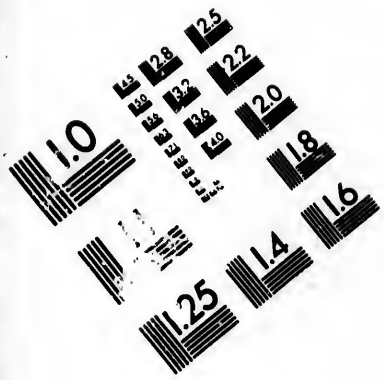

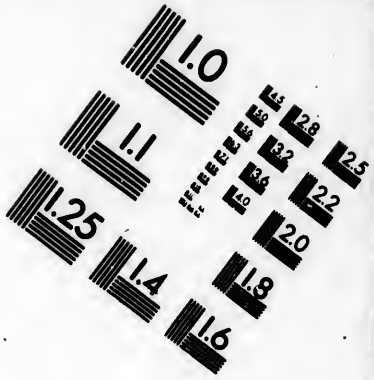

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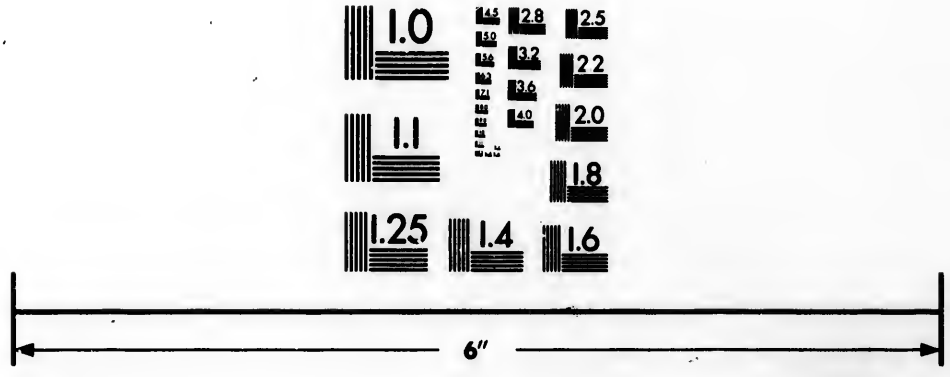

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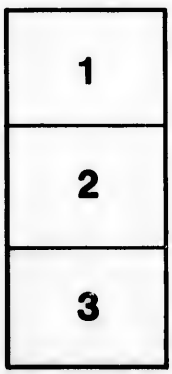

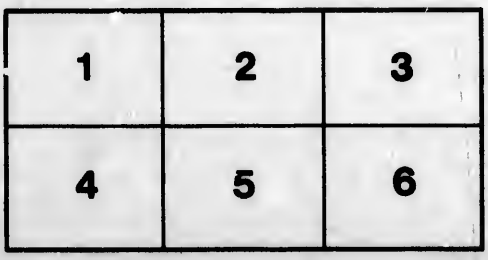

REPORT

OF

PROCEEDINGS

At a Court of Oyer and Terminer, appointed for the Investigation of Cases from the

INDIAN TERRITORIES:

HELD BY ADJOURNMENT AT QUEBEC, IN LOWER CANADA, 21st OCTOBER, 1819,

At which the following Gentlemen, Partners of, and connected with,

THE NORTH WEST COMPANY, viz.

ARCHD. N. McLEOD,	SIMON FRASER,
JAMES LEITH,	ALEXR. MACDONELL,
HUGH McGILLIS,	ARCHD. McLELLAN,

And JOHN SIVERIGHT,

Who were under Accusation by the

EARL OF SELKIRK,

as Private Prosecutor, for great Crimes and Offences, alleged to have been by them committed, made their appearance, in pursuance of official notices given to both parties, and demanded their trials, which they could not obtain, because

The Private Prosecutor was not ready:

with the speeches of counsel, the arguments held on the occasion, and the Decision given thereon,

FROM MINUTES TAKEN IN COURT.

Nulli vendemus, nulli NEGABIMUS *aut* DIFFEREMUS, *justitiam vel rectum.*———MAGNA CHARTA, *Cap.* 29.

MONTREAL:
PRINTED BY WILLIAM GRAY,
1819.

INTRODUCTION.

As a sequel to the "Proceedings connected "with the disputes between the Earl of Selkirk "and the North West Company at the assizes at "York in Upper Canada, in October 1818," and as a preliminary to what it may be deemed expedient to lay before the public hereafter, the following report will most forcibly demonstrate the anxiety with which the North West Company are, and have been from the commencement in 1816, continually pressing for a legal investigation into their conduct. The Earl of Selkirk has taken advantage of their unexampled forbearance, and in numerous publications, disseminated with all the industry of implacable malignity, has continued to represent them as "atrocious criminals" who defied or evaded the law, and has construed their silence into an acquiescence in his calumnious charges. On the other hand the North West Company have all along wished to justify themselves by appealing to the laws of their country, convinced, as has been the case, that his Lordship's libellous accusations must then inevitably

inevitably recoil upon their author. After all their exertions to obtain this object, they found themselves scarcely arrived at the threshold of investigation by the acquittal of the few persons who had the good fortune to be tried at York, when Lord Selkirk abandoned the contest, and fled away to pursue similar manœuvres in another hemisphere to those he had practiced here. He left, however, his victims labouring not only under the unmerited obloquy of the crimes of which he had accused them, but also under the charge of evading, avoiding, and delaying legal process against them. The impartial reports that have been published of the few legal proceedings that have taken place, form a sufficient answer to the accusations themselves, and to repel the charge of desiring to evade justice, it is only necessary to state that, independently of repeated and constant attendance of almost all the accused in every Court and at every Session in the district of Montreal, in the district of Quebec, and in Upper Canada, where their cases could be legally tried, the memorials and applications to government have been so numerous, that the bare specification of their dates can not fail to strike with astonishment.

In September, 1816, a memorial was presented on behalf of all the gentlemen who had been arrested at Fort William by the Earl of Selkirk in the preceding month,

In the same month, one on behalf of Boucher and Brown, charged as principals in the battle at Red River of the 19th of June, 1816.

In December, one separately on behalf of James Grant, a partner of the North West Company, who came down afterwards.

In

In March, 1817, all these applications were renewed, and trials most pressingly urged.

In June, 1817, owing to the delays in this province, a memorial was presented in the hopes of obtaining in Upper Canda all the trials wanted, including those of George Campbell and others of Lord Selkirk's settlers accused by him.

In August, 1817. a special memorial to obtain the trials of Archibald McLellan, and James Leith, in Upper Canada.

In September, 1817, a memorial praying for the trial of Hector Macdonald, and others of Lord Selkirk's settlers accused by him.

In December 1817, a special and urgent memorial was presented to obtain the trials of Archibald McLellan, Cuthbert Grant, and others.

In January 1818, one for the trials of Seraphim Lamarre, Peter Pangman dit Bostonais, J. B. Desmarais, and Hector Macdonald.

In February 1818, one for the speedy trial of George Campbell in particular, and again.

In the same month, a general memorial praying for the speedy trial of all the parties accused.

In March 1818, a memorial on the same grounds as before, praying that all the trials might be had in Upper Canada.

In June 1818, strong remonstrances were made to the crown officers and to government, respecting the vexatious delays that had taken place, in reply to which the attorney general gave as a reason for those delays, that "the private "prosecutor, the Earl of Selkirk alone possessed "the evidence in support of these prosecutions."!

In October, 1818, when His Grace the late Duke

Duke of Richmond became Governor, these remonstrances were repeated, and re-urged.

In November, 1818, the memorial to His Grace, which formed the basis of the proceedings now reported, was presented, and the appointment of a Court in consequence of the same, together with the subsequent attempt made on behalf of the Earl of Selkirk to put it off, is detailed in these pages.

In October 1819, the memorial which produced the final answer given by his Honour the President, that a Court would be holden at Quebec on the 21st of October for the investigation of cases from the Indian Territories, where the parties interested *must seek legal course and redress*; and

On the 30th of that month, immediately after the close of this session, *re infectâ*, another memorial was laid before government, repeating the complaint of delay, and praying for redress.

Of the redress which the North West Company have hitherto obtained, the public may now form some judgement.

Montreal, December, 1819.

DISTRICT OF QUEBEC. } Session of a COURT of OYER and TERMINER, & GENERAL GAOL DELIVERY, as well for the District of Quebec, as for the Indian Territories, under a Commission dated 29th April, 1818*, and continued by Adjournment until *Thursday, 21st October,* 1819.

His Honor Chief Justice SEWELL, and ALEXIS CARON, Esquire, King's Counsel,

HAVING taken their seats as Commissioners, and the pannel of the Grand Jury having been called over, a number of gentlemen, under accusation, for offences alleged to have been committed in the Indian Territories, came into Court, and their appearance was enter-

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* See Copy of the Commission, Appendix A.

ed of record by consent of the Solicitor General, CHARLES MARSHALL, Esquire, (acting in the absence of the Attorney General,) namely,

ARCHIBALD NORMAN McLEOD,
JAMES LEITH,
ALEXANDER MACDONELL,
ARCHIBALD McLELLAN,
HUGH McGILLIS, and
SIMON FRASER,
} Esquires, partners of the North West Company,

and Mr. JOHN SIVERIGHT, Writer.

After which the Court adjourned until Saturday the 23d October.

SATURDAY, 23d OCTOBER,

PRESENT AS BEFORE.

Upon the Court being opened, it was ascertained that *twelve* Grand Jurors were present. The Chief Justice intimated to them, that "they were again called to perform the duties of Grand Jurors, under the Commission which formerly tried Charles De Reinhard, and that (a competent number of their body being in Court) Bills of Indictment, relative to offences alleged to have been committed in the Indian Country, being to be laid before them, was the cause of their being called upon."

Mr. Solicitor General presented two Bills of Indictment to the Grand Jury, who stated by their foreman to

to the Court, that some hesitation was felt as to proceeding upon any bill of the importance of those laid before them, with twelve jurors only, and wished steps to be taken to ensure the attendance of a larger number. The Court, having intimated its acquiescence, was then adjourned till Monday the 25th October.

MONDAY, 25th OCTOBER,

PRESENT AS BEFORE.

The Court being opened, some conversation took place relative to the number of the Grand Jury who were present, and an application made at the instance of PETER BURNET, Esquire, to be excused from serving on this Grand Jury, he being the brother-in-law of ARCHIBALD NORMAN McLEOD, Esquire, was acceded to by the Court. The attendance of fourteen of the Grand Jury appearing to be secured, a wish that sixteen could be obtained, was expressed by the foreman. The Chief Justice recommended them to commence an examination of the bills in their possession, and if difficulty presented itself, to communicate it to the Court, who would then take effective measures to secure the attendance of the absentees. This idea being adopted, the Court was adjourned till two o'clock the next day.

TUESDA

TUESDAY, 26th OCTOBER, 1819,

PRESENT AS BEFORE.

The Court being opened, the Grand Jury entered, and returned True Bills of Indictment against the following individuals in the service of the Hudson's Bay Company, and the Earl of Selkirk, viz.—

WILLIAM WILLIAMS,
JOHN CLARKE,
JOHN McLEOD,
JOSHUA HALCRO,
FREDERICK MATTHEY,
JACOB VITCHY,
JACOB WELLING,
JACQUES ORCHET,
BERNARD RE, DIT MAYANCE,
JACQUES BIN,
JEAN BRUSSEL, and
JACQUES SCHNIDER,

} for an assault and false imprisonment of John Duncan Campbell, and Benjamin Frobisher, Esqrs. partners of the North West Company, and several of their servants at the Grand Rapid in the Indian Territories, on the 24th of June last.

AND

AND AGAINST THE SAME PARTIES,—for an assault and false imprisonment of Angus Shaw, John George McTavish, and Wm. Mackintosh, Esquires, partners of the North West Company, and several of their servants, at the same place on the 26th of June last.

Mr. Solicitor General acquainted the Court, that he had no further business to lay before the Grand Jury, but that *Mr. Stuart* (who was not in Court at that moment) had a motion to submit which might lead to some discussion, though in his opinion it was one which the Court would not find itself able to entertain. The Chief Justice enquiring the nature of the motion, the Solicitor General stated, that it went to the discharge of certain gentlemen from recognizances, about which, as he conceived, the Court could know nothing, although he would admit that they were in existence; as also that the gentlemen had appeared in this Court, and their doing so was entered of record.

The Chief Justice then informed the Grand Jury, that they were discharged from further attendance, and the Court adjourned till Thursday the 28th October.

THURSDAY

THURSDAY, 28th OCTOBER.

PRESENT AS BEFORE.

Mr. Vanfelson stated to the Court, that they intended to submit a motion, or motions, for the discharge of several gentlemen; that having been compelled to be up late last night, preparing the papers necessary to be filed on the occasion, the motions were not yet put in writing; but that the Solicitor General had consented that the motions should be put in after, and that the argument upon them might proceed.

Chief Justice Sewell.—We must see the motion. Is it their discharge from recognizances to appear in this Court that you move?

Solicitor General.—If it is, I have no objection to it.

Mr. Stuart.—Our motions will be, that several gentlemen now around me be discharged from their recognizances, their appearance being of record in this Court; the circumstances of their cases differ, but each application will be supported by affidavits. The first in order is the case of Archibald Norman McLeod, Esquire, and our motion generally is, that he be discharged from *any* recognizance under which he may be.

Solicitor General.—I wish rightly to understand the motions, because if simply to a discharge from this Court, I have no objection; but if beyond that, I do not consent. Indeed I do not suppose your Honours sitting

sitting only as Commissioners of a Court of Oyer and Terminer—

Mr. Valliere.—And of General Gaol Delivery.

Solicitor General.—Admitted. But it is certainly useless to apply to this Court to exercise a power over recognizances which, taken in another jurisdiction, can not by possibility be within its scope. It appears to me to be idle to talk of discharging from obligations to appear at York in Upper Canada, or in another district of this Province, Montreal for instance, or even from another Court in this very district, by a Court of Oyer and Terminer, and General Gaol Delivery for the district of Quebec.

Mr. Vanfelson.—We will state reasons to the Court in support of the motion.

Chief Justice.—We must see the motions intended to be made. If they are not here, you are not ready.

Mr. Valliere.—The affidavits in support of our motions are here, (*those ex parte Archibald Norman McLeod, were handed to the Court,*) and we move for the discharge of Archibald Norman McLeod, Esquire, and other gentlemen, who are under recognizance, from their bail; and we shall also move that those who have made appearances which have been entered of record in this Court, be discharged by proclamation. The affidavits now before your Honours, are to substantiate, that Archibald Norman McLeod is under recognizances, from which we move his general discharge. The recognizances I believe are admitted by my learned friend, the Solicitor General, although not exhibited here.

Solicitor General.—I have no objection to say, that in

in point of fact, recognizances have been taken, but the simple point upon which I will resist the application, is, that this Court, in my humble opinion, cannot release persons from recognizances not taken by its authority. I will consent to their discharge, except as they may be bound to appear in other Courts; indeed, there being nothing against them here, a motion for their discharge appears to me to be completely unnecessary.

Mr. Valliere.—Our motions are now ready, and I will read them and file the affidavits.

Ex parte, Archibald Norman McLeod.

MOTION.—That inasmuch as Archibald Norman McLeod, a person bound by recognizance, to appear when and wheresoever he may be legally required to answer to two certain bills of indictment found against him, and divers others persons at the Court of Oyer and Terminer and General Gaol Delivery, holden in and for the district of Montreal, on the 21st day of February, 1818, and continued by adjournment until the 16th day of May following, one of which bills is for conspiracy; and the other charges the said Archibald Norman McLeod, as accessary after the fact, to the murder of Robert Semple, Esquire, has appeared in performance of such his recognizance, and nothing has been objected against the said Archibald Norman McLeod, on the part of our Sovereign Lord the King, the recognizance of the said Archibald Norman McLeod, and of his bail in that behalf, be discharged.

Ex parte

Ex parte James Leith.

MOTION.—That inasmuch as James Leith, a person bound by recognizance to appear personally at the Court of King's Bench, for the district of Montreal, and also at any Court of Oyer and Terminer, to be held in the district of Montreal, or in any part of the provinces of Upper or Lower Canada, where crimes and offences committed in the Indian territories may legally be heard, tried, determined and judged, has appeared in this Court in fulfilment of the condition of such recognizance, and nothing hath been or is objected against him on the part of our Lord the King, the said James Leith and his bail, in this behalf, be now discharged from the said recognizance.

Ex parte Hugh McGillis, Alexander Macdonell, Simon Fraser, and John Siveright.

MOTION.—That the said Hugh McGillis, Alexander Macdonell, Simon Fraser and John Siveright, be respectively discharged by proclamation, if nothing be objected to them on the part of our Lord the King.

A MOTION was likewise made *Ex parte Archibald McLellan*, and it appearing that his recognizance was taken at a former session of this Court, the Solicitor General stated, that as he had nothing to object to Mr. McLellan on the part of our Lord the King, he could have no objection to his discharge from his recognizance.

The affidavits and documents filed in support of these motions, as well generally, as individually, are detailed in the appendix, Letter C. and following, together with such part of the substance of them, as does not appear in the course of the argument held upon these motions.

Solicitor General.—I consider that unless the Court see the recognizances, they certainly can not pronounce upon this motion, (Mr. McLeod's.) I do not wish to be understood as questioning the existence of recognizances, nor do I deny that they may be of the tenor specified in the motion. Whether they are so or not, my memory does not serve me to determine; nor is it necessary that it should. To my mind, a much better way to avoid difficulty, will be to confine ourselves to what strikes me as the proper question, namely, whether as a Court of Oyer and Terminer, your Honours can touch the subject.

Mr. Vallicre.—May it please the Court. The motions which I propose to submit to the Court, are competent to the authority of your Honours, and I believe there can be no doubt of their success. If it turns out otherwise,

otherwise, the result must inevitably be, that the private prosecutor has it in his power to suspend the investigation of accusations of the most criminal nature, which he may think fit to bring against the most respectable gentlemen. For three years, and in some cases upwards of that period, the private prosecutor has incessantly and most industriously, raised accusations, which for a considerable time bore the appearance of having originated from the most honourable motives, against the characters of these gentlemen, the agents, the partners, and the servants of the North West Company. To promote his views, he has left nothing undone that could tend to poison the public mind, nor has he stuck at any thing to practice imposition, both upon the provincial and upon the Imperial Government. In order to affix dishonour and infamy upon the gentlemen of the North West Company, and thereby to attain the ultimate and sole object of all his machinations, namely, their ruin, no calumny has been too odious, no falsehood too gross, to be advanced by the private prosecutor. Could it be that gentleman, possessed of the most honourable feelings, such gentlemen as the agents and partners of the North West Company, could it be possible for them to remain silent under such heavy accusations, without making any demand to put their falsehood to the proof? assuredly not. They demanded to be permitted to stop the torrent of these calumnies, by a strict and rigorous investigation. They only desire to examine by the torch of truth, those serious accusations of murder, of treason, of conspiracy, and of all the crimes which the malice of the private prosecutor has imputed to them;

well assured, that its sacred light must incontestibly render their innocence apparent, as has uniformly been the case down to the present moment, where and whensoever, any investigation has taken place. Look at Mr. McLeod, a man of a respectable family, a man of education, and of distinction, now for three years the victim of the cruelest persecution, and, deprived, by the manœuvres of the private prosecutor, of every remedy. Let us look at these affidavits and we shall see, that maugre the prejudices excited against him by artifices of every kind, this gentleman and his partners, have solicited in every possible way, the investigation of their cases, and that even they have often been led to believe, that government perceived the necessity of judgement being given upon them. In order to obtain the favour of a trial in the face of their country, these gentlemen have travelled from post to pillar, from one province to the other, from Lower Canada to Upper Canada, from Sandwich to Quebec, from Quebec to York, from York to Montreal. To obtain this grace, they have attended every Court ; the Court of King's Bench, and the Courts of Oyer and Terminer in both Provinces, accompanied by the same evidence, and armed with the same defence ; they have attended in the Courts of each district, in the district of Montreal, in the district of Quebec, and I do not know by what singular chance they have not been required to attend in the district of Three Rivers. Yet, notwithstanding, the Earl of Selkirk excited the greatest prejudices against them by means of the press, notwithstanding in his communications to Government, and to its officers

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be represented with all his might, the necessity of bringing these atrocious criminals, as he styled them, to trial; notwithstanding it was his duty, as the private prosecutor to have attended these Courts, and notwithstanding that some of these Courts had been specially appointed for the investigation of offences alleged to have been committed in the Indian Territories; yet these gentlemen have invariably received the same answer, "*the private prosecutor is not ready*". This has been the answer uniformly given to the gentlemen of the North West, after incurring enormous expenses, and great personal inconveniencies to themselves, and to their trade, by the detention in Canada of the witnesses necessary for their exculpation. At length these gentlemen presented a petition to His Grace the late Duke of Richmond on the 19th of November, 1818, which, concludes with the following prayer;—

"Your memorialists, therefore, most respectfully pray "your Grace will be pleased to direct a special Court "of Oyer and Terminer for the trial of offences, charged "to have been committed in the Indian Territories, to be "holden at such time and place as to your Grace may "seem meet; but not before the month of September "next; and in the event that your Grace shall order "such Court to be holden in Upper Canada, then to di- "rect instruments under the Great Seal, to be issued, re- "mitting to that Province such cases as the Crown law- "yers shall recommend to be brought to trial; to direct "sufficient notice of such trial to be given to the persons "accused, and to the private prosecutor, in the mean "time to direct the suspension of farther vexatious pro-

"ceedings

" ceedings and arrests; and especially to command the " Sheriff of Montreal, or whomsoever it may concern, to " revoke and recall the warrants which have been, as " your Memorialists are advised, unlawfully and impro- " perly sent to create fresh disturbances in the Indian " Territories.—

" And your Memorialists," &c. &c. &c.

Here we perceive that the petitioners solicit his Grace to appoint a Court of Oyer and Terminer for the trial of offences alleged to have been committed in the Indian Territories, and to direct that notice should be given to the parties concerned. An answer to this petition was received in the first instance from Col. Ready, under date 3d Feb. 1819, which I will read; it is addressed to " the Honble. William Mc Gillivray, and others, the agents and partners of the North West Company," and is as follows:

Quebec, 3d Feb. 1819.

Gentlemen,

In reply to that part of your memorial of the 19th Nov. which relates to the appointment of the special Court of Oyer and Terminer, for the trial of offences charged to have been committed in the Indian Territories, I am directed to acquaint you, that His Grace the Governor in Chief, will comply with your request; and that directions will accordingly be given for the issuing of a commission of Oyer and Terminer to assemble at Quebec, on the 21st day of Oct. next, for the trial of the offences above alluded to, of which due notice shall be given to the persons accused, and to the private prosecutor.

cutor. In answer to that part of your memorial, respecting the suspension of the execution of the warrants which have been issued against persons in the Indian Territories, I am to add, that His Grace does not consider himself called upon to interfere in this matter,

I have the honor to be &c. &c. &c.

(Signed) J. READY.

In this answer two very important points are fixed, the gentlemen of the North West Company are assured, upon the faith of Government, that a Court of Oyer and Terminer should be held, and that it should be held at Quebec, in the month of October, the period most convenient to all the parties. In the official notice of my learned friend the Solicitor General, which was given under date the 24th of May, we find the day is changed, and the 2d of Nov. fixed for the opening of the Court. This notice is as follows:

Quebec, 24th of May, 1819.

Sir,

I have the honor to inform you, that it is the pleasure of His Grace the Governor in Chief, that a Commission of Oyer and Terminer should open at Quebec on the second day of November next, for the trial of offences committed in the Indian Territories; and I am directed to make this communication to you, in order that the partners and servants of the North West Company, against whom charges may still be pending may be ready at that time to take their trials.

I have the honor to be, Sir,

Your most Obedient Servant,

(Signed) CHARLES MARSHALL.

Sol'r. Gen'l.

The Honble. Wm. McGILLIVRAY, &c. &c. &c.

By

By Mr. Solicitor General's letter, the faith of government, already pledged to the North West Company, was further confirmed, and these gentlemen immediately prepared to take the necessary measures for conforming to this notice. In consequence you see, that the partners and servants of the North West Company, under accusation, have come to Quebec, accompanied with their witnesses, but again the crown officers tell us, "*the private prosecutor is not ready.*"

Mr. Solicitor General intimated, that the notice of the 24th of May had been countermanded.

Mr. Valliere.—The notice was countermanded! but why was it countermanded? It is not in jest (*ce n'est pas pour badiner*) that the accused have clamoured from one end of the empire to the other, to obtain an examination into their conduct. I ask, therefore, of the Solicitor General, why the faith of government, pledged in the first instance in the month of February, and officially confirmed by himself in the month of May, is to be violated, and the Court promised for the 2d of November, is to be countermanded in the month of June. I know of no answer but one, which is a shameful and abominable one, namely, the old answer, "*the private prosecutor is not ready.*" I will read Col. Ready's letter, and your honours will see that that is in truth the only reason.

Castle, Quebec, June 20th, 1819.

SIR,

"I lose no time unnecessarily in acquainting you, "that upon my informing Mr. James Stuart, that a "Court of Oyer and Terminer would be open here in "November, for the trial of offences committed in the "Indian

" Indian Territories, I received an explicit declaration
" from that Gentleman, that it would be impossible to
" procure the attendance of the necessary witnesses at
" that time.

" I need not scarcely observe to you, that much as it
" is to be regretted that these matters should not be
" brought to a speedy termination; it is an inconvenience
" to which Government can apply no remedy, except
" by preventing the useless attendance of the parties ac-
" cused, and their witnesses. On the other hand no pe-
" riod shall be fixed for these trials, without communi-
" cation first being made to you on the subject.

" It has been suggested on the part of the Earl of Sel-
" kirk, that the autumn of next year would be as early
" as it would be possible to procure the necessary evi-
" dence, and if you see no objections to the arrange-
" ment every exertion in the power of the Crown shall
" be made to bring the business to a speedy termination
" at that time.

" I have the honor to be,
" &c. &c. &c.
" (Signed) J. READY.

" The Hon. Wm. McGillivray,
" &c. &c. &c."

The reason, the only reason, given for countermanding the original notice, is that the witnesses on the part of the prosecution can not be ready by the 2d of November. But, may it please your honours, it seems to me that to give such an answer is a mockery, an attempt to add insult to injury. The faith of Government being pledged by two official communications, made by the command

of the late Duke of Richmond, the gentlemen of the North West Company immediately took efficacious measures to avail themselves thereof, and the sincerity with which they prayed for a Court is proved, by the accused having repaired to Quebec at the appointed period. The difficulties which their affairs in the interior must be subject to by the absence of so many of the partners and servants; the inconveniencies to themselves; the enormous and inevitable expenses; nothing deterred them: well is it for these gentlemen, that they are able to incur those expenses, for had the views of their *noble* rival to ruin them succeeded, they could not have come here. But, having, in obedience to the constituted authorities incurred these heavy charges, having encountered the difficulties of a long journey with their witnesses, and appearing now before this Court, upon the faith of Government, I ask, is it reasonable, is it just, now to tell them "Go back from whence you came, *the private prosecutor is not ready?*" But the period when the countermanding notice was received was too late, to effect the object it proposed. In the month of July or towards the end of June it was not possible to prevent the accused and their witnesses from making an useless appearance. Even using the utmost expedition, there was scarcely time after the notice of the 24th of May, to communicate the directions of Government, so that the accused could repair in due season to Quebec; for the distance of some of their posts in the interior is more than three thousand miles, some I believe five thousand miles; at the very time that this letter was received by Mr. McGillivray, to whom it was addressed, the gentlemen of the North West

West and their witnesses had actually left the Indian Territories, in obedience to the orders of Government. I again therefore ask can it be considered as a sufficient reply to give to these gentlemen, in this Court, in the Court in which they have been directed to make their appearance, in order to be tried by their Country for the crimes and offences they are alleged to have committed, and that too after a lapse of three years, "*the private prosecutor is not ready!*" Admit this to be a valid answer, and it is the private prosecutor who moulds the law after his own will and pleasure.

But in the anxiety of these gentlemen to obtain their trials, it was deemed expedient to present a fresh memorial to his Honour the President, which was done on the 2d of October, and on the 5th the following answer was given :—

Castle of St. Lewis,
Quebec, 5th October, 1819.

GENTLEMEN,

Having laid before his Honour the President your memorial, dated the 2d instant, on behalf of the North West Company and others, respecting the trials of certain individuals who stand charged of crimes and misdemeanors committed in the Indian Territory, I am directed to acquaint you in reply thereto, that a Commission of Oyer and Terminer issued for that purpose on the 29th day of April, 1818, and was continued by adjournment to the 21st day of October instant, to be held at Quebec. I am further to acquaint you, that his Honour is informed that the said Commission will open under the adjournment aforesaid on the 21st instant, and

that you and the other memorialists may take such legal course before the said Court as they may be advised for accelerating any decisions respecting the subject of the said memorial; and I am to add, that the Solicitor General will be apprized, and called to the exercise of his duties on the subject of such crimes and misdemeanors as may be brought under his consideration before the said Court, *where legal course and redress* MUST *be sought for by the persons interested therein.*

I have the honour to be,
Gentlemen,
Your most obedient servant,
(Signed) J. READY.

Here we see the period originally fixed by the Duke of Richmond for the holding of a Court of Oyer and Terminer, the 21st of October, is reverted to, and that this is the Court in which the parties concerned, MUST *seek legal course and redress.* Yet after we have come before the Court, which his Honour the President has prescribed to us, as that in which we are to defend our characters, I would ask, will that Court allow of the answer, "*the private prosecutor is not ready*?" If he is not ready now, when will he be ready? perhaps in two or three months, perhaps in two or three years. It is due to the public, to explain why he is not ready. The proceedings at York explain it. Last year the principals in the unfortunate business of Mr. Semple, after having been imprisoned for two years, under the same pretence that the evidence on the part of the private prosecutor *was not ready*, obtained at length a trial, and the shameful circumstances brought to light during that investigation, will

will for ever disgrace the accuser. After a most rigourous enquiry, they were acquitted by their country, and their entire innocence established and declared in the face of the world. Some of the gentlemen accused as accessaries equally received their trials; the result was the same, and the same as will take place on every future investigation. The infamy of these calumnies has been removed from the accused, and is now on its way to light upon the head of the accuser. The mean infamy of his accusations has been exposed; and this is the true motive that here too *the prosecutor is not ready!* The same verdict which was given at York, would have been given here, to the extreme mortification and confusion of the author of these horrible calumnies; and notwithstanding we have applied, and petitioned, and solicited, in the most humble manner, and from one place to the other, the favour of being tried, the boon of being declared guilty or innocent, in the Court at York, in the Court at Montreal, and finally in a Court specially pointed out by Government, and into which we have come in pursuance of the command of Government; yet we are to be told that the Court has no jurisdiction over our cases, and that we must remain the victims of a vindictive persecution without even the privilege of being heard.

Mr. Solicitor General, intimated with some warmth, that he had said no such thing, and that all he had said was to express a doubt whether the Court would feel itself at liberty to entertain a motion to relieve persons from recognizances taken in another jurisdiction, and to suggest as a preferable course, the confining of the argument to that point. Then denying the imputation contained

tained in the last observation of Mr. Valliere, he observed that such assertions ought not in fairness to be made.

Mr. Valliere—I did not assert that to be the language of Mr Solicitor General, it was merely an inference which I drew as to the consequences of its being established as a principle of law, that this Court could not grant the relief now sought for. At this period of time, it is clear, that the motives of the private prosecutor, have resolved themselves into the most eager desire of revenge. Hitherto his machinations have been defeated. The justice of the country has declared, that the accusations he has brought against these gentlemen, and their servants, are utterly false and groundless. The reason why he is anxious for delay, is again to indulge the malice of his heart, in subjecting the objects of his vengeance to the expence and inconvenience of further procrastination, by putting off, for another twelvemonth, the verdict of acquittal, which he well knows must take place upon the trial of these cases. On the other hand, the gentlemen, who are here in obedience to the orders of Government, deprecate, for the protection of their fortunes, for the safeguard of their lives, and dearer than all, for the maintenance of their reputation, all further delay.—They demand, and I hope successfully, condemnation or deliverance.

Solicitor General.—I wish,*(Mr Vanfelson having risen)* to relieve the gentleman, who is about addressing the Court, from any unnecessary trouble, by suggesting, that the main question appears to me to have been completely overlooked by my learned friend, who has just sat down. To the discharge of these gentlemen from *this* Court, I have no objection ; but till the question as to

to the power of the Court is determined, it does strike me, as a dreadful waste of time, to go into argument, and avoid the principal difficulty, namely the nature of the discharge asked.

Some conversation then took place between the gentlemen of the bar, which not appearing likely to close immediately;

Chief Justice Sewell.—If amongst yourselves, gentlemen, you can agree upon an entry—well—but it must be among yourselves. We can have no objection to that course, but we will be no parties to it. If we are applied to, we have but one course for the one party and the other—the strict measure of criminal jurisprudence, as adopted in the ordinary and uniform administration of the law. The circumstances of the case may bear hard, and doubtlessly do bear extremely hard in many points of view, upon a number of persons. It is very natural to desire relief, and we should be very happy to extend it, and as far as we are able, we will extend it. But whatever our wishes may be in any case, that comes before us, our interference can only be regulated by the strict rules of law, and so upon this, whatever its hardships, and whoever they may press upon, we can afford relief only as the law authorises it. What that is, shall be willingly given to both parties—beyond it we can not go for either.

Mr. Vanfelson.—May it please your Honours; in an ordinary case, and after the observations made by my learned colleague, I would not have troubled you with a single observation; but the present case one is so singular and so extraordinary, that you will pardon me.

The

The circumstances of the present case demand very mature consideration, and I can not but believe that after giving it that consideration, your honours will accede to our motions. The first circumstance I will submit to the Court is this—That there is *a private prosecutor*, avowedly spoken of in this case. Most assuredly it is not in general that *a private prosecutor* is spoken of, but in this case one of many singularities, is, that the existence of *a private prosecutor* is acknowledged, constituting at the same time one of the misfortunes of the North West gentlemen. Let us look at the case of Mr. McLeod; one of the gentlemen at the head of a society of merchants engaged in a trade which is opposed to the interests of *this private prosecutor* in the Indian Territories. At a time when Mr. McLeod could have no knowledge of the proceedings of the Earl of Selkirk, being in Europe, accusations of the heaviest nature were preferred against him. In 1818 Mr. McLeod, as appears by his affidavit, being in Europe, at Brussels, was informed by a letter from one of the other agents of the North West Company, that he was accused of great crimes by Lord Selkirk, before a Court of Oyer and Terminer at Montreal. What course did Mr. McLeod pursue on receiving this intelligence? He did not lose a moment, but prepared himself to meet these charges by the shortest route. He immediately proceeded to England, and thence to Scotland, where, having arranged his affairs, and left his family, he embarked for America in the month of September. Contemplate for an instant the anxiety manifested by these rapid movements, for repelling the accusations against him.

him. The first intimation that he was accused was received by him at Brussels about the end of July, and in the month of September we see that his affairs in England and in Scotland are all arranged, and he is on his way to Canada. On his arrival at New-York, on the 15th of November, he learnt that the Earl of Selkirk had left America for England. Mr. McLeod wrote to the agents of the North West Company to enquire if his presence was necessary either in Upper or in Lower-Canada. The answer was, No—that the Earl of Selkirk was gone to England, that the trials in Upper-Canada were over, and that had he even been present in the month of October preceding, it would equally have been unavailing, as he could not have had his trial. On the receipt of this information, Mr. McLeod again left New-York for England. Arrived in that country, I regret to say that he found the same system of calumny in operation. All these movements were represented on the other side of the water by the friends of Lord Selkirk, as having for their object an evasion from justice. Truly it was a singular method of evading justice, to follow his accuser instantly to England. To all these calumnies Mr. McLeod most wisely opposed only a contemptuous silence. Finding no accusation preferred against him in England, he again repaired with his family in the beginning of the year to Canada. The first news he heard on his arrival at Montreal, was that a bench warrant had been issued against him, directed to the sheriff of the district of Montreal. He immediately went to the sheriff, submitted to the operation of the law, and was in consequence put under recognizance. The recognizances are

indeed of a singular nature, and dissimilar to any recognizances I have ever before seen.

Chief Justice.—Let us know when and where they were taken. Whether in or out of Court, and if taken in Court, what Court it was?

Mr. Vanfelson.—Bail was given before the Chief Justice of the district of Montreal on the 15th of May last; and it was taken out of Court. There had been two bills of indictment found against Mr. McLeod, the one as an accessary after the fact to the murder of Robert Semple, Esquire, and the other for a conspiracy. The tenor of the recognizances is perhaps the most extraordinary ever demanded or entered into by any man. The obligatory parts are set forth in the affidavit which is before the Court, which I will read.

" The said deponent" (A. N. McLeod, Esquire,) " went and surrendered himself up to the said sheriff, " and in consequence, entered into a recognizance on " the fifteenth day of the said month of May, before the " Honourable James Monk, Chief Justice of and for " the said district of Montreal, for his appearance, *when* " *and wheresoever he may be legally required* to answer " two certain bills of indictment found against him, this " deponent, and divers other persons at the Court of " Oyer and Terminer and general gaol deilvery, holden " in and for the said district of Montreal, on the 21st " day of February, in the year 1818, and continued by " adjournment until the 16th day of May following, " one of the said indictments charging the deponent " with conspiracy, and the other of the said indict- " ments, charging this deponent as accessary after the fact

" fact to the murder of Robert Semple, alleged to have " been committed in the Indian Territories, to wit, at a " certain place commonly called Red River, not com- " prised in any parish or county, but situated in the " Indian Territories, or parts of America, not within " the limits of either of the provinces of Upper or Low- " er Canada, or of any civil government of the United " States of America."

Mr. Vanfelson then recapitulated the statement made by Mr. Valliere, of Col. Ready's letter of the 3d February, and the Solicitor General's notice of the 24th May; remarking particularly on the former, that by it the existence of *a private prosecutor* was recognized by government, and that the notice of the Solicitor General was an official confirmation of the intimation from government. Enlarging upon the measures adopted by the accused in anticipation of their trials at this Court, he quoted from Mr. McLeod's affidavit, " this deponent " made the necessary preparations to procure the attend- " ance of divers material and necessary witnesses to be " produced and called in support of his defence to the " said bills of indictment, and that the said witnesses " are now in person in this city of Quebec." He then proceeded,

What is now the situation in which Mr. McLeod stands? the condition of his recognizances are, " that " he shall appear *when and wheresoever he may be legal-* " *ly required*, to answer two certain bills of indictment " found against this deponent, and divers other persons " at the Court of Oyer and Terminer, &c." Now, that Court in which these indictments were found, and

whence therefore these recognizances derive their origin, has terminated; and when, in obedience to the notice given by my learned friend the Solicitor General, Mr. McLeod comes here, and finding there is nothing against him, demands to be discharged from his recognizances, my learned friend says, No. Now I ask, since the Court in which the indictments were found has ceased to exist, where else but in this Court can Mr. McLeod demand his discharge?

Chief Justice.—These recognizances were taken, I suppose, before a Judge, or some qualified person sitting in the district wherein the indictments were preferred, and after they were found. If I understand it correctly, they were found at a Court of Oyer and Terminer, and that Court is closed; that adds no difficulty to your obtaining any relief you are entitled to. Mr. McLeod was never in custody, I suppose.

Mr. Stuart.—Certainly not, Sir.

Solicitor General.—The indictment was found at an ordinary and *general* Court of Oyer and Terminer.

Mr. Vanfelson.—These are offences from the Indian Territory, which are different.

Solicitor General.—There was not a word about Indian Territories, or any other specialty in the commission;* it was completely general. Such a commission as

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* This may have been the case, but how then came it, that under that commission of general gaol delivery, the crown preferred indictments for offences alleged to have been committed *in the Indian Territories*, and actually caused one of those causes to be tried?

as is to open next week in the district of Montreal, which will exercise just the same jurisdiction.

Mr. Vanfelson.—It is necessary to remember the peculiarities attending these cases. The difficulties of communication, and the great distance between Lower Canada and the Indian Territories, make it impossible to do more than go and return once a year. The trade of the interior, in which all the parties concerned in these cases are engaged, on one side and on the other, requires therefore that both a certain and a convenient time should be fixed for investigation, and the moment a day is fixed, it is necessary to carry into effect, without the least delay, the measures necessary for obtaining the presence of the witnesses that may be required. These measures were taken by Mr. McLeod, and his partners, and effectually taken, though at a great expense and inconvenience; and here are the accused and their witnesses, ready on the day prefixed at Quebec. Good! our duty has in every particular been fulfilled. On the other hand, let us look at the conduct of the *private prosecutor*, and his agents. They received notice at the same time as the others, that a Court of Oyer and Terminer would sit at Quebec on the 2Ist of October. They received at the same time with the others a notice from the Solicitor General, that the Court would take place on the 2d of November, and informing that his Grace had ordered such a commission to open, and that the accused were directed to appear before it in order to take their trials. To this communication, it appears that an answer was given, that *the private prosecutor was not ready*, nor would be ready, either in the month of October

tober, or in the month of November, but perhaps he might be ready in the autumn of 1820! This produced the letter from Colonel Ready of the 20th of June, (p. 16.) But this came too late: at the time it was written, every thing was in a state of forwardness for assembling the wi'. esses. It appears by the affidavits that it was not possible to stop the witnesses from coming down, or reverse the arrangements that had been made, the accused and their witness being already on the route to proceed to Lower Canada. Pray, what else could be expected after the communications from government in February and May, if these gentlemen were in earnest in their request to have a Court appointed in which they might take their trials? Let it likewise be always held in mind, that the private prosecutor has himself petitioned for the same object. I will now proceed to submit to the Court some remarks, in order to prove that it never was the intention of the private prosecutor to bring the parties whom he had accused to trial. The only object of all his prosecutions, has been to subject the North West Company to expense and inconvenience, and thereby contribute to their impoverishment and ruin.

In support of this observation I have to remark, that it was not enough to accuse the partners of the North West Company, but in order to succeed in his plans it became incumbent on the private prosecutor to lower them in the public estimation, and on this account, we see that in the intervals between the various accusations, pamphlets are published of the most virulent nature, and as false as virulent, in order to poison the public mind.

There

There is scarcely a term of reproach, of disgrace, or of infamy which the private prosecutor has not lavished upon gentlemen bearing the best of characters, in order to lower them in the opinion of their fellow-citizens. The same purpose also strongly and obviously marks all his communications with government. There is not a single letter, not a single representation made to the Governor or to the officers of the Crown, which does not contain the most shameful calumnies, and most wicked misrepresentations: and at the moment of his departure from America, he adds another, and more scandalous, and offensive libel to the many that preceded it. In a memorial, as he calls it, he does not hesitate to accuse, wholesale, all the authorities in the two provinces. In the month of October 1818, this memorial was addressed to His Grace the late Duke of Richmond, praying him to appoint a Court of Oyer and Terminer in like manner as had, about the same period, been done by the gentlemen of the North West Company. But in this memorial we find all the officers of government of the province, the Judges, the Special Commissioners appointed by the Prince Regent, the Law Officers of His Majesty, not forgetting my learned friend on the right, *(the Solicitor General,)* in short, every individual attached to government, we find them all I say pourtrayed as being lost to every sense of justice and of honour. Such has been his conduct from the beginning until the end of his career in Canada. But I ought to have noticed that this famous memorial finished thus. "May it therefore please your Grace, that these matters "may be taken into your consideration, and your au-

"thor-

"thority exercised thereon, in such manner as may be "best calculated for the purpose of rendering amenable "to justice and of prosecuting with effect, the persons "guilty of the crimes hereinbefore referred to; that a "competent and impartial tribunal under a commission "of Oyer and Terminer and general gaol delivery be "constituted in the Province of Lower-Canada, for the "trial of such persons, to continue in the exercise "of its powers till the prosecution for the said "crimes be brought to a conclusion, and for the "more effectual attainment of this object, that the "conduct of these prosecutions be left to the coun-"sel of your memorialist, to be carried on by them, as "permitted by law; and may it also please your Grace "to take such measures as the circumstanaes may re-"quire, respecting the acts of official misconduct here-"in before complained of, and afford such further re-"dress in the premises as in your wisdom may appear "just.

(Signed) "SELKIRK."

I do not know what answer was given to this memorial, perhaps it might not be considered as worthy of one. But this I know, that instead of prosecuting the trials in the Court he prayed for, as soon as the Earl of Selkirk had signed the memorial, he instantly left Canada for Europe. Immediately on his arrival in England he adopts the same course. He addressed a communication to His Majesty's Government, a studied composition, in which, not satisfied with repeating his calumnies against his opponents, he, with the most unbecoming and indecent effrontery, represents all the authorities

thorities of the two provinces, as a set of men wholly unworthy of confidence. Yes, your Honours, in a letter to the head of His Majesty's Government, he dares to state in effect, though not in direct terms, that there is not one honest man amongst them, not one who is deserving of the trust reposed in them by the British Government, but that they are all, not excepting the learned Solicitor General, prejudiced and wicked men, without feeling, without honour, without religion. This is the character given to the constituted authorities of the two Canadas by the Earl of Selkirk.

Mr. Vanfelson then proceeded to state the application made to his Honour the President on the 2d of October, by which the accused still prayed to be tried by the Court appointed by his Grace the late Duke of Richmond, representing that their witnesses had been brought down from the interior country from distances of from two to five thousand miles, on the faith of government, that their trials should take place in the month of November, and that the countermand had been received too late to prevent it; as also Colonel Ready's letter of the 5th October, in which the 21st of that month is named as the day when the Court of Oyer and Terminer would assemble, before which the persons interested MUST *seek legal course and redress.* After a few further observations on the assiduity with which the accused had come forward, the hardships they were subjected to, the flight of the Earl of Selkirk from America, at the very moment when the trials at York were taking place, he concluded by deprecating further delay, as being, amongst other things, likely to expose the accused, not only to a continuance of the dreadful inconveni-

ence, and enormous expense they had for so long a time suffered, but also to the more serious danger of having their means of defence curtailed, if not annihilated, by the death of their witnesses (already exemplified by that of more than one instance)* or by the other chances and accidents incident to human affairs, and especially where their witnesses are to be brought down with danger and difficulty for such an immense distance.

Solicitor General.—I shall trouble the Court very shortly upon the present question, and in doing so I shall hardly notice the arguments produced by my learned friends in support of their application, because I consider them as totally inapplicable to the point which ought to engage our attention, namely, whether this Court has any jurisdiction at all over the cases of these gentlemen. It does not appear to me that your honours will feel yourselves invested with authority even to take their cases into consideration, and I shall therefore abstain from any observations on the merits which have been so fully gone into by my learned friends. And as to the wretched trash that has been published and was alluded to in the course of the argument, it is perfectly unnecessary, indeed it would be a waste of time, to advert to it. If, contrary to my expectations, the Court shall be disposed to entertain the application, I may, in that case, have occasion to file counter-affidavits to shew that the merits are not against the Crown.

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* Michel Martin, who gave evidence of the most important nature both at Quebec and at York, is lately dead; Seraphim La Mar, a most material witness as to almost every transaction at Red River, is also dead; D. McKinnon, a settler, died in prison at Montreal, &c.

It is not my intention to follow my learned friends through the various remarks relative to the faith of Government being pledged upon the present occasion. It is sufficient to say that whatever has been promised has been fulfilled. My learned friends could hardly mean that in promising a Court should be held wherein the difficulties which had unfortunately occurred in the Indian Territories might be examined, the government pledged itself that it should be held wherever and whenever the accused might demand, and without reference to whether the Crown was ready to proceed to their trials, that they could enforce them, or, in the event of not receiving them, insist upon being discharged from their bail. Adopt the doctrine of my learned friends, and the government must not only furnish Courts, but it must furnish evidence also. What is the extent to which in the present instance the government went? It had heard loosely of offences having been committed by certain persons in the Indian Territories, and as an act of grace in answer to petitions from the accused, it says, you shall have your trials; and, the Crown possessing at all times the right of choosing its own Court, an intimation is given that at the Court of Oyer and Terminer the parties may take such legal course as they may be advised to accelerate decisions on the subject. This is the extent; but does it amount to a pledge that the charges shall be entered upon by the Crown? No such thing. It merely says on the 21st October, a Court will sit at Quebec competent to take cognizance of offences committed in the Indian Territory, and there you may pursue such course as you may think expedient. It was urged by

my learned friends that, except by application to this Court, these gentlemen were perfectly without remedy, but certainly in point of fact, that is not the case. They can apply to the Court before whom the recognizances have been taken, or to a Court excercising the same authority in the district. A Court of Oyer and Terminer sits at Montreal next week, possessing similar powers to that in which the indictments were originally found.* Application being made there, it might be examined upon the merits (which I should consider can not be done here) and relief probably obtained. Another objection that might be urged is that the recognizances are not before your honours, and therefore, legally, their contents are unknown to you. But the true test by which to decide this question is first to ascertain whether this Court can interfere in any manner with the proceedings of a Court possessing equal authority in another district. If it can not *generally*, then to say that it can grant the present application, is to go beyond the very first principles of common sense. Were I to say that I consent to their discharge here, your honours must be aware (I speak now merely according to my own opinion) that in the Court at Montreal, where the recognizance was taken, that would avail

* The Court alluded to, was one of Oyer and Terminer, and general gaol delivery for the district of Montreal, to supply the place of the usual term of the Court of King's Bench which was prevented from being held in September by the illness of the Chief Justice; but the Court of Oyer and Terminer under the operation of which the recognizances were taken, was one specially appointed to be held in pursuance of applications made for that purpose, by persons whose cases were brought from the Indian Territories.

avail them nothing. Do your honours think, should *you* be disposed (which I can not apprehend you will) to discharge these gentlemen, that the Court at Montreal must necessariiy be bound by that discharge? Or should I, at the ensuing Court at Montreal, call on these gentlemen to appear and on their default, move for the forfeiture of their recognizances, must I take as an answer, that at a Court of Oyer and Terminer in another district, the principals were discharged? The questions are obvious, and the answers I think equally so; that in neither case could a discharge here operate to their advantage. To consent to their discharge here, would be, on my part, if I may be allowed to use such an expression, a legal deception; certainly, legally speaking, it would be so, inasmuch as this Court, according to my opinion, possessing no jurisdiction to give them their discharge, they would still be liable to be called on at any time. It is needless to enlarge; were I endowed with all the eloquence of my learned friends, and to speak for six hours, it could amount to nothing beyond this; that, according to my judgement, the recognizances not being before the Court, the motion can not be granted, and (which I principally insist upon) that this Court possesses no sort of jurisdiction over recognizances taken in Montreal.

Mr. Stuart.—The motions which we submit to the Court, embrace the cases of persons rather differently situated. Some of the gentlemen have presented themselves before the Court, and had their appearance entered of record under the belief, as stated in their affidavits, that, although by great seal instruments, they were transmit-

mitted to the province of Upper Canada to take their trials for all offences alleged to have been by them committed in the Indian Territories, and although in consequence of these instruments they were afterwards tried as accessaries to the murder of Robert Semple, Esquire, before a Court of Oyer and Terminer and general gaol delivery, held at York, and acquitted; yet that since the date of the great seal instruments, warrants have issued in the district of Montreal for their apprehension for some supposed crime or offence alleged to have been committed by them in the Indian Territories, before the date of these instruments, which warrants, it is believed, are still in force and virtue. In the cases of Mr. Mc Leod, and of Mr. Leith, they have given bail before the chief justice for the district of Montreal; and another case is that of Mr. McLellan, who is under recognizance to appear in this Court. These then are the distinctions, and the whole of the argument will apply to the cases of Mr. McLeod, and the former gentlemen, as Mr. McLellan must, as a matter of course, be discharged. I am free to admit that in submitting motions of this description to a Court, it is usual to support them by reference to authorities, but the recognizances which have been taken in these cases are of so perfectly novel a description, that it is in vain to look for an authority by which they could, according to the light I enjoy, be reasoned upon even by analogy. If they had been drawn up according to any of the usual forms in which instruments of that nature are ordinarily taken, we should have felt ourselves bound to endeavour to support our motions by the production of authorities bearing upon the application, but here,

for

for the reason I have stated, it is totally impossible. The recognizance on the part of Mr. McLeod was entered into before the Chief Justice for the district of Montreal, and is for his appearance "*when* and *wheresoever* he may "be legally required to answer two certain bills of indict- "ment found against him at a Court of Oyer and Ter- "miner and general gaol delivery, holden in and for "the district of Montreal, on the 21st. day of February "1818, and continued by adjournment until the 16th "day of May following, one of which indictments "charges him as accessary after the fact to the murder of "Robert Semple, Esquire, and the other with conspira- "cy." Our recognizance then is to appear to answer these charges when and wheresoever we may be legally called upon to do so. Subsequently we shew an order to the defendant to appear at a particular day and place in a particular Court. We were ordered to appear on the 21st. of October at the Court of Oyer and Terminer to be holden at Quebec. Here we make our appearance, and cause it to be recorded. But the private prosecutor does not appear, and nothing being brought against Mr. Leod we ask for his discharge upon the same terms as that which Mr. McLellan will receive. My duty will be to endeavour to shew that Mr. McLeod, under the circumstances of his case, is entitled to ask in a Court like this to be discharged. Mr. Leod was under bail to appear when and wheresoever required. He has been required to appear here, and his appearance has been recorded. We now move that he be discharged from his bail, conceiving that this Court has authority adequate to granting our motion, and not doubting but, in the exercise of its discretion, it will do so: under the peculiar circumstances of our case.

Chief

Chief Justice.—Do you mean to contend that whether we have power to try him or not? we have power, and ought, to discharge the applicant? You know it has been decided that petitions to a Court of general gaol delivery to bail a prisoner under the statute of 35 Henry VIII. are unavailing. You remember the case of Platt *(Leach's Crown Cases, Vol. I. p. 202.)*

Mr. Stuart.—The case of Platt was an application to a Court of general gaol delivery to admit to bail a person accused of foreign treason, a crime for which a specific Court is fixed. This is not such a case at all.

Chief Justice.—It certainly runs all fours with it, according to my idea.

Mr. Stuart.—I beg the Court's pardon, but I really see no, or scarce any, analogy. In that case the Court had *no* power at all, either to try or to bail; in this, it is entirely different, the Court has *equal* power for these purposes (though a Court of Oyer and Terminer and general gaol delivery) with that possessed by the Court of King's Bench. Its jurisdiction over the offence is not questioned; there the very essence of the enquiry was, whether the offence was within the cognizance and power of the Court at all. The crime for which Platt applied to be admitted to bail proving to be one which must be tried either in the Court of King's Bench, or under a special Commission, it was said the application in that case ought to be made to that Court only which had jurisdiction to try the offence. We make our application to a Court perfectly competent to *try* the case, and therefore we take it to be competent to discharge from recognizance to answer the charge against us.

Chief

Chief Justice.—The observation in Platt's case, that application ought to be made *only* to that Court having jurisdiction to try the offence, strikes at the very point under consideration. Have *we* jurisdiction, not over the offence *generally*, but over this case *particularly?* If former proceedings have taken place elsewhere, how are we to interfere? We are certainly not a superior Court to that in which they originated. On what authority then can we, as a Court co-equal only with that in which the proceedings originated, interfere with them. The knot of the application of the case of Platt is here.

Mr. Stuart.—The differences between these cases I take to be this, that in the one the Court had no power whatever to try, whilst in the other, the power of the Court can not, I think, be questioned. We do not assert that our application *must* be granted, but that it *may* be granted, that it is in the discretion of the Court to grant it.

Having stated the difference between the applications, I shall now go into the substantial and real merits of the case, as a whole, in order to satisfy the Court that they ought in justice to be granted. In doing so it will be necessary to advert to a variety of circumstances which will exhibit clearly and undeniably the unprecedented course of injustice and oppression which the gentlemen applying for relief to this Court, in conjunction with their partners and servants, have been exposed to for some years past. The system of oppression under which they have laboured for years, is one of the most odious description, it is a system of persecution under the form of judicial

proceedings. In exposing the terrible and harassing effects of this system of persecution under the colour of legal process, I shall be careful not to travel out of the record, but I feel myself imperiously called upon when applying to the Court on behalf of some of the victims (and no small number too) of the persevering and vindictive malice of the private prosecutor, that I omit nothing which may be calculated to establish in the minds of your honours, a conviction that public justice requires the Court to interfere, and by granting the applications now submitted, to afford relief to those in whose behalf they are presented. In any references which, in the pursuit of this object, I may have occasion to make, I shall confine myself entirely to the private prosecutor's own statements, or if I do otherwise, I will give notice. The difficulties which introduced the system of persecution so much and so justly complained of, commenced in the year 1814. Some time about 1812, the Earl of Selkirk, according to his own statement, became the grantee of the Hudson's Bay Company for a large tract of wild country, over which it is pretended that their charter (among other rights which they claim from it) gives them not only an exclusive right of trade, but the right of soil also. The validity of this grant, or of the charter under which the conveyance was made to Lord Selkirk I shall not touch upon; those are points to be discussed by persons possessing superior qualifications. One of the stipulations entered into on the part of the grantee was that he should establish a colony there. For the two first years no difficulty occurred, no violence of any kind, nor any thing to interrupt the harmony and good

good fellowship which might naturally be expected would subsist between the traders and the colonists—persons having the same origin—coming from the same country—many of them united by relationship—adding therefore the attachments of family and blood—and nearly the whole springing from that part of the country, which it is only necessary to name, and the force of the ties of blood rush instantaneously upon the mind: I speak of the Highlands of Scotland, proverbial for the attachment which the natives unceasingly bear towards each other. For two years then, all was tranquility, harmony and good will, whatever has occurred since of rancour, hostility and blood thirstiness, we shall shew originated with the agents of the private prosecutor. The first open act leading to the charge, is a proclamation which I will read;

PROCLAMATION.

"Whereas the Governor and Company of Hudson's "Bay, have ceded to the Right Honourable Thomas "Earl of Selkirk, his heirs and successors, for ever, "all that tract of land or territory, bounded by a line "running as follows, viz. beginning on the western shore "of the Lake Winnipic, &c." It is not necessary to read the whole of the boundaries; the description proceeds till the line returns "through the middle of the Lake "Winnipic to the place of beginning, which territory is

"called Ossiniboia, and of which, I the undersigned, "have been duly appointed Governor. And WHEREAS "the welfare of the families at present forming settle- "ments on Red River, within the said territory, with "those on their way to it, passing the winter at York or "Churchill Forts in Hudson's Bay, as also those who "are expected to arrive next autumn, renders it a neces- "sary and indispensible part of my duty to provide for "their support, in the yet uncultivated state of the coun- "try, the ordinary resources derived from the buffalo "and other wild animals hunted within the territory are "not deemed more than adequate for the requisite sup- "ply; wherefore it is hereby ordered, that no persons "trading in furs or provisions within the territory for the "Hon. Hudson's Bay Company, the North West Compa- "ny, or any individual or unconnected traders or persons "whatever, shall take out any provisions either of flesh, "dried meat, grain, or vegetables, procured or raised "within the said territory, by water or land carriage, "for one twelvemonth from the date hereof, save and "except what may be judged necessary for the trading "parties, at this present, within the territory, to carry "them to their respective destinations, and who may on "due application to me, obtain a license for the same. "The provisions procured and raised as above, shall "be taken for the use of the colony, and that no loss "may accrue to the parties concerned, they will be paid "for by British bills at the customary rates. And be it "hereby further made known, that whoever shall be de- "tected in attempting to convey out, or shall aid and assist "in conveying out, or attempting to carry out, any provi- "sions prohibited as above, either by water or land carriage,

"shall

"shall be taken into custody, and prosecuted as the laws "in such cases direct, and the provisions taken as well "as any goods or chattels of what nature soever, which "may be taken along with them, and also the craft, car- "riages and cattle instrumental in carrying away the "same, to any part but the settlement on Red River, "shall be forfeited.

"Given under my hand at Fort Daer, (Pambina,) the "8th day of January, 1814.

(Signed) "MILES MACDONELL,
"Governor."

That proclamation was the source of *all* the unfortunate occurrences on the one side and on the other. How far the private prosecutor is innocent of these consequences, will be apparent, if we refer to a very early letter under his own pen, in which directions are given of such a nature, that, for the sake of humanity, one would wish to discredit it, and nothing but the irrefragable evidence of his Lordship's own hand-writing could obtain it belief. This letter is dated as far back as 18th June, 1812, and if the consequences that might well be expected to follow any attempt to execute such instructions as it contained, did not earlier occur, it was because the person to whom they were then addressed, disgusted at the hard-hearted cruelty that could dictate them, refused obedience to them. The traders of the North West Company and their adherents were to be treated as interlopers, their houses were to be razed to the ground, their property to be seized and destroyed, themselves to be precluded from obtaining food by hunting or fishing, and thus to be left destitute of all resources under the rigours

gours peculiar to the climate. As I shall have occasion frequently to advert to this letter, I will read his Lordship's own words.

"You must give them," (the Canadians,) "solemn "warning, that the land belongs to the Hudson's Bay "Company, and that they must remove from it; after "this warning they should not be allowed to cut any "timber, either for building or fuel; what they have cut "should be *openly and forcibly seized*, and *their build-* "*ings destroyed.* In like manner they should be warn- "ed not to fish in your waters, and if they put down "nets, *seize them as you would in England those of a* "*poacher.* We are so fully advised of the unimpeach- "able validity of these rights of property, that there can "be no scruple of *enforcing them, wherever you have the* "*physical means.* If they make a forcible resistance "they are acting illegally, and are responsible for the "consequences of what they do, while you are safe so "long as you take only the reasonable and necessary "means of enforcing that which is your right."

This letter was not acted upon at the time at the station of the individual to whom it was addressed, for the reason I have just stated, nor did difficulty occur till after the proclamation. It was not till Mr. Miles Macdonell found that he was no longer entirely dependent for supplies, when enabled by ordinary methods to procure them himself, upon the friendly aid of the North West traders, who had constantly relieved the difficulties of the settlement to the utmost of their power, that he issued the proclamation, the fruitful origin of all the mischiefs which have followed. A small accession to the settlement in point of numbers took place during the year

year 1814, and being now fully prepared to carry into operation the schemes which had been long determined upon, we find the exclusive right of soil set up in the form of legal notices to the superintendants of the North West stations, to deliver up and quit the various posts they occupied; they are all in the same terms, and this is one:

"To Mr. André Poitras, acting for the North West "Company at Riviere la Souris."

"Take notice that by the authority and on the behalf "of *your landlord*, the Right Honourable Thomas Earl "of Selkirk, I do hereby warn you and all your associ- "ates of the North West Company, to quit the post and "premises you now occupy at Riviere la Souris, within "six calendar months from the date hereof. Given un- "der my hand at Red River Settlement, the 21st day of "October, 1814.

(Signed) "MILES MACDONELL."

Here we find the true source of the agitated state of the country; the North West traders saw that every measure of Lord Selkirk tended to *one sole* end, *their ruin;* and they could no longer doubt but that was his *sole* object; and yet, while all this was going on, while every movement shewed the determination to enforce these claims by physical strength, the mist of delusion spread with almost magic art, and the private prosecutor was represented to the public, to the government here, and at home, as the most injured of individuals, whilst those who in any way interfered with, or, in protecting their own property and interests, opposed this usurpation of power and authority, were stigmatized with the perpetration

perpetration of every degrading crime which malignity could suggest. It is but doing justice to the talents of the private prosecutor to admit, that the vast plan for attaining the monopoly which all these measures aim at, has been devised by himself, that he shone as the principal on every occasion, although the operations might be carried on by subordinate agents. The establishment of a colony was the ostensible object of his pursuit, whilst the monopoly of the fur trade, including in it *the destruction of his commercial rivals*, stands disclosed as the real one; and so determined is he to accomplish his purpose at all hazards, that there are no means he scruples to forget his rank and his character by descending to adopt. He commences with the engine of calumny, and assails the character of his opponents; from that he proceeds to violence, and lawless outrage, upon their persons and their property; and at last resorts to a system of persecution under the colour of legal process, which, for its ruinous extent and multiplied forms, is not unworthy of its contriver. But to consider more at large the second means by which the object was to be attained. It must be apparent, I think, if there existed or was supposed to exist, any right under the charter of the Hudson's Bay Company, to deprive the North West traders of that which they had enjoyed for more than a century—the right of trade and establishing posts, (I do not mean exclusively enjoyed)—if difficulty upon so delicate and important a point had wished to be avoided by the private prosecutor, he would have commenced, knowing as he well did, how much difference of opinion pervaded the minds of those most competent, from their extensive

extensive knowledge and experience to form a judgement, by an application to his Majesty's Government to examine the claim he was about to set up under the grant which he had obtained. The Government admitting or rejecting it, all difficulty would have been at an end. At present the right is asserted on the one hand and denied on the other. The authority assumed as inherent in the charter of the Hudson's Bay Company, and by them conveyed to their grantee, is as novel as extensive, and has never been acquiesced in by those who were peculiarly to be affected by it; on the contrary, their representatives with frankness and candour stated to his Majesty's ministers, that until they were aware that it was acknowledged by the government of their country, *they would certainly resist it*, and to this moment it never has been sanctioned. As to the validity or invalidity of the charter itself, or the legality of the grant to Lord Selkirk, I do not, as beforesaid, mean to offer a single remark; all I mean to state as a point that can not be controverted, is, that great doubts were known by the private prosecutor to exist upon the subject. It is true that men eminently qualified to decide, have given opinions favourable to the claims set up by the Hudson's Bay Company, and it is also true that men equally eminent and as fully qualified, have given directly contrary opinions. In this case, I say, thus situated between conflicting opinions, each entitled to an equal share of respect and consideration, it was the duty of the Earl of Selkirk and of the Hudson's Bay Company, before they rashly ventured to enforce by physical strength a dubious or questionable authority, to have petitioned the King in Council to decide the extent of the powers con-

ferred by the charter. If it had been wished to avoid difficulty, such would have been the course adopted. His Majesty, in Council, was the only tribunal competent to decide the question, and ought to have been appealed to. Had this been the case, I repeat, the difficulties would have been avoided, but the object which is the end and aim of every step that has been taken, namely, *the destruction of the North West Company*, and injury to their trade, might not have been obtained, and this may account for the application not having been made. What followed is what might have been expected, not more from the peculiarities which stamp the differences of these opposing parties, than from the general principles upon which human nature is constituted. Looking at our own frailties, even in the ordinary situations of civilized life, I say it was not to be wondered at, that difficulties, and those of a serious nature, should occur. It could scarcely be expected that the Canadian traders would submit without opposition, to be treated like so many poachers, on the grounds and upon the waters where for upwards of a century they had been accustomed to traffic, to hunt, and to fish, nor, on the other hand, fully advised, as his Lordship's letter of June 1812 says—they were, of the unimpeachable validity of these rights of property, was it, after the temper shewn in the proclamation, to be expected but that wherever it was supposed they possessed the physical means, his adherents would endeavour to enforce them, in obedience to, and furtherance of, his Lordship's avowed object—*the destruction of the North West Company*. What but commotion could be anticipated from such

such an injudicious and indiscreet assertion of territorial rights, combined with unwarrantable provocation?—Broils between the parties did ensue, difficulties did occur, whenever they met, and, owing to the irritation of both parties, doubtless a great deal happened on both sides perfectly unjustifiable. To expect that, upon two parties, inflamed with animosity towards each other, meeting in a wilderness, remote from all the restraints which civilization, combined with a due administration of the law unite in imposing, mischievous effects would not attend the rencontre, is to betray a total ignorance of human nature, and of the principles which govern the whole family of mankind. Now, let each man lay his hand on his heart, and ask, must not the private prosecutor have anticipated these consequences from the beginning? Who then, I ask, *is*—who *ought* to be held, answerable for the mischiefs and affrays that have ensued? Certainly he who began the quarrel—he who by artful misrepresentations and by direct calumnies, first most unfeelingly assailed the characters of those whose commercial efforts he was going to oppose: but finding that of itself unavailing, directs his servants and adherents on all occasions, where from physical means, they had a prospect of success to resort to that method of establishing the claims to exclusive sovereignty conferred by the doubtful charter of the Hudson's Bay Company—he, who, wishing to oust from the country, those who for years had been peaceably prosecuting a lawful commerce, exposes his servants and followers to the consequences that could not fail to attend the attempts peremptorily directed to be made thus to accomplish the de-

struction of his commercial rivals, by ruining their property and their trade, after he had failed in destroying their reputations and characters—he it is who must be answerable for the consequences resulting from such infatuated measures. Before they were entered upon, he was aware they would be resisted, he was aware that the rights of the traders would be endeavoured to be maintained, and yet he persevered in a system of opposition destructive to the peace, the harmony, and prosperity of those for whom he professed the utmost solicitude, his deluded colonists. So contrary to reason does this course appear, and so obscure, that it would be difficult to arrive at a conclusion as to what could have induced it, but in the instructions given by the letter of June 1812, we find a clue to all.

It is frequently difficult to discover the motives from which the conduct or actions of individuals spring, but there is one mode, which as it is the only one that furnishes a fair criterion, so also it is the only mode by which an honest man would be desirous that his principles of action should be estimated; and that is an examination of his conduct. If you find it uniformly devoted or tending to one object, if at all times, in various places, and under different circumstances you perceive that the measures of the private prosecutor must necessarily lead to *the ruin of the North West Company*, then, according to this fair test, *that* was his object. It is not an accidental deviation from, or interruption of, the pursuit that at all invalidates the correctness of this position. If till 1814 nothing had occurred to evince that the means so shamelessly recommended in the letter of 1812 were

were to be adopted, it was purely accidental, arising in some instances from more correct sentiments actuating the persons to whom those instructions were addressed, and in others perhaps from their not possessing "*the "physical means*" of enforcing submission. The test notwithstanding remains a fair one. In the circumstances I have adverted to there are three features all bearing a similar impress—first, the letter of 1812 declaring the rights, and pointing to physical strength as the means of enforcing them, if not immediately acknowledged—then the proclamation of 1814 prohibiting the fur-traders from deriving the necessary and ordinary supplies of provisions, and thirdly the notices to quit the trading posts or stations occupied by the North West Company. All these point to one end, and each has its particular effect in accomplishing it—that end is—*the destruction of the North West Company*—ensuring, as a natural consequence, the monopoly of the fur-trade. The peculiar effect will be evident upon a cursory examination of the nature of the trade. Extending itself into a wilderness, a distance of five thousand miles, through rivers interrupted by rapids, and susceptible of navigation by the slender canoe of the savage alone—it is evident the traders engaged in it must depend upon a renewal of their supplies at various points on their route, inasmuch as they are unable from the nature of the navigation to employ vessels capable of burden. Not like a vessel on a voyage to India, where all the passengers may be accommodated with state rooms according to their various ranks—there it is indifferent whether provisions are required for one fortnight, for one month, or for the whole

whole voyage, the vessel employed being adequate to its conveyance in addition to her freight—here, small indeed is the space that can be allowed for the conveyance of the necessary provisions Now, practically, what must be the inevitable consequence of interruption to the receipt of supplies at any one of the intermediate points between the utmost extremes of the point of departure and of destination, the mode of performing the voyage being thus—starting from a given point, they receive the necessary provisions to take them to the next post or depôt situated at a certain distance, arrived there, they are supplied with food for their support to the next station, and so continually from station to station to the utmost extremity of the route. If then, at any one point, from any circumstances, the necessary supply is not received, what is the consequence? Why—their destruction—starvation—let the supply fail at one point only, and the circulation is broken, the artery is cut—vitality ceases—death ensues—and as certain as cutting the artery is death to animal existence, so is—so must be—from the very nature of the trade, the failure of provisions at any one of the appointed spots for receiving them, and this was well known to the private prosecutor who used it therefore as a means to accomplish his sole object, *the destruction of the North West Company*, thereby ensuring to himself a monopoly of the fur-trade. But to be a little more minute, let us begin with the proclamation and ascertain what would have been the consequence of paying obedience to it—what the consequence of not receiving from the Red River country the supply of buffaloe usually obtained from that quarter by the posts below

low it. The same end as all the other measures point to, must have arrived, namely, *the destruction of the North West Company*, and that too even here *under the form of legal process*. The proclamation is issued under the authority of a grant assumed to be legal, but not obeyed, (and because of the fatal consequences that would ensue, it was impossible that it could be obeyed,) the navigation of the river was to be obstructed, and the passage of the supplies prevented. What would have been the consequence if resistance had been made? Why, that we should, according to his Lordship, "be acting illegally, "and therefore responsible for the consequences." Next come the notices to quit,* pointing to the same end, and to be accomplished by the same means, *the form of legal process*. Had a single post on this extensive communication been abandoned, again the artery would be cut, and the same effect be produced—*the destruction of the North West Company*.† Ad-

* In point of chronological order, Mr. Stuart, might with great propriety have adverted to the actual forcible seizure of the North West Company's provisions at Riviere la Souris in June 1814, *under colour of legal process*, by warrants issued by one person calling himself a governor, to another calling himself a sheriff, besides other aggressions, equally attempted to be justified by the pretended legal authority assumed by Miles Macdonell.

† The attack upon Fort Gibraltar in October 1815, and the capture, and utter destruction of that post in March following, though part of the same plan *for the destruction of the North West Company*, yet, as no legal or other pretext was ever brought forward to justify them, did not perhaps come within the scope of Mr. Stuart's argument at the moment, as not having been committed *under the colour of legal process*.

Adverting now more particularly to the third strong feature. The text is in the Earl's letter before quoted, viz. "if they make a forcible resistance, *they* are acting "illegally, and are responsible for the consequences of "what they do, while *you* are safe, so long as you take "only the reasonable and necessary means of enforcing "that which is your right;" thus aiming *at the destruction of the North West Company*, and that, *under the form of legal process*. As a commentary upon this precious letter, I have said, that if the navigation of one of the rivers in this chain of navigation was stopped, that the same end would arrive, and the only means of averting the consequence of such an outrage, would be to force the passage of the King's highway—the highway of nature, which no man or body of men has a right to close or stop. If obstructed, it is the right of every man to overset the impediment, to abate the nuisance, certainly without resorting to violence, if that can be helped, but to abate and remove the unwarrantable nuisance is the *right*, and I will go farther and say, it is the imperious *duty* of every man. This was precisely the case here, precisely the case of the gentlemen here, of Mr. McLeod and the others, whose affidavits are before the Court, and who were on their way to abate the nuisance, to open the King's highway, when the unfortunate affray took place, whilst they were at a great distance from the spot, which has been made such a handle of to blacken their characters. But it was long previous to this, at the period 1814, when, during the late war, it was impossible to receive supplies from Canada or from below, owing to the Lakes Erie and Huron

tion being in possession of the enemy, that the attempt was made at this moment of difficulty completely to cut off their supplies from above, by enforcing the proclamation, by blockading the river.—In this situation—deprived of the ordinary supplies for their trade from below by the enemies of their country, and of their returns and provisions from above by their commercial opponents, nothing scarcely appeared to prevent the accomplishment of the main object of all the movements of the private prosecutor, namely, *the destruction of the North West Company*. The threatened mischief was however for a time averted. But, early in the following year the attempt was to be made on a more enlarged scale, and not only was the navigation obstructed but no land passage was to be permitted. Desirous of avoiding collision whilst any means were open by which their commerce could by possibility be carried on, the river, on which for more than the century the fur-traders had been accustomed to convey and receive their supplies and returns, being again blockaded, an endeavour was made to substitute a land communication, under great inconvenience, from the upper posts with Lake Winnipic, by passing below the settlement at the Forks of Red River. But this experiment led unhappily to fatal consequences. Mr. Semple, impressed with an entire dependance on the "unimpeachable validity" of the boundless territorial pretensions of the Hudson's Bay Company and Lord Selkirk, as their grantee, in the performance of what he considered his duty to his employers, rashly determined at all hazards to enforce them by physical strength. The event is well known; a conflict ensued, and in the un-

fortunate affair, himself and twenty of his followers were the victims of his indiscretion in whatever motive it may have originated. This loss of lives, deeply to be deplored, and by none more sincerely than by the gentlemen who have been so unjustifiably accused of having been accessary to it, was attributed to the Indians having been incited by the North West Company to destroy the Colony, and the gentlemen around me were stigmatized as murderers. After two years unceasing exertions to wipe away this stain and relieve themselves from the unfounded aspersion, by receiving a trial in the face of their country, whilst the private prosecutor was as active in devising means to evade and postpone the investigation constantly demanded by the accused—at length delay, procrastination and subterfuge had reached their utmost limits, and the opprobrium which had so long assailed and blackened their characters, was by the verdict of their country, pronounced a malicious and unfounded calumny, and established as true the statement which had been constantly given by their servants and others engaged in the unhappy conflict, that it was in self-defence the melancholy catastrophe ensued. We are authorised to say they are innocent of the blood of that day, because their country has declared them to be so, after a solemn examination of all that could be adduced to substantiate the guilt, or vindicate the innocence of the accused. It has been manifested to the world that the melancholy bloodshed of that day, was the result of an unwarrantable attempt to assert and maintain the territorial rights claimed by the Hudson's Bay Company, in conformity to the early instructions of the private prosecutor in these

ee cases, not to scruple to enforce them wherever the physical means were possessed. Had they in this instance been adequate, the constant object of solicitude, *the destruction of the North West Company*, would have been nearer its attainment. After so melancholy an overthrow to his anticipations it might have been supposed that a course so charged with danger would have been abandoned. Any other man, when he saw the vast fabric reared by the resources of his mind, thus fallen in ruins, would have paused. One might have thought, capacious as are the resources of his mind, that even the Earl of Selkirk would have stopped. But no—so far from disaster and disappointment producing with him their ordinary effects, they serve only as incentives to increased and more extensive exertions. One can not but admire the unbounded resources of the mind of his Lordship, resources adequate to every emergency, however we may deplore the application of them, resources which enable him to render even defeat subservient to his purposes equally with success; indeed it appears occasionally even to be more advantageous to his schemes. What then is the course which was now to be pursued? One that is exactly consistent with the depth of his plans. The Earl of Selkirk becomes a magistrate of the Indian Territory, and for the Western district of Upper-Canada. A circumstance like this was strongly and justly calculated to excite alarm in the minds of those who for years had been harassed by oppressive and violent measures on the part of his agents, but supported by an assumed authority only. Well might they dread the addition of magisterial powers being placed at the disposal of the

triver of all the measures that had produced the previous injuries of which they complained, and well might they, from what had passed, anticipate further and more aggravated wrongs. What *then* does he do? Armed with this powerful instrument, so capable of being perverted into an engine of oppression, he proposes a more daring achievement than any that had heretofore marked the contest. He now determines on an extended scale, and with means adequate to the purpose, to prosecute the ultimate object of all his pursuits, namely, *the destruction of the North West Company*, and personally to superintend the operations. For this purpose a considerable force is raised, with which he proceeds in person, and attacks his opponents in their strong hold, arrests the principal director of the Company, together with five or six of the partners, and takes full and entire possession of every thing belonging to them. He no longer plays the petty game of out posts, he attacks the citadel, he beards the lion in his den: Fort William is the spot where he chooses to make his attack. Every preparation was made to encounter and subdue that resistance, which, from having so long told tales of the uncontrouled defiance of all law which pervaded the Indian Territory, he represented, and perhaps persuaded himself he had reason to apprehend. Indeed, accrediting the statements which had so long and anxiously been circulated, what might not have been expected in the very centre of their domination with resources of arms, ammunition, and men at command sufficient to have ensured a successful opposition? But resistance was not made, justifiable as it would have been. If resistance had been made, a scene of

of bloodshed must have ensued, a practical commentary displayed, the text for which is to be found in the Earl's letter. It was an attempt on a grand scale to enforce the doubtful and disputed rights claimed by the Hudson's Bay Company, by physical force, combined with the semblance of legal authority.* Having issued his warrant as a magistrate, had even a shew of resistance been offered, the consequences, however fatal, would have been attributed to that spirit of defiance to the law, which his Lordship has never failed to charge upon his adversaries. The sacrifice of lives which must inevitably have been made in the conflict that would have ensued, would be described as the consequence of a forcible resistance to a warrant which being legally issued, it was indispensible to support in its execution by an armed force, which happily, it would be said, as a matter of precaution, had already been prepared; and whilst the lives of *his* followers, which might have been lost, would have been characterised as murders, those on the other side would not fail to be described as the unfortunate victims of their own opposition and resistance to the law, or, in the language of his Lordship, "*they* were acting illegally, and were *responsible for the consequences*," while, hav-

* Fort William is considered to be situated in the Western District of Upper-Canada, and it is believed neither the Hudson's Bay Company nor Lord Selkirk, claim any right of soil so far; his Lordship was therefore not in this instance enforcing those doubtful and disputed rights alluded to by Mr. Stuart, though he was undoubtedly pursuing his main object, *the destruction of the North West Company, under the semblance of legal authority.*

having issued his warrant, he, and *his* adherents were safe. Here is the clue, *they* are *responsible* and *you* are *safe*, if forcible resistance should be offered. Again, there is not wanting the clear and distinct expression of his Lordship's expectation that resistance would be made, and we can not but admire the dexterity with which the government was, by anticipation, prepared, in the event of a conflict, to affix the odium of resistance to the law upon those whom he was at the very moment devising plans to render the victims of persecution, under its semblance, thus again scheming to render catastrophes, however fatal, subservient to his views. In a letter to his Excellency Sir John Coape Sherbrooke, after receiving the first information of the affray at Red River, and previous to setting out from St. Mary's on the expedition to Fort William; after lamenting that in a case wherein he was a party he was reduced to the alternative of acting in his magisterial capacity, or of allowing an audacious crime to pass unpunished, he states that he can not doubt but it is his duty to act, though, he adds, he was not without apprehension that the law may be openly resisted by a set of men, who have been accustomed to consider force as the only criterion of right. Happily no resistance was made—the objects of this persecution under colour of legal process submitted to what they knew to be an unwarrantable abuse of authority, and resolved patiently to wait till the laws of their country proclaimed their innocence and redressed their injuries. Now let us see what would have been their situation if a contrary course had been pursued. Had resistance been made, had (as inevitably must have been the case)

case) lives been lost in opposing the proceedings at Fort William, and these gentlemen, many of whom were present at the time (and the victims of that aggravated outrage) were standing at that bar on the accusation of murder, which no doubt would have been preferred against them, I ask what effect would it have before the Court, were I, as their advocate, to have stated that the issuing of a warrant by Lord Selkirk, was a vindictive prostitution of his authority as a magistrate for purposes of malevolence, or that it was a mere manœuvre to get possession of the fort and of the persons of the proprietors; that its object was to enable him to seize their property, to ransack their papers, totally to interrupt and destroy their commerce, by seizing upon their principal clerks and servants, some as parties to the alleged crimes, and others as witnesses, thus weakening the means of conducting their affairs to an extent that must unavoidably result in *the ruin of the North West Company?* What, I ask, without having a knowledge of the transactions that actually did occur at Fort William, would have been the effect of such a defence? Why, we should have been told that it was a vile calumny, an indecent assertion, an unfounded slander. We should have been taught that even against the humblest magistrate in commission, such representations would have been unavailing, and we should have been reproved with indignation for daring to ascribe to a magistrate holding the elevated rank of a peer of the realm, an abuse of his office for the purposes of private malice and sordid interest. Had this been our defence for resisting the attack, we should most certainly have been told that it was an aggravation of our crime,

crime, and a wanton outrage against the character of a distinguished, disinterested, and indefatigable magistrate. But, resistance not being made, the expected justification for all the preliminary movements was cut off, and it became necessary to seek for some new colouring for these unparalleled acts of violence, committed under the disguise of legal process. It became indispensible to discover some grounds of accusation sufficiently strong to excite the public feeling, and also to prevent the impression which the letter to Sir John Coape Sherbrooke was calculated to produce upon his mind, being removed by the submission of those very persons who had (according to his statement) been so long accustomed to consider force as the only criterion of right, that nothing could be expected from them but open resistance to the law. To the fertile mind of his Lordship this was no difficulty, and charges of crimes of every description were alleged against the partners and servants of the North West Company. Treason, murder, conspiracy, robbery, and almost every offence in the catalogue of crime was urged against them. The plan was successful, for I recollect the degree of alarm that was felt in this country when the intelligence first reached here, and the prejudice it excited against the supposed culprits. I can speak for myself, that those were the sensations created in my own mind on first hearing of these arrests. Having thus secured the persons of his commercial rivals, seized their goods, and put an entire stop to their trade, he had again cut the artery, and the ruin of the North West Company might now be considered completely certain. But this was not enough—he seized the books

books of the Company, ransacked their papers, examined their accounts, made himself master of their most secret and intimate thoughts, through the correspondence of the Company, and this was all done under pretence of searching for evidence against the culprits. Thus, whilst the partners were sent away prisoners upon accusations of crimes of which it was impossible they could be guilty, and their servants debauched and seduced from their service, the accuser was employed in scrutinizing the books and private papers of those whose destruction he now felt within his grasp. An act more flagrant never was committed by man, an act that nothing can excuse, that nothing can extenuate; and I tremble when I think that at this very moment of usurpation and outrage, at the very moment of this open, daring, violation of law, which he had himself committed, this mighty magician had the address to direct the tide of public opinion against the very men whom he was endeavouring to destroy, by a persecution under the semblance of law, the most vindictive and oppressive that ever infringed on the rights of human beings. Such was the effect of his exertions, that, obtaining credit for anxious endeavours to enforce the law, and secure the punishment of notorious criminals, his opponents became for a time, objects of general horror : but the delusion has passed away, and the stroke recoils upon himself. I am at all times disposed to do justice to the talents of the noble Lord; none but talents of the first order could have devised such plans as he has pursued; none but talents like his could have surmounted the defeats which have opposed his career, and only himself could so frequently have converted those very defeats into the means of increased exertion.

Calumny first assailed the characters of those who were to be the objects of his attack ; violence succeeded to calumny, and to violence has succeeded a persecution under colour of legal process. The history of the would furnishes numerous instances in which persecutions under legal forms have oppressed mankind, and one looks with an indistinct feeling of horror at the consequences. Look at the bloody revolutions which have spread desolation and ruin, like a pestilence, and you will perceive that this is the fruitful source whence they have sprung. The oppressor has set himself with might and main to accomplish his object, and then covers over his open and daring usurpation by oppressive appeals to those very laws he has so flagrantly violated.

Reviewing all the means to which the Earl of Selkirk has had recourse, we see that he was now in his full career, and would have destroyed the North West Company, destroyed their funds, destroyed their trade, or taken it into his own hands, taken possesssion of their posts one after another, and thus he would have completely effected his long sought object, *the ruin of the North West Company*, ensuring thereby the monopoly of the fur-trade ; and this he would most fully have done, but for the direct and immediate interposition of the sovereign authority, ordering the restitution of the forts, buildings, and trading stations, with the property they contained, to the parties who originally established them. But, though by this interposition of the Prince Regent, some of the various engines of oppression were removed, and the object again defeated, new measures were immediately resorted to. It appeared now to be determined to attempt

tempt the entire ruin of the commercial rivals of his Lordship, by removing every individual competent to take a prominent part in conducting the Indian trade, and in addition to subjecting the partners individually to odium by the imputation of crimes, and thereby affecting their credit as merchants, to expose them to all the expenses inseparable from legal proceedings, which, it is needless to say, in such cases as these must be enormous. Accusations were immediately brought against as many as possible, and it appeared also to be resolved that they should be confined as long as possible, and in pursuance of that plan, individuals have been detained one, two, and three years, demanding their trials, to the sacrifice of their health, and in some instances of their lives. There was in this Court the other day that miserable individual Boucher, who, after a confinement of two years and upwards, at length dragged the private prosecutor, or rather his witnesses, to York, and received his trial, and was declared innocent, but at the entire sacrifice of his health, by his long confinement. Others of the victims of this system of indiscriminate accusation, have died, owing to the length and severity of their imprisonment. What, if endowed with the eloquence and powers of diction possessed by the private prosecutor, would be the picture that might be drawn of such a perversion of the forms of law? If he and his adherents had felt the weight of such a series of continued and uninterrupted oppression, under colour of legal process, what would have been the representations that he would have presented? These hardships we have been compelled to sustain, and although from the result of all the trials that

have taken place, it is apparent that no individual who has been accused, ought to have been punished, yet they have been punished with a severity extending to ruin of health, and, in some instances as before stated, to loss of life from the oppressive nature of protracted imprisonment. But in the vast fabric which the plans of the noble Lord intended to rear, and to which the destruction of the North West Company was necessary as a basis, the death of some its servants was nothing, mere dust in the balance, unworthy of consideration. What, I would seriously enquire, is to be the end of these oppressions? Where are they to stop? Where is this course, equally alarming to all, to be arrested in its destructive career? For let us recollect that if in one instance, all the institutions which are framed for our protection can be rendered the instruments of our persecution, they can in another. The consideration is important to all. If a system of obloquy and calumny can set aside or render abortive the safeguards of the law, in the present cases, the same system may be resorted to with equal success in cases wherein we—any of us—may be the victims. But affixing odium to those whom he opposed by a systematic course of calumny and misrepresentation, was only one of the vast means brought into the field. Similar odium by similar means must be attached to whoever dared to interfere with, or oppose, in the administration of the duties of their official situations, this unheard of system of persecution. Thus, magistrates, judges, commissioners, governors, the officers of government here and at home, in short the government itself, were all marked as the victims of obloquy, and declared to be des-

destitute of principle and of honour, and the supporters of every enormity. That such a system has not excited an abhorrence and alarm proportionate to the dangerous consequences that flow from it, may well be a matter of astonishment and regret. That we should with apathy behold a tribunal erected above the tribunals of the law, and from the tyranny of which no individual can expect to be exempted—that we should witness it with indifference is a symptom portending the most pernicious results. That without any effort to withstand its baneful tyranny, we should allow, under colour of legal process, a system to be established, to which not only our persons, which, compared to our minds, are but as mere shadows, but our minds, our reputations, and our characters are to be exposed as to the peltings of a pitiless storm, can not but excite our surprise. It may serve, however, to shew the address with which the scheme has been conducted, when a plot so deeply laid, so atrocious in its design, and so horrible in its consequences, has failed to excite the alarm and indignation of the country. The feeling it ought and might have been expected to have created was one of active sympathy, and earnest endeavour to avert the evil. The calamity to-day is yours, to-morrow it may be mine; my neighbour's house is on fire,

———*jam proximus ardet*
Ucalegon.———

the next house is burning, mine must succeed it. Remove from us the safeguard of the law, let this system be established, and we are left in the wide world exposed to malice, persecution and oppression, with nothing to afford

afford us protection, and without a shelter from the storm which threatens our destruction. When such a system, organised and directed by talents of the highest description, aided by rank of the first order, is in operation, deplorable indeed must be the situation of its unhappy victims. It might perhaps be thought, that the sovereign authority having interposed, all was over, and that the game of persecution by legal process was up; but not so, the active mind of the private prosecutor was not thus to be stopped in its march, and again were the officers of government to be rendered subservient to his views. Although perfectly aware that the cases of some of the gentlemen present, and of others, had been transmitted to Upper Canada, under great seal instruments, authorising their trial for all offences alleged against them, he applies, through the medium of the crown officers to the Court at Montreal for warrants to be issued, which, being granted, have been sent into the Indian country again to subject them to additional expence and inconvenience. What say the affidavits of these gentlemen, who have come voluntarily and made their appearance? that they are "credibly informed, "have good reason to believe, and do in their consciences verily believe, that since the day of the date of the "aforesaid instrument, under the great seal of this province, there have issued warrants from some court, judge "or justice, in and of the district of Montreal, for their "apprehension for some supposed crimes or offences alleged to have been committed by them in the said Indian Territories, before the day of the date of the said "instruments under the great seal of this province,

"which

"which said warrants the deponents have reason to be-
"lieve, and do verily believe, are in force and virtue."
Yes, they are left as a precious legacy to the North West Company. Their design is clearly to be seen: no sooner would the persons involved in these accusations, either as parties or witnesses, have returned to the Indian Territories from Upper Canada, where most of the accused were already bound to appear, than they would, by virtue of these bench warrants, be again arrested and brought to Lower Canada. The system of oppression under the colour of legal process then is still in full play, and by thus removing, through accusations, indictments and arrests, all those persons who are competent to conduct the intricate business of the interior, the trade must necessarily be transacted to great disadvantage, which, united to the expense inseparable from the constant and harassing legal proceedings, it is hoped may accomplish in this way that ruin, which former efforts, gigantic as they have been, have failed to effect. In this manner accusations were again brought forward, and again have the objects of a persecution, as relentless as extensive, to vindicate their innocence. It would avail nothing to say, already have we received a trial for these very alleged offences, and been pronounced innocent by the voice of our country, already, after years of unceasing clamour for an opportunity to refute the charges, have we at length proved them to be unfounded—these, and similar declarations, will all go for nothing. We are challenged again to prove our innocence: again is the opprobrium of having perpetrated infamous crimes endeavoured to be fastened upon us. With his usual daring

he

he has again called upon us to defend ourselves. The Douglas hath thrown down his glove. We accept his challenge, and are prepared to meet him: but, where is the Douglas? He is not here to redeem his pledge, he has fled from the face of his adversaries, and his glory is passed by.

We have been accustomed to esteem it our happiness to be born in a country, and under a government, where all are entitled to equal rights in a court of justice; where the poorest peasant and the proudest peer are equally protected by the law. What shall we say then to such a perversion of our privileges and our rights as the oppressions exhibited to the Court in the cases of these gentlemen? Individuals dragged year after year, from Court to Court, from province to province, with their characters tainted by accusations, and seeking to throw back the unfounded calumnies, yet unable to obtain their trials? What shall we say to the system of persecution under colour of legal process, when individuals come voluntarily three, four, and five thousand miles, to seize the opportunity, which at that distance they have heard will be afforded in this Court of Oyer and Terminer, to persons accused of having committed offences in the Indian Territories, of proving their innocence, and to which their accuser has been warned to come prepared to substantiate their guilt? What, I ask, shall we think of persons, who thus voluntarily surrender themselves, saying; "We hear we are accused, that charges are alleged "against us, and we have, regardless of inconvenience "or expense, come with our witnesses, and supplicate, "in God's name, to be permitted, before the tribunal of "our country, to clear our characters, thus tainted with "ignominious accusations."—What, I say, shall we think of

of their being told, after coming five thousand miles, under such circumstances, "you may go back again, the *Earl of Selkirk is not ready*"?

Let us for a moment advert to the circumstances which preceded the appointment of a Court for the trial of offences committed in the Indian Territories, as signified by the official letter of the governor's secretary, and the notice of my learned friend the Solicitor General. The agents and partners of the North West Company had been assailed for years with accusations of murder, treason, and conspiracy, alleged to have been committed by themselves and their servants, and had ineffectually endeavoured by every means in their power, and every where, in every Court where they could legally seek it, to obtain an investigation of these charges.—At length, after the proceedings at York had declared two of the principals accused in the affair of Mr. Semple to be innocent, and a second trial having obtained the same verdict on behalf of a number of their partners, accused as accessaries, they resolved to petition the highest authority: they asked of the representative of their Sovereign in these provinces, to interpose the authority of His Majesty's government to check this unprecedented system of persecution under colour of the law, by the appointment of a Court of Oyer and Terminer, before which the private prosecutor and the persons accused should be notified to appear with a positive intimation to the former, that in case of his default, the prosecutions should be dismissed never to be revived. They prayed that some termination might be put to this scene of legal oppression, to this tissue of calumny; that some time might be

irrevocably fixed as the period when they should, by a public trial by their country, be either restored to their rank in society, or, by their guilt being substantiated, receive the punishment due to their crimes. In God's name, they implored, let some prospect of a termination of this system of oppression and persecution, be held out—let the result be what it may—come life—come death—come what will—come what may—in God's name, let us have our trials. This was the substance of the language of the accused in their petition to His Grace the late Duke of Richmond, immediately after the acquittal of the persons tried at York, and the effect of this application is before the Court. A prospect was held out in the notification before alluded to, that by the appointment of a Court of Oyer and Terminer and general gaol delivery, the desired relief would be afforded. This was the conduct of the *accused* in November 1818. The *private prosecutor* about the same time presented a memorial to the government, which, after calumniating, not the objects of his vindictive persecution alone, but every officer of His Majesty's government, from the highest to the lowest, whose duties had ever led him into contact with these disputes, concludes (as it was necessary to give some colour to the course which had so unjustifiably been pursued,) by asking that a Court of Oyer and Terminer and general gaol delivery be constituted in Lower-Canada, for the trial of the persons whom he alleged to be guilty of crimes. Here then we find both parties asking for the same thing, both asking for the appointment of a competent tribunal, both asking apparently with anxiety for a day of trial. The sincerity with which

which it was asked by each will be evident presently, when we notice the consequence of these applications. A Court *was* appointed, and a day of trial *was* fixed. Notice thereof was given to the agents of the private prosecutor, and to those of the accused. Both received intimations to the same effect, namely, that a Court for the trial of offences committed in the Indian Territories, was positively to be held on the 2d of November at Quebec. No sooner is the intimation received by the North West Company, than they prepare to scatter the joyful news, that at last an end is to be put to the aggravated and systematic course of injury which their interests, their property, their persons, and their characters had sustained for years, at the caprice and by the malevolence of the private prosecutor. No time is lost in spreading the information, or making the necessary arrangements for conducting the business of the interior at the stations usually superintended by those who are now to receive their trials. Every thing was put in motion; the witnesses being collected from various and remote posts, the accused, conscious of their innocence, left the Indian country and hastened to the appointed place of trial. After this, and at a time when he was in the Indian country above Fort William, Mr. McGillivray received the letter of Colonel Ready, dated 20th June, containing information that *the private prosecutor was not ready*, nor could any time be mentioned when he would be prepared, and therefore it would be unnecessary for us to appear at the time we had been directed to do so. The letter I believe does say that some time after next autumn the private prosecutor may perhaps be ready, but I

would ask, can such a procrastination be allowed? The statement of the agents of my Lord Selkirk is simply that he will not be ready, unsupported by affidavits or documents, or any elucidation as to why, after near five years preparation, he is not ready. I would solemnly ask, can such an answer be received? Is it enough to tell the victims of this horrid system of legal oppression, after coming thousands of miles, in obedience to the directions of the government, to claim their trials, that they can not receive them, because *the private prosecutor is not ready?* Can it, I would ask, be esteemed a sufficient answer, whilst at the same time that their trials can not be had, they shall be rendered liable to arrest in virtue of other warrants issued at the instigation of the private prosecutor? Is it, under all the circumstances of the case, to be endured, that the private prosecutor shall be able for years to delay the course of equal and substantial justice, by withholding trials from those whom he thinks proper to accuse, by simply saying, when the day arrives, I AM NOT READY?

Upon the whole case, which it is impossible to contemplate but with dismay and most serious apprehension, I would say that it has never been my lot to witness so aggravated a series of injuries heaped upon human beings, nor could I have thought it possible that malevolence itself could have harassed—could have *thus* harassed, under the form of legal process—those whom it might wish to destroy. But by sad and bitter experience do the gentlemen around me know its practicability. Their cases exhibit such an accumulation of unprecedented oppressions, that it is impossible not to feel the

the necessity of affording them relief. I feel for them, not merely as clients, but as men, as members of the same community. I feel for them as men who have been assailed in their characters by the most unfounded and insupportable calumnies; whose properties, pursuits, and persons, have encountered every species of violence and injustice, and to crown all, who are made the victims of a cruel and abominable persecution, a persecution the most horrible in its nature, and most destructive in its consequences, a persecution under colour of law. In his endeavours to accomplish their ruin, they find themselves deprived by this mighty magician of the sanctuary to which they have been taught to look for safety; they are deprived of their recourse to that shield which the wisdom of those who framed our constitution interposed for our protection from arbitrary power; they are deprived of the benefit of that system of law which was purchased at no less a price than the blood of our forefathers. By what right are they deprived of its blessings? Our ancestors, their ancestors, bled for their laws, and they are entitled to the full enjoyment of their inestimable privileges. Take from us our laws, withhold from these individuals their right not to have justice delayed, and they may be compared, from the persevering vengeance with which their ruin is prosecuted, to the unfortunate travellers in the vast plains found in the wilderness we have heard so much of, when the dry and lofty grass is on fire, and the destructive element rolls its immense flames with a devastating fury, from which not even the fleetness of their horses can enable them to escape. To rescue them from this miserable, this perilous

lous state, I ask for their discharge. We have asked for our trials, but the boon is not granted us. The system of malice and of legal persecution is still at work, and, unless the Court will interfere and save us from its effects, again we shall have to ask for our trials from Court to Court, only, after another five years of suffering and oppression, to receive the same answer, THE PRIVATE PROSECUTOR IS NOT READY.

Here the argument as to the merits of the case closed, and some conversation took place between Mr. Solicitor General and the other professional gentlemen, as to the extent of the application made on behalf of the different gentlemen. The recognizance of Mr. McLellan being read, the Solicitor General said, he of course would be discharged, and so might Mr. McLeod, as far as related to this Court. In relation to the other gentlemen, he observed, that it was needless to say any thing, as they were as free as he was.

Mr. Valliere, referring to the affidavits of Mr. Leith, and other gentlemen similarly situated, urged, that from them it appeared evident, there were warrants in force against them for offences alleged to have been committed in the Indian Territories, and that too, notwithstanding they had been transferred under great seal instruments to the province of Upper Canada, for trial, for all offences, alleged by them to have been committed in the Indian Territories, and some of them have taken their trials at York,

York, on such charges as were brought against them, and being acquitted, were discharged. The consequence, he said, is easily foreseen, if they are exposed to these warrants: the moment they return to their avocations in the Indian country, they will be arrested, and brought down again to Canada, just to gratify the malevolence of the private prosecutor, by occasioning expense and inconvenience to the objects of his vengeance.

The Chief Justice remarked, that whatever might be the hardships of the situation of these gentlemen, it was impossible the Court could interfere in their behalf, as the Court could know nothing of warrants issued in another district, and which were not even before them. Mr. *Vallicre* urged that the affidavits went the length of stating, that they were in existence and in force and virtue, and that in consequence thereof, these gentlemen had entered their appearance here, and, it being the last day of the session, applied to be discharged. To this it was replied by Mr. Solicitor General, that he had no sort of objection to their being discharged, nor to any of the gentlemen being discharged.

Mr. Valliere.—Well then we'll take our discharge.

Solicitor General.—I mean from this Court only, not any thing beyond that. I say I have no charge against any of these gentlemen at *this* Court, and have no objection (indeed I can have none, having no accusation against them,) to their discharge therefrom.

Mr. Valliere.—Well, we'll take that for all the gentlemen, if Mr. Solicitor has no objection.

Mr. Solicitor General enquiring if that met the approbation of the Court, the Chief Justice said, the Court could have but one rule, namely, the strict, the rigid, rule

rule of law. If, as he had beforesaid, the gentlemen of the bar could agree amongst themselves upon any course, the Court would not object to it, though it would not become in any way a party to the arrangement, but if upon the argument they were called to give judgment, they would be ready to do so at two o'clock the next day. The cases appeared to have three distinctions; that of a person under recognizance to appear in this Court, of others under recognizances taken in another district, and of some other gentlemen who are under no recognizance, having had no process served upon them, but who asked to be discharged from this Court as a surety against the execution of warrants which they apprehend have been issued against them; and if judgement was asked of the Court, it should be given agreeably to the strict rules of law, without reference to who might be affected by it.

After a few words between the advocates, the Solicitor General said, that, conceiving it to be the preferable course, he should wish for the judgement of the Court, and an adjournment accordingly took place, till two o'clock next day.

FRIDAY

FRIDAY 29th OCTOBER,

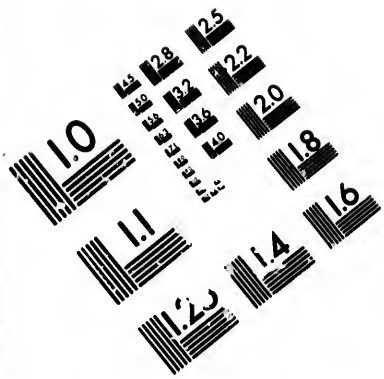
PRESENT AS BEFORE.

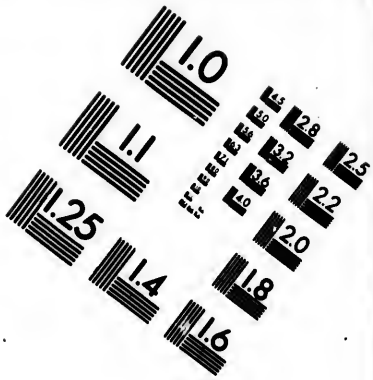
Chief Justice Sewell.—The Court is now called upon to pronounce judgement upon the argument held yesterday. We are prepared to do so, and, with the exception of Archibald M'Lellan, our judgement is that nothing can be allowed to be taken by the motions. The motions come before the Court in the shape of application for relief on behalf of a number of gentlemen variously situated; some being under recognizance taken in different, districts to appear in any Court wherein they may be legally required to answer certain charges of offences alleged to have been committed by them in the Indian Territories, seek to be discharged therefrom and their bail; and others, making a voluntary appearance under an apprehension that process of Court has been issued against them, ask thereupon to be discharged by proclamation. In support of the applications the gentlemen who have presented them have adduced as reasons why the Court should accede to their motions, a variety of allegations of hardships and oppressions sustained by those in whose behalf they are offered. They may be, and are, for aught I know, perfectly well founded, occasioning justifiable cause of complaint, but of any circumstances unconnected with the abstract legal question we know nothing and are bound to know nothing. In the argument which has been submitted to us very strong ap-

peals have been addressed to our feelings, but most unworthily should we occupy the stations we hold if we could for a moment suffer them to operate upon our judgement in the most distant degree. With the consequence of our decision we have nothing to do, and of the parties affected by it we are entirely ignorant: we are called upon by the motions to decide an abstract question of law, and, according to the light we have, we shall do so, without reference to parties or consequences, and when we have exhibited the reasons which influence our judgement, we doubt not that it will be satisfactorily shewn that the discharge asked for must be (with the exception of Mr. McLellan) according to the rules of law, refused to the parties. The first question is, can this Court discharge Mr. McLeod from his recognizances?—We answer, it can not. They were not taken before us, but without at present entering into that part of the consideration, it is absolutely necessary that the recognizance, being matter of record, should be before the Court. I do not mean that the original record itself should be before us, because, being an inferior Court ourselves there is no possibility of issuing a writ of Certiorari to bring it in, but an exemplification, under the seal of the Court where the proceedings were had, might have been here, or at least a sworn office-copy: a copy examined with the original and proved on oath by the witness who examined it. It may be said that the recognizance is proved by the affidavits that are here: but it is the *record*, and also not *a part*, but the *whole* of the record, which must be exemplified or copied; it must be from beginning to end before the Court, so that they

may

may be in possession of the full effect of it, and for this reason, a partial extract may bear a very different import from the whole taken together; therefore it is essential that the whole record by exemplification under the seal of the Court, or at least by a sworn office-copy, be before the Court. All our common place books define what a recognizance is. *Chitty*, page 90, says, "a recognizance is an obligation entered into before a magistrate, duly authorised for that purpose, with conditions "to appear at the sessions or assizes. The party need "not sign the recognizance, but the record thereof is afterwards made out on parchment, and subscribed by "the justice before whom it is taken. But it is a matter "of record as soon as taken and acknowledged, though "not made up by the justice, and only entered in his "book." In 4th *Blackstone* also, the nature of recognizance, its objects, and the modes of discharge therefrom, are fully set forth. As a matter of record then, it is evident that before we can possibly interfere, the recognizance must, either by certificate from the Court where it is taken, or by a sworn office-copy, be produced in Court. The affidavits of the parties that they are under recognizance, can not be received as evidence thereof, because at best it is but a partial account of them which is thereby given, whereas it is most distinctly stated in all the authorities, that *the whole* and not *a part* of a record must be exemplified or copied. An exemplification of the record under the seal of the Court when the proceedings have taken place, or a sworn office-copy of the entire record, is the least evidence that the Court can require of the existence of recognizances, because upon no





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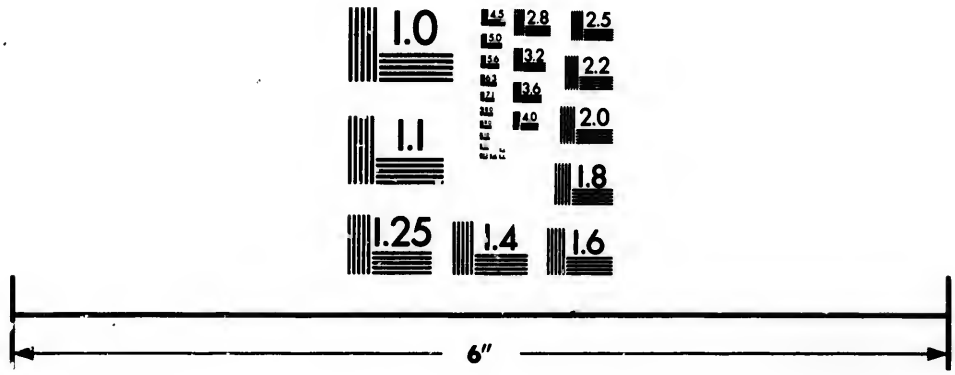

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less evidence is it competent to the Court to proceed upon any thing connected with them. A recognizance taken by other than this Court to be within our jurisdiction, must be certified in some shape to us by the authority by which it was taken, and in the absence of such certificate it is totally impossible that we can in any way interfere. In the ordinary fulfilment of their duties, the justices who take recognizances, must, in pursuance of the statute, deliver them on the first day of the next session to the Court in which the parties have been bound to appear, and they are then filed by the proper officer, so that they may be regularly proceeded upon, and that, in case of forfeiture, they may, according to the practice at home, be estreated and sent up into the Court of Exchequer. How is *this* Court to know whether the recognizance in the present case has been fulfilled or become forfeited. Having no return made to it, nor indeed any evidence, that is legal evidence, of a recognizance having been entered into at all. Recognizances can only be discharged in the way now sought for, by the order of a Court to which they are certified by the justices by whom they were taken. The evidence of their having been entered into, must be their production in one of the shapes that have been adverted to. In *Peake's Evidence*, page 28, the various forms in which matters of record can be produced before a Court are fully pointed out, but none of these have been adopted on the present occasion. Supposing this recognizance to be forfeited and estreated into the Exchequer, from negligences of the parties to fulfil the conditions of the bond, and that application was made for a quietus; the first step in that

case

case would be to obtain a constat, an instrument which is prepared by the proper officer, at the solicitation of any person intending to move in the Court of Exchequer for the discharge of any thing. The constat is declared to be more certain than a certificate, because it certifies all that appears upon the record—but *we* have no record before us, how therefore could a constat be prepared, when we are ignorant of the very condition of the obligation, the non-fulfilment of which has occasioned the forfeiture. It is impossible for us to accede to the motions, without a trace of a recognizance before us, nor an exemplification under the seal of the Court where the proceedings have been had, nor even an office-copy. From the exhibition of the contents of the record by one of these means it is that the Court must receive its information of the tenor of a recognizance. It can not obtain it by any other means. There is a case in 1st *Strange*, page 210, in which it was moved that the keeper of records in one of the counties, might attend a trial at bar in the Court of King's Bench, with some of the original records which on a former trial it had been objected were worn out and obliterated; but the Court refused the application, saying that they never did it, but a rule for copies might be had. The Court further observed, that the officer who had the custody of the records could not be examined as to their substance, though he might give evidence as to their general condition. From this it is manifest that were the officer of the Court who has the keeping of this record here under examination, he could not be allowed to testify as to the *matter* of the recognizance. If that was the case in the Court of King's Bench

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at home, it is manifest that the copy of the record ought to be here, as it is the only admissible evidence of the recognizance that can be given: any other proof must be incomplete and not entitled to be received. In all matters of record the whole record, and not a part only, must be exemplified or copied in order that the Court may be in possession of the full effect of it. A partial extract will not suffice, it must be the complete, entire, fac simile as it were, of the record, so that its true import may be ascertained, which can only be determined by the exemplification of the whole. Again, how could the officer of the Court make his certificate of a forfeiture without the recognizance, and he is under a penalty if he does *not*, under a penalty for each failure, the one moiety to the use of His Majesty, and the other moiety to the use of whoever will sue for it. Yet, no record being returned to him, it would be an impossibility that he could say whether the recognizance had been forfeited or not. The application to us on behalf of Mr. McLeod is, that the recognizance of himself and of his bail be discharged, he having (as stated in the motion) appeared in performance of such his recognizance. In discharge of what recognizance? How can we cancel a recognizance, the original of which is not here, nor any kind of a certified copy? In whatever point of view the subject is examined, the difficulty recurs, and we find it impossible to grant the relief that is asked by his counsel.

The application on behalf of a number of other gentlemen is, that they may be discharged by proclamation, and their counsel having represented, as do their affi-

affidavits, that they do so to avoid being arrested upon warrants, which it is stated are in force and virtue against them. But how can *we* grant these gentlemen relief, even should the warrants have been obtained illegally. The commission under which the Court in the district of Montreal that found the indictments, sate was precisely the same as that under which this Court is holden, equal in power to this, and exercising a jurisdiction perfectly similar. A writ of certiorari would not bring their proceedings before us; it would not lie from us to a Court every way co-equal with ourselves, and possessing a jurisdiction in the district of Montreal co-extensive with that of this Court in the district of Quebec. The Court at Montreal where the proceedings in the cases of these gentlemen have been held, was a Court of Oyer and Terminer and general gaol delivery, and so is this;* but they have separate jurisdictions, and can not interfere with each other, as we are advised, and nothing has been adduced to shew that legally we can exercise any authority out of the district of Quebec. These gentlemen think proper to come here and enter an appearance, and then seek to be discharged from indictments found in another district, because they can not be tried in this. If the case of Platt is referred to it will be found exactly similar to this in principle. In that case, the application was made in an ordinary Court of Oyer

* But the Court at Quebec was specially appointed, as appears in the Commission (Appendix A.) for the trial of cases from the Indian Territories, which it seems was not so with regard to that of Montreal, which is alluded to.

Oyer and Terminer, and general gaol delivery to admit a prisoner to bail for treason alleged to have been committed without the realm, he being found in the gaol, and having complied with the forms of the act which empowers a Court thus constituted, to admit a prisoner committed for high treason to be discharged or to be bailed, according to the circumstances in which he stands at the moment. This is an application to discharge persons by proclamation, against whom indictments have been found, and, as is alleged, warrants have issued in another district for offences committed in the Indian territories. So far the cases are analogous as they are founded upon offences committed out of the ordinary jurisdiction of the Court in both instances, and the power of the Court of Oyer and Terminer and general gaol delivery in either case to proceed to trial, must be conferred under a special authority. An ordinary Court of Oyer and Terminer and general gaol delivery for the district of Quebec, could not take cognizance of offences committed in the Indian territories, which is without its district, neither could the ordinary commission of a general gaol delivery for the county of Middlesex, extend to the trial of a prisoner accused of a murder, or high treason committed without the realm. But the statutes of 35 Henry VIII. and the 43d of the King, confer an extra jurisdiction; the one authorizing treasons, &c. committed out of the realm to be tried under a special commisson, and the other conferring on the usual Courts of either district of Lower Canada, and by instruments under the great seal of this province, declaring that justice may be more conveniently administered

tered in Upper Canada upon the Courts of that province also,* the power of trying offences committed in the Indian Territories and consequently out of their ordinary jurisdiction. A great deal has been urged relative to the transmission to Upper Canada of the individuals for trial for all offences who have been subsequently indicted in Montreal for offences alleged to have been committed in the Indian Territories previous to the date of the great seal instruments. If the Court who have found the bills of indictment had no power to do so, can *we* have power to interfere. How can we possess any superior power over offences committed in the Indian Territory beyond a Court of a similar description in another district. By what mode can we get their proceedings before us? A certiorari could not issue directing a Court co-equal with ourselves to send them up. By the statute 43, Geo. III. any of the usual Courts in this province are competent to the trial of indictments for offences alleged to have been committed in the Indian Territories—then we can not interfere. If it is (as undoubtedly it is) at the option of the Crown to select its judicature, and it has done so, assuredly in those particular cases, we stand in the predicament of having no power to try the defendants, and, therefore this application to us to discharge them and their bail from recognizances entered into in consequence of proceedings had in that very Court, which the Crown has chosen, is nugatory. The application ought to be made to that Court which has power to try the offences alleged to have been committed. It is useless to petition *this* Court, because we in fact, have no power

* See Appendix B. being the act of the 43d of the King alluded to, commonly called the Canada Jurisdiction Act.

over matters done in another jurisdiction, at least you do not attempt to shew us that we have any jurisdiction. We are a Court sitting under a general commission of Oyer and Terminer and general gaol delivery, and the distinction between our authority and that of a superior Court is manifest. In 12th *Modern Reports* there is a case in which the distinction of jurisdictions is completely set forth : it is an admiralty case. The suggestion was that process had been issued of a thing out of their jurisdiction, but the Court held that their process would shew as a matter of record how it came within their jurisdiction, and presuming that every thing had been done right till the contrary had been shewn, refused to interfere in the way they were petitioned or moved to do. This is completely the case here, except that we are an inferior Court, and the application in that case was to the Court of King's Bench. Proceedings in the cases under discussion have been had in another district, the district of Montreal, and the Court in which they have been taken is a competent authority to continue them. If they have been in error, an application to the Court of King's Bench in that district might be made to remove their proceedings, and by that means the necessary correction would be made.

In these cases indictments have been found, and process of Court has issued in consequence thereof. The exercise of the sovereign authority in the election of its Court is apparent. It is no informal notification we have of this circumstance. The act of electing the Court of Oyer and Terminer for the district of Montreal, has been followed up by the interposition of the grand jury, who have returned bills against the defendants. The solemn

act

act of the Crown is therefore evident from the applications themselves, because the necessity of relief arises therefrom. The different Courts of competent jurisdiction are all open to the Crown, and although the proceedings had in the Court that has been selected are not before us in any shape, the applications shew that proceedings must have been had. Upon the whole argument we would remark that there should have been shewn some act of the government selecting this as the special Court in which the applicants were to receive their trials before these motions could be presented with a prospect of success. In the opinions which have been submitted to the Court the question involving the difficulty has not been touched at all. It has not been attempted to be shewn that we possess a jurisdiction in the cases that have been presented to our notice. The difficulty in this is precisely that which occurred in *Platt's* case. Over offences committed in the ordinary way *in the County of Middlesex*, the general commission of gaol-delivery, under which the Court sat authorised them to act, but the case of Platt was that of high treason, committed *without the realm*, and therefore by the statute of 35 Henry VIII. only to be tried in the Court of King's Bench or under a special commission, and therefore the Court said, "to petition a Court of gaol-delivery who have no "power at all to try the prisoner is nugatory and "void." In the particular cases before us we are equally without jurisdiction. Some of the gentlemen are not under recognizance, nor are there any recognizances before us at all. In the argument very great anxiety has been shewn to impress upon the Court the hardship of the cases of these gentlemen and of the difficulties

ficulties to which they will be subject should the Court refuse to grant their motions, but the very principal difficulty of the whole has not even by inference been adverted to. These indictments being found are not to prevent the individuals affected by them from proving their innocence to another Court, but it must be noticed that they were not called to substantiate it here. According to the affidavits the recognizance entered into by some of the gentlemen was to appear when and wheresoever they might be legally required so to do. But they were not called upon to appear here to answer to indictments found in a Court of another District, and over whose proceedings it is impossible that we can have any controul. I shall make no reference to the observations that have been addressed to our discretion upon the merits of the applications arising from the peculiar circumstances of the cases. Of them we can know nothing, that is, they can not operate upon our decision on the abstract question of law contained in the motion. Upon them, the gentlemen under recognizance, with the exception of Mr. McLellan, can take nothing. With respect to the other gentlemen as they are in no way before us, we can give no opinion. Upon the whole, here we have no jurisdiction in these cases; the proceedings in them have been found in a court of another district co-equal with ourselves, and it is impossible that *we* can interfere with them, whatever the Court of King's Bench might feel itself authorised to do.

The order of the Court is that the gentlemen do take nothing by their motions. Mr. McLellan, there being nothing alleged against him on the part of our Sovereign Lord the King, is discharged.

The Court was then adjourned till the 24th day of January 1820.

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(APPENDIX A.)

PROVINCE OF LOWER-CANADA.

(Signed) J. C. SHERBROOKE.

(L. S.) *GEORGE the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.*

TO our trusty and well beloved, the Honourable Jonathan Sewell, Esquire, Chief Justice of and for our Province of Lower-Canada, the honourable James Monk, Esquire, Chief Justice of our Court of King's Bench for our District of Montreal, in our said Province of Lower-Canada, the honourable Oliver Perrault, and Edward Bowen, Esquires, Justices of our Court of King's Bench, for our District of Quebec, in our said Province of Lower-Canada, the honourable Isaac Ogden, James Reid and Louis Charles Foucher, Esquires, Justices of our said Court of King's Bench, for our said District of Montreal, and the honorable Pierre Bedard, Esquire, the Provincial Judge for our District of Three Rivers.

Know Ye, that we have constituted and assigned you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, our Justices, the Gaol of our said District of Quebec of the Prisoners therein being for this time to deliver, and therefore we command you, that at a certain day, which you or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, shall appoint, you do meet at our City of Quebec, in our aforesaid District of Quebec, our Gaol of our aforesaid District of Quebec to deliver, and to do thereupon

upon what to Justice shall appertain, according to the Laws and customs of England, and of our said Province of Lower-Canada, saving to us our amerciaments and other things to us thence appertaining. For we have commanded our Sheriff of our said District of Quebec, that at a certain day, which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, to him shall make known, all the Prisoners of our said Gaol, and their attachments before you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, he then cause to come.

In Testimony whereof, we have caused these our Letters to be made Patent, and the great seal of our Province of Lower Canada to be hereunto affixed, and the same to be entered of record in our Register's office, or office of Enrolement, in our said Province of Lower Canada: Witness our trusty and well beloved, Sir John Coape Sherbrooke, Knight Grand Cross of the most Honourable Military Order of the Bath, Captain General and Governor in Chief, in and over the Province of Lower Canada, Vice Admiral of the same, &c. &c. &c. at our Castle of St. Lewis, in our City of Quebec, in our said Province of Lower Canada, the twenty ninth day of April, in the year of our Lord, one thousand eight hundred and eighteen, and in the fifty-eighth year of our Reign.

(Signed) J. C. S.

(Signed) JOHN TAYLOR,
Depy. Secy.

PRO-

PROVINCE OF LOWER CANADA.

(Signed) J. C. SHERBROOKE.

(L. S.) *GEORGE the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, defender of the Faith.*

TO our trusty and well beloved, the Honourable Jonathan Sewell, Esquire, Chief Justice of and for our Province of Lower Canada, James Monk, Esquire, Chief Justice of our Court of King's Bench for our District of Montreal, in our said Province. The Honourable Oliver Perrault, and Edward Bowen, Esquires, Justices of our Court of King's Bench for our District of Quebec, in our said Province of Lower Canada, the Honourable Isaac Ogden, James Reid, Louis Charles Foucher, Esquires, Justices of our said Court of King's Bench for our District of Montreal, and the Honourable Pierre Bedard, Esquire, the Provincial Judge for our District of Three Rivers, in our said Province.

Know Ye, that we have constituted and assigned you, or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, our Justices to enquire more fully the truth, by the oaths of good and lawful men in the District of Quebec, in our said Province of Lower Canada, and by other ways, methods, and means, by which you shall or may the better know, as well within liberties as without, by whom the truth of the matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, False Coinings, and other falsities of the

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money of Great Britain and other Kingdoms and Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, and unlawful uttering of Words, Assemblies, Misprisions, Confederacies, False Allegations, Trespasses, Riots, Routs, Retention, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champerty, Deceit, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of the same, within the District aforesaid, as well within liberties as without, or committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, by whomsoever, and in what manner soever, done, committed or perpetrated, and by which person or persons, how and after what manner, and of all other articles, and circumstances, concerning the premises, and every of them, or any one or more of them, in any manner whatsoever; and the said Treasons, and other the premises, according to the Laws and customs of England, and of our said Province of Lower Canada, for this time to hear and determine, and therefore we command you, that at certain days and places which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, shall for this purpose appoint, you do, concerning the premises, make diligent enquiry, and all and singular the premises hear and determine, and those things do and fulfil in form aforesaid, which are to be done as to justice doth belong, according

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ing to the laws and customs of England, and of our said Province of Lower Canada, saving to us our amercinments and other things to us thence appertaining. For we have commanded, and hereby do command, our Sheriff of our said District of Quebec, that at certain days and places which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, shall make known, to cause to come before you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, such and so many good and lawful men of his Bailiewick, as well within liberties as without, by whom the truth of the premises may be the better known and enquired into. In testimony whereof, we have caused these our letters to be made patent, with the great seal of our said Province of Lower Canada to be hereunto affixed, and the same to be entered of record in our Register's office, or office of Enrolements, in our said Province of Lower Canada. Witness our trusty and well beloved, Sir JOHN COAPE SHERBROOKE, Knight Grand Cross of the most Honourable Military Order of the Bath, Captain General and Governor in Chief in and over the Province of Lower Canada, Vice Admiral of the same, &c. &c. &c. at our Castle of Saint Lewis, in our City of Quebec, in our said Province of Lower Canada, this twenty ninth day of April, in the year of our Lord one thousand eight hundred and eighteen, and in the fifty eighth of our Reign.

(Signed) J. C. S.

Signed) JOHN TAYLOR,
Depy. Secy.

N. B. A subsequent instrument added the name of ALEXIS CARON, Esquire, King's Counsel to the Commission.

(APPENDIX B.)

ANNO QUADRAGESIMO TERTIO GEORGII III. REGIS.

CAP. CXXXVIII.

An Act for extending the Jurisdiction of the Courts of Justice, in the provinces of Lower Canada, and Upper Canada, to the trial and punishment of persons guilty of crimes and offences, within certain parts of North America, adjoining to the said provinces.

(11*th* AUGUST, 1803.)

WHEREAS crimes and offences have been committed in the Indian territories and other parts of America, not within the limits of the provinces of Upper or Lower-Canada, or either of them, or of the jurisdiction of any of the Courts established in those provinces, or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go unpunished, and greatly increase—For remedy whereof, *May it please your Majesty*, that it may be enacted, and be it enacted by the *King's most excellent Majesty*, by and with the consent and advice of the Lords spiritual and temporal and Commons, in this present parliament assembled, and by authority of the same, THAT from and after the passing of this act, all offences committed within any of the Indian territories, or parts of America, not within the limits of either of the said provinces of Upper or Lower Canada, or any civil government of the United States of America, shall be, and be deemed to be offences of the same

same nature, and shall be tried in the same manner and subject to the same punishment, as if the same had been committed within the provinces of Lower or Upper Canada.

2d. *And be it further enacted*, that it shall be lawful for the Governor or Lieutenant Governor, or person administering the government, for the time being, of the province of Lower Canada, by commission, under his hand and seal, to authorize and empower any person or persons wheresoever resident, or being at the time, to act as civil magistrates and justices of the peace, for any of the Indian territories, or parts of America, not within the limits of either of the said Provinces, or of any civil government of the United States of America, as well as within the limits of either of the said provinces, either upon informations taken or given within the said provinces of Lower or Upper Canada, or out of the said provinces, in any part of the Indian territories, or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence, to safe custody, in order to his or their being conveyed to the said province of Lower Canada, to be dealt with according to law, and it shall be lawful for any person or persons whatsoever, to apprehend and take before any person so commissioned as aforesaid, or to apprehend and convey, or cause to be safely conveyed, with all convenient speed, to the province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody, for the purpose of being dealt with according to law.

3d. *And be it further enacted*, that every such offender may and shall be prosecuted and tried in the Courts of

the province of Lower Canada, (or if the Governor, or Lieutenant Governor, or person administering the government for the time being, shall from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence in the province of Upper Canada, and shall by any instrument, under the great seal of the province of Lower Canada, declare the same, then, that every such offender may, and shall be prosecuted and tried in the Court of the province of Upper Canada,) in which crimes or offences of the like nature are usually tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the province, where the same shall be tried under this act; and every offender tried and convicted under this act, shall be liable and subject to such punishment as may, by any law in force in the province where he or she shall be tried, be inflicted for such crime or offence, and such crime or offence may and shall be laid and charged to have been committed within the jurisdiction of such Court, and such Court may and shall proceed therein to trial, judgement, and execution, or other punishment, for such crime or offence, in the same manner, in every respect, as if such crime or offence had really been committed within the jurisdiction of such Court, and it shall also be lawful for the judges and other officers of the said Courts to issue subpœnas, and other processes, for enforcing the attendance of witnesses on any such trial, and such subpœnas and other processes shall

be

be as valid and effectual, and be in full force, and put in execution in any parts of the Indian territories, or other parts of America, out of, and not within the limits of the civil government of the United States of America, as well as within the limits of either of the said provinces of Upper or Lower Canada, in relation to the trial of any crimes or offences by this act made cognizable in such Court, or to the more speedy and effectually bringing any offender or offenders to justice under this act as fully and amply as any subpœnas or other processes are within the limits of the jurisdiction of this Court, from which any such subpœnas or processes shall have issued as aforesaid; any act or acts, law or laws, custom, usage, matter or thing to the contrary notwithstanding.

4th. *Provided always, and be it further enacted*, that if any crime or offence charged and prosecuted under this act shall be proved to have been committed by any person or persons not being a subject or subjects of His Majesty and also within the limits of any colony, settlement or territory, belonging to any European states, the Court before which such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge.

5th. *Provided nevertheless*, that it shall and may be lawful for such Court to proceed in the trial of any other person being a subject or subjects of his Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement or territory, belonging to any European state as aforesaid.

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(APPENDIX C.)

Memorandum and Abstract of papers filed in Court by consent.

I.—General affidavit of HENRY McKENZIE, Esquire, of which the following is a copy :—

PROVINCE OF LOWER CANADA.

Court of Oyer and Terminer and General Gaol Delivery.

Ex parte ARCHIBALD NORMAN McLEOD, Esquire, et al.

Henry McKenzie, of Montreal, in the district of Montreal, esquire, merchant, one of the agents of the North West Company, being duly sworn, deposeth and saith, that since the month of September, of the year 1816, he has been principally employed as agent on the parts of the partners and servants of the said company, who were and are alledged to have committed crimes and offences in the Indian Territories, and as such agent was one of the persons who, from time to time, had communication with His Majesty's Provincial Government, and also with the law servants of His Majesty in this province and in Upper Canada, respecting the said supposed crimes and offences, and the trials of the said partners and servants of the North West Company, who were alledged to have committed the same. That the Honorable William McGillivray, principal agent of the said North West Company, had the principal management and conduct of the said correspondence, as well with His

His Majesty's Provincial Government in the said two provinces, as with the law servants of His Majesty in the same provinces, and that the letters, notices, answers, and other communications, as well from government as from the said law officers, were for the most part directed to him as such principal agent. That the said William McGillivray is at this time absent from this province; and this deponent is well informed, and doth in his conscience verily believe, that the said William McGillivray is now at York, in the province of Upper Canada, there to attend as witness and private prosecutor in a Court of Oyer and Terminer, or some other Court having criminal jurisdiction, on a certain indictment found against Thomas Earl of Selkirk, and divers others, for a conspiracy said to have been entered into by them in the said province of Upper Canada; and that he is not expected to return to this province until about the tenth day of November now next ensuing. And this deponent upon his oath aforesaid, further saith, that in consequence of the many vexatious delays attending the investigation of the said supposed crimes and offences said to have been committed by divers partners and servants of the North West Company, the said William McGillivray and Simon McGillivray, also an agent of the said North West Company, (now in England, as this deponent verily believes,) presented to His Grace the Duke of Richmond, governor in chief of Lower and Upper Canada, on or about the 19th of November, 1819, a memorial, of which the copy hereunto

unto annexed marked A. (1.) is a true and correct copy, as this deponent verily and in his conscience believes. That on

(1.) This memorial, after giving a brief outline of the proceedings of the Earl of Selkirk, and the vexatious delays which took place in the subsequent law transactions, went on to relate his Lordship's conduct in the following terms :—

" The Earl of Selkirk, however, instead of waiting to meet " the investigation of his own conduct, or to support his charges " against his prisoners, proceeded to the interior of the Indian " countries, from whence he only returned to this province in " January last, and then, instead of establishing his charges a- " gainst the partners and servants of the North West Company " who had been so long waiting for trial, he bent his whole at- " tention to framing and producing fresh charges against persons " still remaining in the interior country, and who could not for " many months have an opportunity to defend themselves. A " Court of Oyer and Terminer, competent under the commis- " sions already mentioned, to try the persons under recognizance " and waiting for trial, being held at the seat of government in " Upper Canada in April last, these persons proceeded thither " with their witnesses at great expence, and with much personal " inconvenience, but no prosecutor appeared, nor were the " crown lawyers furnished with the necessary instructions or " evidence to bring forward any charges against them, although " such charges, and documents purporting to support them, had " been long before printed and industriously circulated by the " Earl of Selkirk and his adherents in both provinces. In the " month of July, however, when it was perfectly notorious and " well known to his Lordship that the necessary avocations of " the season required the presence of the agents and partners of " the

on or about the 3d day of February next following and now past, the said Duke of Richmond, then Governor in Chief

" the North West Company at Fort Willliam, he proceeded with " his witnesses to Upper Canada, and having at length communi- " cated his instructions and evidence to the crown lawyers, he ap- " plied for the appointment of a Court of Oyer and Terminer to " sit on the first of August, in order that he might be enabled to " try the servants of the North West Company in the absence of " their masters, and of the witnesses necessary for their defence, " and also that he might have the opportunity of preferring in- " dictments against persons who could not possibly be present to " defend themselves, but his Lordship's application was refused, " and the Court was appointed to sit on the 19th of October, in " order to give time for both parties to appear and to proceed to " fair and impartial trial."

" The Earl of Selkirk was at York on the 7th of October, " (twelve days before the sitting of the Court,) and on embark- " ing in the steam-boat for Kingston, gave out that he would re- " turn to attend the trials; at Kingston his Lordship intimated " that he would return from Prescott, and at York his return " was so confidently expected, that the attorney general delayed " the trials for some days, avowedly to wait for his Lordship's " arrival, which, however, did not take place. Procrastination " had been carried to the utmost admissible limit. The Earl of " Selkirk shrunk from the investigation of his own charges, and " fled from the legal consequences which he well knew would " follow their refutation. The trials proceeded: all the persons " present to meet the charges were acquitted, and the judge " who presided at the trial of the gentlemen whom his Lordship " had arrested and treated with such indignity at Fort William,

" declared

Chief as aforesaid, was pleased to give his answer to the said Memorial, of which answer the copy marked B, and sub-

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" declared in his charge to the jury, that *there was not a scintilla* " *of evidence against any of them.*"

" In the course of these trials, it was fully established in the " evidence for the defence, that the disturbances in the Indian " Territories had commenced with the aggression of the servants " and adherents of the Earl of Selkirk, the progress of which " was proved as far as the Court would receive evidence upon " points not immediately before them, by which it will appear " that the case stated by the North West Company while smart- " ing under unexampled oppression and praying for redress, was " only such as they have subsequently made out in evidence in a " Court of Justice. The opposite character of the statements " which have been so industriously circulated against the North " West Company, is thus rendered equally manifest, and it ex- " cited the astonishment of the Court, and of the public, to find " so weak a case made out for the prosecutor, after the aggra- " vated accusations which had been given to the world in the " shape of pamphlets and ex parte affidavits. In short, your " memorialists have no hesitation in affirming, that it became " manifest to all impartial persons, that the charges against the " North West Company had been founded upon artful misre- " presentation, and supported by direct perjury, and that the " object of the Earl of Selkirk in which he persevered, till a re- " gard for his own safety induced him to abandon it, had been " to ruin by legal prosecution these persons, whose property and " trade had been rescued from his grasp, and protected from his " violence by the Prince Regent's proclamation of the 3d of May " 1807."

" Your

subjoined to the said herein beforementioned copy marked A, is a true copy, as this deponent verily believes, having

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" Your memorialists have always been aware that ever since " the commencement of the Earl of Selkirk's connection with " the Hudson's Bay Company, his real object has been to ob- " tain the monopoly of the fur trade, and, under the mask of " colonization, to introduce into the interior country, such a " physical force, as should enable him to enforce the exclusive " rights claimed by that Company, and to expel the North West " Company their rivals in the trade. At the recent trials at " York, the Court did not permit the production of any docu- " mentary testimony anterior to the proclamation of Mr. Miles " Macdonell, the pretended governor of Ossiniboia, dated Janu- " ary 1814, and therefore the evidence failed in fixing the origin " of the disturbances which ensued, upon the Earl of Selkirk in " person, farther than by implication, as the case was clearly " established against his servants, who must have acted under his " instructions; but if your memorialists had been permitted to " go two years farther back, they could have clearly traced the " plan to the Earl himself; and they humbly submit to your " Grace, a copy of one document which they wished to produce " for this purpose, namely, an original letter of his Lordship's " dated in 1812, in which this nobleman, who assumes the cha- " racter of a disinterested and philanthropic founder of colonies " appears in his true colours, as a competitor for the advantages " of the fur trade, and cooly devotes to a lingering and miserable " death, any of his fellow creatures who shall presume to thwart " his views, or to oppose his pretensions. The order to destroy " the houses and fuel of the Canadian traders in a climate where " the cold is so intense as frequently to freeze mercury, and to

having seen and perused the original thereof. That a written notice from Charles Marshall, Esquire, Solicitor General of Lower Canada, was given by him to the said William McGillivray, and came by post to him at Montreal, on or about the 26th of May last past, and this deponent saw it then at Montreal aforesaid, in the hands of

marked

" seize their nets in a country where fish forms their sole subsist-
" ence during the winter, evinces such hardened depravity of
" mind, and cruelty of disposition, that your memorialists could
" not expect it to be believed on any less authority than the evi-
" dence of his Lordship's own hand, which they will produce
" for your Grace's satisfaction, but the letter they must retain to
" be brought forward in the courts of justice in England."

The memorial then goes on to state the various legal proceedings till then had in the Courts of Lower and Upper Canada; and, expatiating upon the unnecessary measure of warrants being issued against parties who were constantly in attendance, or on their way seeking their trials, proceeds to make an offer, that " if
" any individuals connected with the North West Company shall
" be selected by the crown lawyers as persons against whom
" there is fair and reasonable ground of accusation, your memo-
" rialists will use every effort to procure such persons for trial,
" and any of their partners they will absolutely engage to pro-
" duce."

The memorial concludes with a short recapitulation of Lord Selkirk's projects and manœuvres, his persevering malignity and
" inveterate enmity towards the North West Company, in devis-
" ing means of continued persecution from proceedings which
" are now proved to have been from the beginning, malicious,
" vexatious, and unfounded," and finally prays for a special Court of Oyer and Terminer in the words,—quoted page 13.

the said William McGillivray, of which notice the copy

marked C, and also subjoined to the said herein before-mentioned copy marked A, is a true copy, to the best of this deponent's knowledge and belief. (2) And this deponent upon his oath aforesaid, further saith, that upon the receipt of the said notice from the said Solicitor General, and in consequence thereof, a meeting of the agents of the said North West Company soon afterwards took place at the city of Montreal, to advise and consult touching the course to be followed by the said North West Company in consequence of the said notice. That it was then determined by the said agents of the North West Company that the partners and servants of the said North West Company, who were said to have committed crimes and offences in the said Indian Territories, and particularly John Duncan Campbell (3) and Alexander McDonell, both partners in the North West Company, should, if possible, come to Quebec with their respective witnesses, and be ready to take their respective trials in the Court of Oyer and Terminer which was to be holden at Quebec on the second of November next; and that measures should be taken to provide substitutes in the room of such partners and servants during their absence

(2) The letters of 3d Feb. and 21 May here mentioned, as well as those subsequently referred to of the 20th of June, and 5th of October, appear, pages 14, 15, 16 and 19.

(3) Mr. J. D. Campbell and others who, in pursuance of the notices given, were voluntarily on their way from the interior country in order to have their trials, were forcibly taken in June last by the people of the Hudson's Bay Company (as appears by the indictments for assault and false imprisonment mentioned pages 4 and 5,) and carried round by Hudson's Bay, where they were detained a considerable time, and by having been conveyed by that circuitous route, they did not reach Montreal till the 30th of November, whilst otherwise they would have presented themselves with the other gentlemen at the Court of which the proceedings are here reported.

absence from the trading posts of the said North West Company on such their voyage to Quebec, which measures were in consequence immediately taken, as far as the same were practicable; and this deponent further saith, that he was personally present in the Court of King's Bench held for the cognizance of crimes and offences at Montreal, in the month of March 1818, and that he then heard Norman Fitzgerald Uniacke, Esquire, Attorney General of Lower Canada, publicly say and declare in his place in Court there, that no impartial Jury could be had in the district of Montreal for the trial of the crimes and offences committed in the Indian Territories, and that he would not voluntarily bring any persons to trial for such crimes and offences in the district of Montreal, and that he would give his opinion to that effect to the Governor; and this deponent further saith, that from that open declaration of the Attorney General, it was thence forward bona fide believed by this deponent and the other agents of the North West Company, as he verily believes, that no trials would thereafter be had at Montreal for any crime or offence said to have been committed in the Indian Territories, either by the partners and servants of the North West Company, or by the Earl of Selkirk or his servants; and this deponent further saith, that certain bills of indictment had previously been found in the said Court against John Spencer, Colin Robertson, and other servants of the Earl of Selkirk, for certain crimes and offences alledged to have been committed by them in the said Indian Territories, upon which bills, such of the said

said persons thereby accused, who had appeared thereto, had respectively filed pleas to the jurisdiction of the said Court, and that the said pleas were never brought to a hearing, or in any wise proceeded upon by the law servants of the crown. That bills of indictment were found in the said Court in the same month of March, 1818, against divers servants of the Earl of Selkirk, for crimes and offences supposed to have been committed by them in the Indian Territories, that is to say, against Colin Robertson, John Bourke and Michael Heden, for a riot and false imprisonment, against John Spencer and Miles Macdonell, as accessaries before and after the fact, to grand larceny; against Michael Macdonell and Miles Macdonell, as accessaries before and after the fact, to grand larceny; against Colin Robertson, John Bourke, Michael Heden, Martin Jordan, Michael Kilbride and Hugh McLean, for stealing in a dwelling house above the value of forty shillings; and against Miles McDonel, for an assault and battery, which several indictments were not proceeded upon in the same term of March, having been found towards the close of that term. And this deponent further saith, that a Court of Oyer and Terminer and general Gaol Delivery, being holden at Montreal aforesaid, in the month of May in the same year, the said attorney general Norman Fitzgerald Uniacke, Esquire, intimated to David Ross, Esquire, of counsel for the said North West Company, on the 9th day of that month, that if new bills of indictment were not preferred by the said North West Company in that Court of Oyer and Terminer, and found against said Colin

Colin Robertson, John Bourke, Michael Heden, John Spencer, Miles Macdonell, Michael McDonell, Martin Jordan, Michael Kilbride, and Hugh McLean, during the sitting of that Court, he, the said Attorney General, would enter a noli prosequi in each of the said several indictments found in the said Court of King's Bench in the month of March then last past, and that this information having been communicated to the agents of the said North West Company, the said William McGillivray, principal agent of the said company as aforesaid, wrote and sent to the said Attorney General, and also to the Solicitor General of this province of the 11th of the same month, certain remonstrances in writing, bearing date the same day, and directed to the said Attorney General and Solicitor General, of which remonstrances a true copy is hereunto annexed marked D. And this deponent further saith, that the facts stated and set forth in the said written remonstrances, and each and every of them, are true to the best of this deponent's knowledge and belief. And this deponent further saith, that on the 16th day of the same month of May, the said Attorney General did file a noli prosequi in and to each of the said several bills of indictment so found in the said Court of King's Bench in the month of March aforesaid. And this deponent farther saith, that on the second day of June of the same year, the said William McGillivray wrote to his Excellency Sir John Coape Sherbrooke, then governor in chief of this province, the original letter, of which a true copy marked E. is subjoined to the said remonstrance D. and at the same time sent to the said

said Sir John Coape Sherbrooke, a copy of the said remonstrances. That in answer to the said letter, the said Sir John Coape Sherbrooke wrote and sent to the said William McGillivray, the letter of which a true copy marked G. is also subjoined to the said hereinbefore mentioned copy of remonstrances marked D. and also sent to the said William McGillivray, with the same letter on or about the 23d of the same month of June, copy of a letter or report from the said Attorney General, bearing date the 19th of the same month, and of which a copy marked F, is also hereunto annexed, subjoined to the aforesaid remonstrances. And this deponent further saith, that afterwards on or about the 3d day of October of the same year 1818, the said William McGillivray wrote and sent a letter to Lieutenant Colonel Ready, civil secretary to the Duke of Richmond, then governor in chief of this province, to be laid before the said Duke of Richmond, with certain remarks in writing inclosed for that purpose with the said letter, and of which letter and remarks copies marked H. and I. are also subjoined to the said copy of remonstrances hereunto annexed marked D. And this deponent further also saith, that the said remarks in writing are a true and correct statement of the facts therein stated to the best of this deponent's knowledge and belief. And further, that on or about the eleventh day of October of the same year, the said William McGillivray received from the said Lieutenant Colonel Ready in answer, a certain letter dated the 9th day of the same month, and of which a true copy marked J. is also subjoined to the said copy

of remonstrances marked D. hereunto annexed (4.) And this deponent further saith, that he is credibly informed, hath good and sufficient reason to believe, and doth in his conscience verily believe, that warrants have been issued at Montreal in the summer of the year 1818, for the apprehension of a large number of partners and servants of the North West Company and others, at the suit of the Earl of Selkirk, and that the said warrants have been directed to, and are to be executed in the Indian Territories by divers servants of the said Earl, and other persons partial to his interests, and personally hostile to the said North West Company; and that the said warrants have been sent into the interior of the Indian Territories, there to be carried into execution and effect. And this deponent further saith, that he hath seen one of the said warrants at Sandwich, in the hands of one James McIntosh, then in the service of the Earl of Selkirk, which warrants, signed by Frederick William Ermatinger, sheriff of the district of Montreal, was directed

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(4) These remonstrances to the Crown and to Government with the Attorney General's report, and remarks on that report form a series of bulky documents containing for the most part a recapitulation of the matters, the main substance of which is interwoven in the preceding pages, and it is not therefore deemed necessary to insert them here.

rected to the best of this deponent's recollection and belief, to one Robert Dickson, one John Law, one Duncan Graham, one Louis La Freniere, one Louis Gagnon, one Patrick Corcoran, and the said James McIntosh, and commanded them to apprehend and take the Honorable William McGillivray, Archibald Norman McLeod, Duncan Cameron, John Dougald Cameron, Alexander McDonell, John Duncan Campbell, James Leith, John McLaughlin, John Thomson, Hugh McGillis, Archibald McLellan, John Haldane, James Hughes, Thomas McMurray, Daniel McKenzie, John McDonald, Allen McDonell, James Grant, Seraphim Lamar, John Siveright, Simon Fraser, Cuthbert Grant, William Shaw, Peter Pangman dit Bostonais, Alexander Fraser, Michel Bourassa, Thomas McKay, Robert Montour alias Bonhomme Montour, Charles Hesse, Paul Primeaux, François Deschamps, Antoine Hoole, François Hoole, Louis La Certe, George Campbell, Hugh Swords, James Golden, Laughlin McLean, Theodore Misani, and Charles Brumby—all which warrants are issued against the said partners and servants of the said North West Company, for certain crimes and offences laid to their charge by the said Earl of Selkirk, and said to have been committed in the said Indian Territories.

(Signed) H. MACKENZIE.

Sworn at Quebec, this 28th day of October, 1819,

Before me,

(Signed) ALEXIS CARON.

II.—General Affidavit of Archibald Norman McLeod, Esquire, in behalf of himself and others, detailing the time and manner of receiving the different notices from Colonel Ready and the Solicitor General, and of the applications made to Government for a Court.

III.—General affidavit of James Leith, Esquire, on behalf of A. N. McLeod, Esquire, and others, to the same effect as Mr. McLeod's.

IV.—Affidavit of Archibald Norman McLeod, Esquire, on his own behalf, stating that, being at Brussels in July 1818, he received intelligence of bills of indictment having been found against him in Canada, detailing his prompt departure from Europe to meet those charges, his finding on his arrival that Lord Selkirk had fled to England, that the trials in Upper Canada were over, and that even had he been there he could not not have been tried; his following Lord Selkirk back to England, his second return and arrival at Montreal in May 1819, proceeding to state, "that immediately on "the deponent's arrival at Montreal, he was informed "that a bench-warrant had been issued against him, "directed to the sheriff of the district of Montreal, and "thereupon the said deponent went and surrendered "himself up to the said sheriff and in consequence enter-"ed into a recognizance on the 15th day of the said "month of May, before the Honorable James Monk, "chief justice of and for the said district of Montreal, "for his appearance when and wheresoever he might be "legally required," stating also that he had made the necessary preparations for procuring the attendance of his witnesses, that they were now in person at Quebec, and that several of them had been brought from the

Indian

Indian Territories from a distance of several thousand miles; and further, that he had in conjunction with Mr. Leith, presented his memorial to his Honor the President, which produced the letter of Colonel Ready in reply, dated the 5th October, inserted in page 19.

V.—Affidavit of James Leith, Esquire, on his own behalf, stating his having given bail at Red River to the Hon. W. B. Coltman, special commissioner, in September 1817, to appear in the Court of King's Bench at Montreal; that he had done so, and that he had there entered into a fresh recognizance to appear at the ensuing term of that Court, and also at any Court of Oyer and Terminer to be held in the district of Montreal, or in any part of the provinces of Upper or Lower Canada, where crimes and offences committed in the Indian Territories may legally be heard and determined; that he had in consequence personally appeared in the Court of King's Bench at Montreal, in every term thereof, and also in the Court of Oyer and Terminer and General Gaol Delivery, held at York in October 1818, and that nothing had been objected against him since his said recognizance in any Court.

VI.—Affidavit of Hugh McGillis, Esquire, on his own behalf that in virtue of a great seal instrument directing his trial for all crimes or offences he might have committed in the Indian Territories to be held in Upper Canada, he had been tried on the 31st Oct. 1818 at York, upon an indictment as accessary to the murder of Robert Semple and acquitted; that no other matter was then or since objected against him on the part of the crown either in that or any other Court of Upper Canada; and that nevertheless a warrant or warrants have been issued a-

gainst

gainst him in the district of Montreal, for some supposed crime or offence alleged to have been committed by him in the Indian Territories previous to the day of the date of the aforesaid great seal instrument.

VII.—Affidavit of Simon Fraser, on his own behalf, to the same effect.

VIII.—Affidavit of John Siveright, on his own behalf, to the same effect.

IX.—Affidavit of Alexander Macdonell, on his own behalf, of which the following is a copy:—

PROVINCE OF LOWER-CANADA.

In the Court of Oyer and Terminer and General Gaol Delivery.

Ex parte ALEXANDER MACDONELL.

Alexander Macdonell of Lesser Slave Lake in the Indian Territories, now at the city of Quebec, merchant, a partner of the North West Company, being duly sworn, deposeth and saith, that on or about the 20th day of May last past this deponent being at Lesser Slave Lake at the distance of more than four thousand miles from this city of Quebec, and having previously heard that great crimes and offences were laid to his charge, and warrants issued at Montreal for his apprehension, he departed from that place with the intention of proceeding to Lower Canada to take his trial if such charges existed, and did accordingly arrive at Fort William the principal depot of the said North West Company, on or about the 14th day of July last, there to consult upon the subject with the agents of the said North West Company. That he had previously met the Honorable William McGillivray, principal agent of the said North West Company, between

between Fort William and Lac la Pluie and had been informed by him that a Court of Oyer and Terminer should be holden at Quebec on the 2d November next for the trial of all crimes and offences alledged to have been committed in the Indian Territories, and the said William Mc Gillivray had then informed this deponent that a notice to that effect had been transmitted to him by the Solicitor General of Lower Canada, whereupon this deponent determined to come to Quebec to take his trial before such Court. That the deponent left Fort William on the 22d day of August last on his journey to Quebec for the purpose aforesaid and brought several witnesses with him from the interior of the said Indian territory. That the distance between Fort William and Lesser Slave Lake exceeds two thousand miles, and that travelling between those two places is extremely difficult, and this deponent further saith that he did personally attend this Honorable Court on the 21st. of October instant, was then and there with his witnesses ready to take his trial for any crime or offence which ought to be laid to his charge and that he was so present in consequence as well of the said information so by him obtained at Lesser Slave Lake, as of his subsequent conversation with the said William Mc Gillivray between Lac la Pluie and Fort William, and also in consequence of a letter from Lieut. Col. Ready, civil secretary to his Honor the President, dated the 5th day of October instant, in answer to the petition presented to His Honor the President of this Province by Messieurs James Leith and Archibald Norman Mc Leod on the second of the same month, which last letter informed the said petitioners that a Court of Oyer

Oyer and Terminer was to be holden at the City of Quebec on the said 21st day of October instant, for the trial of all crimes and offences said to have been committed in the Indian Territories, and required all parties to take their course and seek redress before this Court (5)

(Signed) ALEXANDER MACDONELL.

Sworn at the City of Quebec, this day of October, 1819. Before me

(Signed) ALEXIS CARON.

X.—Affidavit of Archibald McLellan, on his own behalf, that he had been tried upon an accusation of felony and murder in the present Court, on the 15th January 1818, and had been acquitted; that he then had entered into a recognizance for his further appearance to answer to such other and further charge as might be preferred against him. That he has in consequence been been compelled to resort to this province from time to time to prevent his said recognizance from being forfeited; that nothing had since been preferred against him or any matter objected against him in this Court on the part of the Crown, and that nevertheless there are at this time warrants in existence in the Indian Territories for his apprehension on a charge or charges of some supposed offences.

(5) See said letter dated 5th October, 1819. page 19.

FINIS.

WM. GRAY, Printer.