Sheriff, who declared that Mr. Rolph's statement was not true.

Mr. Rolph—I am instructed that I can even prove what I have stated.

Sheriff—Sir, you have used very warm language, and my feelings are very delicate.

Mr. Rolph—I have a very warm and a very delicate cause to advocate.

Sheriff—Well, Sir, be careful of my feelings.

Mr. Rolph—I will be as tender of your feelings, as I would be of my own.

Mr. Justice Campbell, without checking the interruption, observed to Mr. Rolph, that he had used very strong language, such as ought not to be used, without proving the facts, and that property was often sold very low, when incumbered.

Mr. Rolph—My Lord, I do not in this case feel it my duty to conjecture, to the prejudice of my client, beyond the evidence produced. My zeal may have carried me too far; but strong facts require strong expressions. Mr. Rolph again proceeded.]

Gentlemen of the Jury—Let us leave an enquiry which we cannot conduct without giving offence in a degree which leads to interruption; but I leave it with an assurance, that you will not fix on the character of a Representative of this District, a stain which appears to be unmerited from their own evidence.

If misapprehensions be perjury in Mr. Randall, how criminal

must it be in lawyers ? This indictment and prosecution betray inaccuracies which would alone powerfully plead in extenuation of the mere misapprehension of this unfortunate gentleman. Men of the first talents in the Province—men who have enjoyed all the advantages which an English education, and an English University can bestow—men who have enjoyed the advantages of many years' maturing experience in the law, and the aid of many a massive folio of learning most profound, have been concerned in preparing this indictment, and arranging this prosecution ; and yet do we find some *misapprehensions*, not unworthy of your notice. The Provincial Statute requires the persons making the requisition of the Candidate, to be themselves freeholders ; and the indictment, therefore, ought to have contained a clear and positive averment of their qualification to make the request ; but the subsequent words, " and other persons having a right to vote at the said election," do not apply to the previous names, as an adequate averment according to the exigency of the law. Again, as the statute authorises only *freeholders* to make the request, the learned Counsel should have proved them to be such ; for it does not appear from the testimony produced, that the officious gentlemen who demanded the deposition of the Candidate, were themselves clothed with the qualification required by law ; and unless Mr. Randall was " lawfully required to take the oath," he is no more guilty of perjury than he who takes before a magistrate one of those voluntary and extra-judicial affidavits, upon which, the crime of perjury cannot be assigned.

The law also requires the materiality of that part of the oath upon which the perjury is assigned, to be averred, with legal precision.

[Here Mr. Rolph read authorities to the above effect.]

But upon looking into the indictment on which they would exhibit Mr. Randall in the pillory, no such averment can be found ; yet in the case before us, such an averment is particularly required ; for that part of the oath upon which the perjury is assigned, is palpably *immaterial*! The whole object of the affidavit was to prove his eligibility, and striking out the Bridgewater works, and the land on the River Welland, there remains abundance in the deposition set forth in the indictment itself to establish his qualification. This indispensable averment was therefore very prudently omitted, lest the insertion of it should force upon the mind of the reader, the absolute nullity of the prosecution. But why do I point out these fatal errors in the indictment, since Mr. Randall, as well as his advocate, would scorn to seek any other acquittal than what flows from your conviction of his innocence ? I merely mention them that you may see that they do not escape our observation, though we disregard them as a defence, and also, that you may fairly forgive Randall for mistakes upon the law, when even the first rate lawyers are not exempt from them.

Gentlemen, Mr. Randall is, in truth, charged with perjury, because he swore that he had a freehold in an estate which he held only as a tenant in common for 999 years. We have assumed in our reasoning that it was a misapprehension, & one which was not unnatural or so outrageous as to imply corruption ; and the more decid-

edly so, being established, there remains enough in the deposition to put his eligibility beyond a doubt.

There is another view of the subject still more striking, still more true, and affording equal evidence of his innocence of this great offence: the oath required by the statute not only describes a freehold, but a freehold over and above incumbrances. Mr. Randall thought that should he merely swear to a sufficient freehold, those emissaries who infest elections to raise a hue and cry against the real object of the people's choice, would assiduously promulgate every judgment, satisfied or unsatisfied, righteous or unrighteous, which could be found against him. Such reports might prejudice his reputation and leave an unfavourable impression on the minds of those, to serve whom is his only desire to live. At the hustings he met the aggregate of his enemies, few indeed in number, but powerful in influence. He was placed in a conspicuous situation, where every act was to be perverted, every declaration misconstrued, every calumny revived, and every political stratagem and electioneering intrigue put into activity against him. To obviate the injurious insinuations of these political critics, he determined not only to name his freehold estates, but such other property at the same time, as would unquestionably leave those freeholds without incumbrance. He named, therefore, his leasehold, not as the property on which he rested his eligibility, but as affording evidence of sufficient means to answer incumbrances.

His construction of his conduct is evidently correct, when you consider that to his leasehold he superadded the compensation money in the hands of the Receiver General. It cannot be for one moment assumed that he thought money was in itself a freehold, though he might fairly point to it as exonerating that freehold on which he grounded his qualification. In fact he jumbled together, in one deposition, the freehold itself, and the property which would release it from incumbrances. Hence it appears, that the course he anxiously pursued to make the truth more apparent, became the very ground of artful construction by which he was to be arraigned for perjury. Had he simply deposed to a qualification on one of his freehold estates, every judgment recorded against him would have been produced in triumph, as affording a presumption of wilful and corrupt misrepresentation under oath, for which he ought to be tried by a jury of his country. To avoid the conjectures of the suspicious, and the wiles of the crafty, he superadded to his freehold conclusive evidence of its sufficiency; and then he is tortured with accusation for the superabundance of his statement. How true it is, gentlemen of the jury, that when an unfortunate man is singled out as a victim for persecution on account of his principles or his politics, no uprightness of intention, no pareness of living, no circumspection of conduct, not even a conscience void of offence before God and man, can shield him from the assaults of the proud, or the invasions of the wicked. It seems as if Providence, in his unsearchable decrees, will allow one man in humbler life to be the sport and victim of others claiming loftier pretensions; perhaps either to awaken his people to an abhorrence of the principle, or as a caution to themselves

to shun the same vortex of unhallowed power, or as an example to nerve themselves with Christian fortitude against the tyranny of oppression, and the vicissitudes of troubled life.

Why was he not charged with perjury respecting the compensation money? The term "freehold," equally applies to the money as to the land. But such an allegation would at once have exposed the idleness of the prosecution for any public purpose. It would at once betray the real and obvious intention of the deponent, viz: not to impose money upon the world as a freehold, but as the means of discharging its incumbrances.

I ask you—Does all this deserve the pillory, or is it worthy of a prosecution? Instead of committing perjury, he is only guilty of a scrupulous desire to avoid even the appearance of it. And while the indictment alleges a wilful and corrupt intention to deceive, you, with an unjaundiced eye, will discover conscientious exactness, and purity of intention.

Perjury is committed either to work some mischief, or to acquire some good.

What mischief, then, sprang from Randall's perjury? It could not deceive, for the very children who play about the streets know the mysterious history of the Bridgewater property. It was not required as an auxiliary at the election, for the affidavit contains abundant evidence of his eligibility.

And what good did he acquire to himself? The hatred of those whose ambition he disappointed, or whose plans of humiliation he frustrated; the troubles and labours of a public life; the resentment of men in office; the heavy responsibility and painful anxiety inseparable from political differences, and legislative duties; the frowns of power, and the utter sacrifice of *all expectations*, except the FRIENDSHIP OF THE PEOPLE. Are these to be estimated as boons for which perjury would be perpetrated; a perjury, too, which must inevitably be detected, and when detected punished with the exemplary rigour which it deserves? By no means. Your suspicion might, indeed, be awakened, if you beheld him raised high in militia military rank, glittering with epauletts and girt with a sword; groaning under offices; enriched with choice locations; and intoxicated with the smiles and the caresses of men in power and influence. But suspicion gives place to downright incredulity against the charge, when you behold RANDALL, RANDALL still—without promotion—without favours—and without reward for his labours, save the consolation of an upright course, and the unvarying friendship of a faithful and generous people.

For many years Mr. Randall has laboured to reinstate himself in the property of which he has been bereft; and at this very moment a memorial upon the subject is before the King in Council in that great nation which is the fountain head of justice, when all other sources fail. This justice has been the object of his earnest pursuit for years before this deposition was made; and when we find a man, now only possessing a little, bestowing all he can spare or bring to his assistance for the recovery of his property, we are constrained to believe that he considered his claim well grounded. Who, then, that

has witnessed his conduct for years, can in their hearts accuse him of swearing to property in which *he thought* he had no title? These circumstances in his life, occurring at a time when they could not be subservient to a prosecution then hidden amongst the arcana of the future, present, in favour of the purity of his intention, a testimony which no trifle can repel, no eloquence do away.

But Mr. Randall has already been acquitted! and with you I welcome the glad tidings. This deposition was not made in secret or hidden in a corner. It was made at the public hustings at the late election, when thousands pressed forward to exercise their elective franchise. All heard, and numbers read the very document which is now introduced as the instrument of his ruin. The blunders of his affidavit were soon magnified into corruption; and the perjury of Mr. Randall immediately became the theme, by harping upon which, it was hoped he might be excluded, that others might occupy his place, and revel in all the luxury of legislative subserviency. But what was the conduct of his constituents? what the construction of a discerning public? Almost all voted for Mr. Randall—and every vote was an acquittal from the foul charge which you are now empannelled to affix upon him for ever!

Gentlemen of the jury—It is time I should cease to further trespass upon your liberal indulgence; but as I draw to a conclusion, I feel an awe which you participate. You are to judge of the merits of the prosecution and of the defence: and when I cease to address you, a short interval will determine the impending crisis. Your verdict will either consign him to misery and insult, or restore him to his friends and to his country. Not only Mr. Randall, but the province is in your hands; for who will enlist in the public service and depose to his qualification, if he is subject to be successfully singled out by some base informer, thrown under some frivolous pretence into the hands of a vindictive prosecutor, and threatened with the ignominy of the pillory? Would the mischief stop here, or be confined to candidates alone? No. By the aid of a little professional subtlety, it would soon spread its paralyzing influence through the whole elective franchise. One lawyer now tells you, that a *small* incumbrance, like a little leaven, will vitiate any qualification; another, and I am bold and proud to be amongst the number, will equally deny and abhor the doctrine. Shall, then, the fate of every candidate and every voter fluctuate with the opinions of a profession ever memorable for contradictory decisions? Or will you, with manly firmness, stifle the attempt in embryo, by judging of your representatives with that Christian candour and ennobling charity, which will for ever put a persecuting spirit to the blush?

Gentlemen—My client has long done his duty to you as a public man; and long may he continue to serve you. It is for you this day to fill up the measure of duty you owe to him. He never has, and never will compromise any honourable feeling in serving you; and he, as well as his advocate, would disdain to seek shelter under that compassion to which he is, indeed, entitled, but which is unworthy the greatness of his cause, and the clearness of his innocence. He calls upon you to pronounce him *guilty* or *not guilty* upon your con-

sciences before God. I now deliver him over into your hands—and in so doing, oh! glorious constitution! I place him in the bosom of his country.

Mr. Justice Campbell—Have you any witnesses to call?

Mr. Rolph—I have some witnesses in attendance; and I will consult my learned friends as to the necessity of calling any of them.

Mr. Rolph, having consulted the gentlemen of the profession about him, said, "We here rest our case."

Mr. M'Auley rose to address the jury; but upon its being objected to, as a right confined to the Attorney and Solicitor General, and on the recommendation of the Court, Mr. M'Auley did not press a reply. But he begged to observe, that Mr. Rolph had misrepresented his meaning in saying that he thought or had said that a bond was an incumbrance on land.

Mr. Rolph—The gentlemen about me understood you as I did.

Mr. Justice Campbell—It is of no consequence.

The learned Judge then delivered to the jury the following

CHARGE.

Gentlemen of the Jury.

The case under your consideration is one of great importance, inasmuch as it may fix the crime of wilful and corrupt perjury on no less a character than that of a Representative of the people in the Commons House of Assembly of this Province. But you must divest your minds of every consideration as to the circumstances or standing in life of the person in question; whether he be a Representative or not, is the same thing to us; if he has committed a crime, and that it is substantiated by evidence, he must abide the consequences. However we might be disposed to excuse a Representative, in trifling matters, you can harbour no feeling for or against any individual charged with so high a crime as the one before us. You have, no doubt, heard a great deal of this subject out of doors; but whatever opinions or prejudices you may have formed upon it, you must set altogether aside, and confine yourselves to the evidence which has been delivered—upon that alone you must decide.

Gentlemen, the crime of perjury has already been explained to you by the learned Counsel on both sides; yet I feel it my duty to refresh your memories upon it. Perjury, Gentlemen, is a crime committed by a person swearing wilfully, absolutely, and falsely, in a matter material to the point in question, when a lawful oath is required from him, in judicial proceedings. The perjury now in question, however, is not founded on any judicial proceeding, but on the authority of an Act of our Provincial Parliament, which requires Candidates for our Assembly to take a certain oath respecting the property necessary to qualify them to become members, and de-

clares that when that oath is taken falsely, it is wilful and corrupt perjury, and liable to all the pains and penalties proscribed by law for that offence. This, Gentlemen, is the kind of perjury charged in the present case.

Let us now proceed to see how far this charge is substantiated by evidence.

You will observe, Gentlemen, that whether Mr. Randall be qualified to sit in our House of Assembly or not, is not a matter now before you—it has nothing to do with the present question—it is another question, which cannot be affected by your present verdict; but the charge in the Indictment is, that when Mr. Randall was legally required to take the oath prescribed by the Act of Parliament, that he did swear, in positive terms, to a certain freehold property in the Bridgewater Works, on the Niagara River, in the Township of Stamford, and also, in 1200 acres of land on the River Welland, Township of Wainfleet, to which, at the time of his taking such oath, he had no legal claim. Then, Gentlemen, if you find that he had no freehold property in these estates, and that they actually belonged to another at that time; it will be your duty to find him guilty, without trusting to the arguments of the Counsel on either side, which were certainly very able and ingenious. Your oath says, that you will well and truly try and a true verdict give according to the evidence. Now the evidence, as respects these two properties, namely, the Bridgewater Works, and the 1200 acres of land on the River Welland, has been very clearly brought before you, and well arranged by the learned Counsel who conducted this prosecution. In the first place, he has produced the proclamation for a meeting of the Parliament; he next produced Mr. Leonard, the Returning Officer, to show that an Election took place at Stamford, in this District, on the 27th July, 1824; that Mr. Randall was a Candidate; that he was required to take the oath, in a legal manner; he named four persons, and stated that there were several others, who required this oath from Mr. Randall; that Mr. Randall did take the oath, and swear that he had a freehold at that time in the Bridgewater Works, and also, in the 1200 acres of land on the River Welland; and by his deposition it appears, that he swore to all this in precise, absolute, and positive terms. The learned Counsel has also brought before you a judgment and execution against the lands and tenements of Mr. Randall, upon which a return was made, that he had no lands or tenements in the District of Niagara. But these are matters of record, that do not at all fix the crime of perjury upon him, and upon which you cannot find him guilty; because, although a Sheriff could not find any of his lands or tenements in the District, he might have them at the same time. Therefore, you are only to view this return as corroborative of other facts.

There are other matters, Gentlemen, brought forward in evidence, which rest with you to determine, and which I feel it my duty to point out. The freehold of the 1200 acres of land on the River Welland, as sworn to by Mr. Randall, it appears in evidence,

had been absolutely changed to another person by virtue of a Sheriff's deed, at the time that Mr. Randall took this oath.

It has been argued by the learned Counsel for the Defence, with a degree of zeal which caused him to use expressions that nothing but his own feelings could justify, that this property was sacrificed at the Sheriff's sale. If such were the case, it ought to have been proved, and I should never give my sanction to the sacrifice of property; but it often happens that a great deal of property is sold by the Sheriff for a small sum, when the property is incumbered, without any blame to be attached to the Sheriff for so doing. I do not, however, presume to say that the property in question was incumbered. It is very well known that when property is incumbered in this colony, the purchaser buys it subject to such incumbrances, and therefore, when the learned Counsel threw out an accusation of the kind, he ought, in justice to the officer, to have proved it. But the material point in question is, was or was not Mr. Randall in possession of this property at the time that he took this oath? A public sale, and a Sheriff's deed of this property to another person was proved, and this cannot be done away, except by a document of a superior authority. By these papers it appears, that so long ago as the 4th of May, 1821, the freehold in this property was in another person, and not in Mr. Randall.

The next material point is the Bridgewater Works, and the best of all proofs, the King's Patent, was proved to be issued in favour of the Hon. Thomas Clark, so long ago as the 2d of January, 1816. It is alleged, however, that the Crown had no right to give a Patent for this property, because they had previously given a lease of it for 999 years. How far the then Governor of this Province had power to issue such a lease, is not for me to say; nor whether Mr. Randall had a right to a freehold from such a lease; nor whether he sanctioned its conveyance to another person; the King's Patent, which was proved before you, is the best of all titles, and cannot be done away by any other title; so that if a person have a lease of a property, and that it be given under a Patent to another, the person holding the lease can only make application to the Crown, by laying a memorial before the King in Council in order to obtain a remedy; and if Mr. Randall could show that he was dispossessed of this property in an improper way, the Crown would remunerate him. But here is the King's Patent to the Hon. Thomas Clark, for this property, since 1816, and whether it contains the same property sworn to by Mr. Randall, the Hon. Thomas Clark himself is a competent witness, in a Crown prosecution like this, and he testifies that this Patent contains all that Mr. Randall swore to in that item, and 10½ acres more. A question was put to this witness, whether he had seen Mr. Randall in gaol in Montreal, and whether he did not ask Mr. Randall to make over to him any claim that he had upon this property. This question was not directly to the point, and it ought not, strictly speaking, to have been put; but it was put, and Mr. Clark admitted that Mr. Randall had a claim on this property. Admitting all this, and that Mr. Clark wished to purchase all incumbrances against the property, he was not bound to do so, and even if he was,

any condition of the kind between them then, would not affect the Crown prosecution, at present—nor does this lease from Governor Simcoe even appear in the evidence in this case. You know nothing of it, therefore; but you know that the property belongs to another person, by a Crown Patent, dated 2d January, 1816, and also, that the property of the 1200 acres of land was given to another person under a Sheriff's deed, in the month of May, 1821. The question then arises, whether Mr. Randall's false swearing in this case, amounts to perjury? If you can suppose that Mr. Randall was not acquainted that the Sheriff sold this land, or that the King had given away the other property by a patent, it is not perjury; for perjury must be false swearing, wilfully and corruptly. Therefore, if a person be not aware of it, it is not perjury; but I submit to you, gentlemen, whether such was the case with Mr. Randall in either of these instances.

Gentlemen, the evidence is very short and explicit, and it is for your consideration to say whether Mr. Randall did take this oath, knowing of the sale and conveyance of these properties, or not. If, from the evidence given before you, it appears to you that he had no knowledge of the sale or conveyance of these properties at the time he took this oath, then it will be your duty to acquit him; otherwise, you are bound by your duty and your oaths, to convict him.

Gentlemen, you may now retire.

The jury retired for five minutes, and returned with a verdict of—*Not Guilty.*

On the return of this verdict, a burst of applause issued from all parts of the Court-House, which was crowded to excess during the trial.

The names of the Jurors were inadvertently omitted in their proper place. The following are the names of the very respectable Jury who were empannelled on this trial:

HENRY C. BALL,
JOHN J. BROWN,
JOHN BROWN,
JOSIAH BROWN,
J. PAULING,
N. PAULING,

RICHARD FITZGERALD,
GEORGE SHAW,
JOHN MARTINDALE,
JAMES COOPER,
LEWIS CLEMENT,
JESSE THOMAS.

