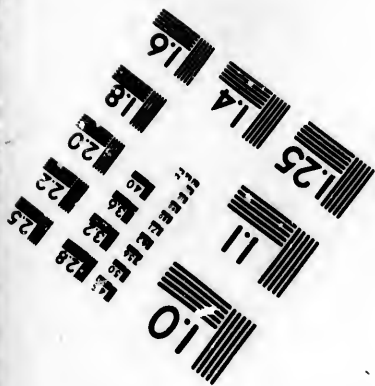
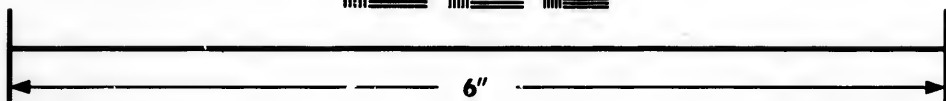
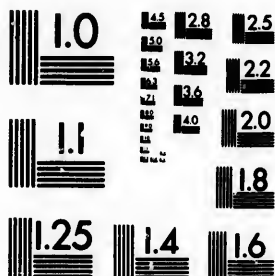


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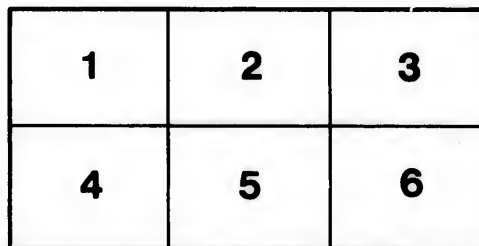
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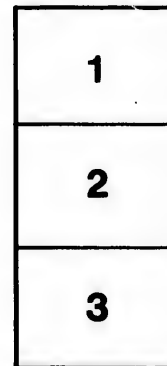
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Major Anderson

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CIRCUMSTANTIAL NARRATIVE

Presented to

OF

J. W. Lawrence Esq

THE TRIAL

by J. H. Anderson

15th May 1827

OF

LEWIS BURNS,

BY A

MILITIA GENERAL COURT MARTIAL,

HELD IN THE

City of Saint John, New-Bruncwick,

ON THE 21ST DAY OF OCTOBER, 1827.

TOGETHER WITH

AN APPENDIX,

CONTAINING

HIS REMARKS ON THE PROCEEDINGS THEREOF:

AND A

RELATION OF THE CIRCUMSTANCES CONNECTED WITH HIS

ARRESTMENT AND SENTENCE.

EASTPORT:

PRINTED BY J. M. QUINCY.

1828

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AMONG the various relative duties which as a Member of Civil Society, man is called upon to perform, none, perhaps, are of more importance, than those which he owes to himself. And, probably, the fulfilment of these, is attended with more serious difficulties than the performance of those duties which he owes to his neighbour.—The Laws of our Country, and the customs and manners of the community in which we live, point out pretty clearly, the line of conduct which we ought to pursue, in reference to the rights and feelings of our neighbour; but, with regard to the exact bound which ought to circumscribe the motives and actions by which we ought to be governed, as relates to ourselves, it cannot be so easily determined.

Our common nature places us all nearly upon a level as to fallibility;—One man may be governed by one passion, and the conduct of another man, may be directed by a passion of a different description, and still, both may be in the wrong; or, at least, they may allow their respective ruling principles to exercise an undue influence upon their feelings and actions.

The different stations in life which we are called upon to fill, also, have their concomitant trials and temptations to be struggled with, and it is to be feared, that few, who, on an impartial retrospect of their past lives, can satisfy themselves, that they have at all times adopted that line of conduct which discretion would have pointed out, had they been disinterested, and judging for others instead of judging for themselves.

UNDER all these difficulties, every man has a right, and it is his bounden duty, to form a judgment of the rectitude of those motives by which he is actuated in his intercourse with

his fellow men.—When he has satisfied his mind on this point, with regard to any particular step he is about to take, he ought from a regard to his own conscience, to proceed in it, disregarding the views which others may be inclined to take respecting it.

BELIEVING that these general preliminary remarks will be admitted as correct, and being fully convinced that every man, in order to maintain his respectability in society must be careful to respect himself, I trust, that no further apology will be considered necessary for my obtruding on the Public notice on this occasion.

IN reference to the late General Court Martial held in this City, and more particularly so, with regard to the manner in which its sentence has been sent out into the world, I conceive I have good grounds for believing, that those who are not acquainted with all the circumstances of my case, may be led to form an erroneous opinion, both of my public and private character.

I THINK, therefore, I am only performing that duty which every man owes to himself, in laying before the Public the Minutes of that Court, together with a narration of the circumstances connected with my trial.

LEWIS BURNS.

Saint John, (New-Brunswick,) 25th February, 1828.

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Minutes of Proceedings

OF THE

COURT MARTIAL, &c.

MEMBERS.

Lieutenant-Colonel CHARLES DRURY, *President.*

Lieutenant-Colonel SIMONDS,	Lieutenant-Colonel HATCH,
Major D. B. WETMORE,	Major ANDERSON,
Major G. MINCHIN,	Major WARD,
Major MOWATT,	Major J. C. VAIL,
Major C. P. WETMORE,	Captain H. FLAHERTY.
Captain R. W. CROOKSHANK,	Captain J. V. THURGAR.

THE Members of Court having taken their seats at the Board, G. F. STREET, Esq. the Judge Advocate, proceeded to read the following Charges, preferred against Captain LEWIS BURNS, by Major B. L. PETERS.

CHARGES.

- FIRST.** For contemptuous and improper conduct as an Officer, in refusing to receive the Muster Roll of No. 1 Battalion Company on the 1st of September instant, when handed to him by the Adjutant of the Battalion, by order of the Major Commanding. He the said Lewis Burns having been duly attached to the command of the said Company by a previous Order for that purpose duly issued.
- SECOND.** For neglect of duty as an Officer, in not taking charge and command of said Company, when duly appointed thereto, and not performing the duties belonging to that Office, as required by the Laws for the organization and regulation of the Militia.
- THIRD.** For disobedience of orders as an Officer, in not ordering or calling out the said Company for Drill and Inspection, in the present year, at the several days and times for that purpose duly named and appointed, under and by virtue of the said Militia Laws.

(Dated) Head-Quarters, Fredericton, 19th of September, 1827.

By Command.

(Signed)

GEO. SHORE, Adj. Gen. M. F.

After the charges were read, the Court was adjourned until next day.

According to adjournment, the Court was re-opened on Wednesday the 7th, at 10 A. M.

A document, said to be a Warrant from the Commander-in-Chief, for holding the Court Martial, was then read by the Judge Advocate. Captain Burns having requested of the Court to be allowed the liberty of perusing the document himself, and this being granted, he, upon reading the same, objected to it, on account of its irregularity; contending, that in terms of the 24th section of an Act passed the 17th March, 1825, entitled, "AN ACT to repeal all the Laws now in force for the organization and regulation of the Militia, and to make further provision for the same," that it is explicitly provided, that any General Court Martial ordered by the Commander-in-Chief, shall be held "by warrant under his hand and seal,"—of which this instrument was manifestly deficient,—nothing in the shape of a seal appearing on its face, except a common wafer.

This objection, however, was over-ruled by the Court; but an exception was permitted to be taken on the point. The Judge Advocate then administered the usual Oath to Lieutenant-Colonel Drury, as PRESIDENT of the Court; and then called forward the other members, for the purpose of being also sworn.—During the course of this proceeding, Captain Burns demanded of the PRESIDENT, that the COMMISSIONS of the different Officers should be produced—this application however was not attended to.

Captain Burns then objected to several members of the Court, on account of their being near relations of Major Peters, the officer by whom the charges were preferred. Upon this the Court was immediately cleared, and upon the re-opening of the doors, this objection was also found to have been over-ruled, and the Judge Advocate declared, that those Members whose names appeared on the list, were eligible to try the cause about to be brought before them. Here Captain Burns openly protested against the proceedings, declared the Court illegal, and immediately left it. In the absence of Captain Burns, however, the Judge Advocate swore in the Members, and the officer in waiting was dispatched to Captain Burns, requiring his attendance at the Court Room;—this requisition, Captain B. peremptorily refused to comply with.

The Court was then adjourned until Tuesday next the 6th of October; and in the interim, Adjutant-General Shore proceeded to Head-Quarters, to lay the state of matters, at this awkward crisis, before the Commander-in-Chief.

Not knowing what representation of the state of affairs, the Adjutant-General might be pleased to make to His Excellency,

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I availed myself of the opportunity of writing to the Commander-in-Chief, by the same Steam Boat which conveyed the Adjutant-General to Head-Quarters;—a copy of my letter is as follows:

Saint John, November 1, 1827.

To His Excellency Sir HOWARD DOUGLAS, Lieutenant-Governor and Commander-in-Chief of the Province of New-Brunswick, &c. &c. &c.

May it please your Excellency,—

As, no doubt, the proceedings of the Body assembled as a Court Martial, in this City, for my trial, will reach your Excellency by this Steam Boat, I humbly beg leave to hand to your Excellency my objections to be tried by that Body.

1st. That by section 24 of the Militia Law, an Officer can only be tried by Warrant under the Hand and Seal of your Excellency. In place of such Warrant, I have every reason to believe, the paper was signed by Adjutant-General Shore, the prosecutor, though, probably, with intimation of its having been so signed, to your Excellency.

2d. That I deny the competency of any man, sitting on this Court Martial, other than a Commissioned Officer, as will be seen by reference to the same section of the Militia Law as mentioned above. In place of Commissioned Officers alone sitting, I find that the President and several of the others, have no Commissions; that the reasons why I object to the sitting of any but Commissioned Officers, are as follow;—1st, that in the late instance of the trial of Captain and Adjutant Forrester, a Militia Officer, at Halifax, it was found, that several of the Officers composing the Court, did not hold their Commissions, upon which the President adjourned the Court until the next day; and such Officers as had no Commissions, were under the necessity of going to the proper Office, paying the fees, and taking them out.

3d. The well known fact of Officers in Nova-Scotia, having prosecuted individuals in their respective Corps, who had not turned out according to Law, having, ultimately, by decision of Civil Courts, had to return the amounts received, with all damages, in consequence of their not having had Commissions; the Law viewing no man as an Officer, who, either himself, or by his Agent, has not taken out his Commission.

4th. The fact of Judge, late President Bliss, the predecessor of your Excellency, in the administration of the Government of this Province, having issued, in the Royal Gazette, a Proclamation, denying the right of any man to appear as an Officer, who had not taken out his Commission.

So soon as these objections are obviated, I am most ready to be tried by a Court Martial, which I earnestly beg your Excellency will grant; but I could not think of submitting my public and private character to be discussed by a body of men, who, in my opinion, were neither, by the legality of their warrant, nor their own qualifications, fitted to try me. I have spent a great part of my life in the British Army, which I left with the highest testimonials in my favor; and I only beg that your Excellency will be pleased to see the law of the land carried into effect, and thereby screen me from private malevolence. If your Excellency should not wish the subject further to be agitated, I am most willing to retire, on my rank being secured to me.

I am,

Your Excellency's most obedient humble servant,

(Signed)

LEWIS BURNS,

Capt. & Adj. 1st Batt. St. John City Militia.

The Adjutant-General having returned from Fredericton on the evening of the 5th, the Court, according to adjournment, resumed its sittings the next day.

At an early hour, the officer in waiting again called on Captain Burns, acquainting him, that his attendance was required by the President of the Court Martial, at the Court Room, that day at 10 o'clock.

Captain Burns attended accordingly, and the charges against him were again read by the Judge Advocate.

Colonel Shore was then sworn, and examined by the Court.

Q. What is your rank in the Militia?

A. I am Lieutenant-Colonel in the Militia, and Adjutant-General of the Militia Forces.

Q. Do you know Captain Burns, and what rank did he hold previous to October, 1826?

A. I know Captain Lewis Burns as a Captain in the Militia since the year 1821, when he was promoted to the rank of Captain in the 1st Battalion Saint John Militia, in the month of August.

Q. What was his rank previous to the 26th October, 1826?

A. Captain and Adjutant—but he has not held the rank of Adjutant since that period.

Q. Have you the order for displacing him as Adjutant?

A. I have not—but, *(here he produced a book)* I now hold in my hand a *Letter Book*, which contains a copy of a letter from me to Major Peters, dated the 26th of October, 1826.

Q. Then is that the order you allude to?

A. It is.

Q. To whom was that order addressed?

A. To Major Benjamin L. Peters.

Q. Will you read that order?

A. I will.

[Here Colonel Shore read the first clause of the letter called by him an order,—a copy of the *whole* of which had been previously transmitted to Captain Burns.]

Adjutant-General Shore, cross-examined by Captain Burns.

Q. Was Major Peters appointed *Commanding Officer* of the 1st Battalion?

A. Major Peters was appointed Major in 1824, and is Major at the present time.

Q. Have you the General Order for his appointment?

A. I have.

[Here Colonel Shore produced the above-mentioned Letter Book, and pointed out to the Judge Advocate something which appeared to be written therein—but he neither read, nor was requested to read, any part of its contents.]

Q. Did not Captain Burns receive the rank of Captain, in order that he might be enabled to take command of the Battalion on drill days, in the absence of Field Officers?

A. Captain Burns was appointed out of the 2d Battalion, Adjutant with the rank of Captain.

Q. Was the order, or letter, part of which you have now read to the Court, for the displacement of Adjutant Burns, published in the Royal Gazette.

A. It was not.

Q. What was the reason of that?

A. Motives of delicacy induced its being suppressed.

[Here Colonel Shore begged the indulgence of the Court to be allowed to sit down, as he had remained four hours on his feet on his cross-examination—leave granted.]

Q. Was Major Peters appointed, by General Order or by Regimental Order, to the command of the 1st Battalion City Militia?

A. Major Peters was appointed, by General Order, to the 1st Battalion, and Colonel Drury was appointed Colonel, at the same time.

Q. How many Captains are there to each Battalion, according to Law?

A. Ten Captains.

Q. Had Captains been appointed to all the Companies of the 1st Battalion, previous to the date at which Adjutant Burns was appointed to it, with the rank of Captain?

A. I do not know—the Commanding Officer of his Battalion knows best.

Q. At whose complaint were the charges, now before this Court, preferred?

A. That of the Commanding Officer of the Battalion, Major B. L. Peters.

Q. Who was Commanding Officer of the 1st Battalion, previous to Major Peters' appointment?

A. Colonel Drury.

Q. Were the charges exhibited against Captain Burns, reported to Colonel Drury before they were sent to Head-Quarters for the information of the Commander-in-Chief?

A. They were not. I believe Colonel Drury did not know any thing of the matter until I sent him the warrant for the trial of Captain Burns.

The Court having sat till four o'clock, the Judge Advocate adjourned it until ten A. M. the following day.

Thursday the 8th, the Court resumed its sittings.

Cross-examination of Colonel Shore, continued:

Q. Did the Commander-in-Chief see the original letter, which you call a General Order, for the removal of Captain Burns from the Adjutancy, or a copy thereof?—Or did the Comman-

der-in-Chief order Captain Burns to be appointed to the command of a company?

Colonel Shore objected to this question, and, after considerable debate, the Court over-ruled its being put.

Here Captain Burns proposed several questions to be put to the witness, relative to his arrest, and the charges preferred against him, which were not answered, and which the Court did not insist on being answered.

Q. Was the complaint contained in the charges made against Captain Burns, by Major Peters, addressed to you or to the Commander-in-Chief?

This question was also objected to, by the Court.

Q. Did the Commander-in-Chief order you to appoint Captain Burns to the command of a company, after he was displaced as Adjutant?

A. He did not.

Major Peters sworn and examined by the Judge Advocate.

Q. What is your rank?

A. Major of the 1st Battalion Saint John City Militia.

[Here the charges against Captain Burns were again read.]

Q. How long have you been Major Commanding that Battalion?

A. Since the 25th October, 1824.

Q. Do you know Captain Lewis Burns?

A. I do.

Q. What Battalion did he belong to?

A. He belonged to the same Battalion as I belong to.

Q. Does he still belong to that Battalion?

A. He does.

Q. What rank did he hold in that Battalion?

A. The rank of Captain and Adjutant, since the 15th of May, 1824.

Q. Has he held that rank ever since?

A. As Captain, but not as Adjutant, having been displaced.

Q. Did you, on the 1st September last, issue a Regimental Order to Captain Burns, to take command of any company?

A. I did not.

Q. At what time did you issue any order, and at what place?

A. On the 11th July.

Q. Was Captain Burns included in that order?

A. He was.

Q. To what Company was Captain Burns attached?

A. He was attached to No. 1 Company.

Q. What rank in the Militia did he then hold?

A. The rank of Captain.

Q. Was Captain Burns furnished (and at what time) with the Muster Roll of No. 1 Company, to which you say he was attached?

A. I directed Lieutenant Roberts, a subaltern officer of that Company, to deliver the Muster Roll to Captain Burns.—A few days after that, I received a communication from Lieutenant Roberts, informing me, that he had forwarded the Muster Roll to Captain Burns, and that it had been returned to him under a blank cover. I then directed Lieutenant R. to make an official report, and to return to me the Muster Roll—which he did. On the 25th August, I issued an order for Captains and Officers commanding, to assemble their respective Companies on Wednesday the 12th and Friday the 14th proximo, for Martial Exercise, and on Monday the 17th of the same month, for Inspection:—requiring, at the same time, commanding officers of Companies to give due notice thereof. On the 31st of August, I enclosed the Muster Roll of No. 1 Company to Captain and Adjutant Robinson, directing him to furnish Captain Burns with it, as he had been attached to that company since July last. I received a return answer from Captain and Adjutant Robinson, that he had attended to that duty, and Captain Burns refused to receive the Muster Roll, unless sent to him officially. Receiving this information from Captain and Adjutant Robinson, I immediately made a report to Lieutenant-Colonel Drury, dated 1st of September, 1827—a copy of which I now have and will read.

[The substance of this report was, that Captain Burns had refused to do the duty of Captain of No. 1 Battalion Company, and that he had consequently appointed Lieutenant Roberts to the command of the same.]

Q. Do you know whether Colonel Drury received the report of which you have now read a copy?

A. A short time afterwards I received a letter from Colonel Drury, directing me to give the command of the company to another officer.

Q. Did Captain Burns take charge of the company, as required of him?

A. He did not.

Cross-examined by Captain Burns.

Q. When were you appointed to take command of the 1st

Battalion of Saint John City Militia, and did you receive your appointment by a General, or Regimental Order?

The Adjutant-General objected to this question, as he said it had been answered previously.

Captain Burns, however, insisted on its being put, and the Adjutant-General's objection was over-ruled by the Court.

A. I considered myself as taking command of the Battalion when I was Gazetted as Major.

Q. At what time was Captain Burns displaced as Adjutant?

A. On the 10th November, 1826, I forwarded a copy of an order to Captain Burns, dated 26th October, 1826, and certified by me as being a true copy of the original.

Here the Judge Advocate read the same clause of this order as had been read by Adjutant-General Shore, on his evidence—the substance of which was, that His Excellency had no further occasion for his (Capt. B's) services in the situation of Adjutant.

Q. Was that a General Order, or a private letter?

A. It was an official communication from the Adjutant-General's Office, dated Fredericton, the 26th of October, 1826?

Q. Did you, after receiving that communication, consider Captain Burns as being an officer in the Militia?

A. I did:—or I should not afterwards have attached him to a company.

Q. Did you, on the first occurrence of a vacant Captaincy thereafter in the Battalion, appoint Captain Burns to the command of a company?

A. The first order I issued after that, for placing officers to their respective companies, and considering Captain Burns as a Senior Captain, I placed him at the head of the 1st Battalion Company.

Q. Did you, on any occasion, state to an officer or officers of the City Militia, that Captain Burns was no longer an officer, and that he could not be considered as such upon public occasions?

A. I did not.

Q. Had you any conversation with Colonel Drury, respecting the appointment of Captain Burns to No. 1 Company, previous to an order having been issued to that effect?

A. I cannot call to mind any particular conversation. I might have had some concerning the subject, but do not recollect when it was.

Q. Do you know whether Captain Burns were put under an arrest in the month of October, 1826?

A. I did not consider him under an arrest, but understood that a communication was addressed to him calling him before a

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Court of Enquiry.—I do not know if it was a Court of Enquiry, but all the Field Officers of the City and County Militia assembled on the occasion, and Captain Burns was called to answer to a complaint preferred against him by the Inspecting Field Officer.

Q. Was the complaint to which Captain Burns was brought forward to answer at the Court you now refer to, made by yourself individually, or in conjunction with the Inspecting Field Officer?

A. It was not made by myself:—nor did I know any thing of it, until I attended at Colonel Drury's House, when Captain Burns denied the charges which it contained, and requested a General Court Martial.

Here Captain Burns stated that he had received from Major Peters, a copy of a letter from Adjutant-General Shore to him, displacing Captain Burns from the situation of Adjutant, the original of which Captain B. requested to be read.—The Court ordered it should be read, and the Judge Advocate read it accordingly. It is as follow :

*Adjutant General's Office, }
Fredericton, 26th October, 1826. }*

SIR,—I am directed by the Commander-in-Chief to desire that you will be pleased to communicate to Captain and Adjutant Burns, of the Battalion of Militia under your command, that His Excellency has no further occasion for his services in the situation of Adjutant.

His Excellency has found himself under the necessity of coming to this decision upon reports from the Inspecting Field Officer and yourself, by which it appears that Captain and Adjutant Burns had not performed his duty in the manner which it was particularly incumbent on him, and appertaining to the proper office of Adjutant to do, but had made use of language calculated to show resistance and disobedience to the orders, and to dispute the authority of Lieutenant-Colonel Love, to instruct and command, as well as to inspect the Militia at their general meetings as directed so to do by His Excellency's orders and instructions, drawn in strict conformity with the Act for the Organization and Regulation of the Militia Forces.

I have the honor to be, Sir, your most obedient humble Servant,

(Signed) GEORGE SHORE, *Adjutant-General M. F.*

Major B. L. PETERS, Commanding }
1st Batt. St. John City Militia. }

I certify the within to be a true copy taken from the original to me directed.

(Signed)

BENJAMIN L. PETERS,
Major Commanding 1st Battalion City Militia.

Captain Burns then requested that this document should appear on the Minutes of the Court,—to this the Judge Advocate objected; stating explicitly at the same time, that he would not insert it in the Minutes of the Court, which should be laid before the Commander-in-Chief—and that, in fact, the Notes or Minutes which he was then taking were not those which would be shown to His Excellency, but that, "A Copy of them would be made out by him for that purpose hereafter."

Q. Do you know whether the General Court Martial which Captain Burns then requested was ever granted him?

A. I know it was not.

Q. Did ever any correspondence take place between you and the Adjutant-General, or between you and the Commander-in-Chief regarding the subject matter of the complaint then laid before the Field Officers at Colonel Drury's house?

A. The impression on my mind is, that no correspondence took place except the official communication which I now hold in my hand, addressed to me by the Adjutant-General, dated the 26th of October, 1826, directing me to communicate to Captain and Adjutant Burns of the Battalion of Militia under my command, that His Excellency had no further occasion for his services in the situation of Adjutant.—The complaint was made by Colonel Love to the Commander-in-Chief, and the communication to which I now allude, is the only one I ever received on the subject.

Here Captain Burns addressed the Court, and begged to bring under their notice, the inconsistency which evidently appeared to exist between the evidence which Major Peters had given, and the tenor of the communication which he (Major P.) had received from the Adjutant-General, and which had just been read by the Judge Advocate. The former goes to shew that Major P. knew nothing of the complaint against Captain B. previous to the meeting of Field Officers at Colonel Drury's house, while the latter manifestly proves that the complaint against Captain B. to the Commander-in-Chief, was made both by himself and Colonel Love.—He, therefore, openly charged Major Peters with prevarication.

The Court was afterwards addressed by Adjutant-General Shore. He stated that it was highly improper for the prisoner Captain Burns to charge an Officer of such *high standing* as Major Peters was with prevarication, and that he did consider it his duty to request of the Court, that the prisoner should not in future take such liberties with an officer of Major Peters' rank.

Captain Burns then addressed the Court, requesting that Colonel Shore should be called to order, when the President told Colonel Shore that the Court were to judge in this case, and would not be directed by him.

Here considerable confusion took place in the Court, arising from the addresses of the defendant and prosecutor.

The Judge Advocate then expressed a wish to be allowed to RE-EXAMINE the last witness (Major P.)

Q. Major Peters,—you stated in your cross-examination by

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Captain Burns the prisoner, that you did not consider him as under an arrest relative to the Court at Colonel Drury's—I want to know if you wish to give any farther information on that subject?

A. I do.—I have before stated that at the time Captain and Adjutant Burns attended at Colonel Drury's, it did appear that it was to answer to charges made by Colonel Love, of the nature of which charges I had no knowledge, until I saw them there.—Some time after that period, in consequence of a communication having been received by me from His Excellency, respecting the charges against Captain Burns, I directed a letter to His Excellency in reply.

Several of the Members of the Court then put the following question—

Q. Did you make any complaint to Colonel Love respecting the conduct of Adjutant Burns at the drill or inspection of the 1st Battalion of City Militia in the year 1826, or soon after the time of the said drill or inspection?

A. I did not.—Certainly no written communication, nor can I recollect of any verbal one.

Question by the Judge Advocate :

Q. Have you had the command of the 1st Battalion since the year 1824?

A. I have.

Major Peters was then directed by the Judge Advocate to withdraw.

Captain and Adjutant George D. Robinson was then duly sworn as a Witness.

[Here the charges against Captain Burns were again read by the Judge Advocate.]

Examined by the Court :

Q. Do you belong to the 1st Battalion City Militia?

A. I do.

Q. What is your rank?

A. Captain and Adjutant.

Q. How long have you held that situation?

A. About three years, but have held the Adjutancy only since April last.

Q. Did you at any time, and when acting as Adjutant, communicate to Captain Burns of your Battalion his appointment to a company?

A. On the 11th July last, I received an order from Major Peters, arranging different officers to their respective companies.—In that order Captain Burns was attached to No. 1 Battalion Company. On the 31st of August I received an order from Major Peters to furnish Captain Burns with a Muster Roll of No. 1 company.

Q. Did you in pursuance of that order present that Muster Roll to Captain Burns?

A. I did.—Upon Captain Burns looking at it he told me Major Peters must send it officially.—In consequence of this answer, I wrote to Major Peters and informed him thereof.

[Here the Judge Advocate banded Adjutant Robinson a paper, and put the following questions.]

Q. Is that the report you made to Major Peters on the occasion?

A. That is my writing.

Q. Does that report contain a correct statement of the transaction?

A. It does.

Q. Do you know whether Captain Burns took command of that or any other company subsequent to that order?

A. He did not to my knowledge.

Q. If he had done so, would not you, as Adjutant, have known it?

A. I certainly should, but Captain Burns might have put up a notice without my knowledge.

Q. Did you receive an order from Major Peters ordering the companies out for drill and inspection?

A. I did.

Q. Did Captain Burns in obedience to that order call out and assemble his company for drill, and in other respects comply with the terms of that order?

A. Certainly he did not appear on the ground to take command of that company on either of the days ordered.

Q. Do you know of his doing any act as captain of a company in obedience to that order?

A. I do not.

Q. Did you receive a letter from Major Peters directing you to order Lieutenant Roberts to take command of Captain Burns' company?

A. I did.

Q. Do you know of any other matters relative to the charges now exhibited against the prisoner, besides those which have already been adverted to?

A. I do not recollect of any.

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Cross-examined by Captain Burns.

Q. Did you not present the Muster Roll (alluded to) on the 1st of September to Captain Burns, in the Public Market Square?

A. I did,—I had been at Captain Burn's Store previously, but he was not in.

Q. On your presenting the Muster Roll to Captain Burns, did he not request you to present his compliments to Major Peters, and to say to him that he (Captain B.) would not receive any paper on Militia business unless it were officially addressed to him by the commanding Officer?

A. He might have done so. I do not recollect.

Q. Did Captain Burns manifest a spirit of contempt towards you, or did you at any time observe him to do so towards Major Peters?

A. I did not.

Re-examined by the Judge Advocate.

Q. Is not the Adjutant of the Battalion the proper channel through which orders are conveyed to officers?

A. I have always understood him to be so.

Q. When you presented the Muster Roll to Captain Burns, did you not do so in the capacity of Adjutant?

A. I did.

Q. Were the orders appointing Captain Burns to the command of a company sent to him through the same channel as the Muster Roll was sent?

A. They certainly were not.—The order appointing Captain Burns to a company appeared in a Newspaper.—The Muster Roll I handed to him myself.

Q. Was the order appointing Captain Burns to a company prior to the date of his being handed the Muster Roll?

A. It was.—The order appeared on the 30th of August, but I suppose that the Printer had altered the date of it, to suit that of his paper.—The order was dated 11th July, and published in the City Gazette on the former day.

Here Captain Burns presented to the Court, a copy of the New-Brunswick Courier, dated 14th July, containing a copy of the order referred to by Adjutant Robinson as having been published in the City Gazette of the 30th of August.—It was headed "MILITIA ORDERS" and signed "by Command, GEORGE D. ROBINSON, Adjutant."

MILITIA ORDERS.

The Officers belonging to the First Battalion City Militia, are attached for duty to the following Companies:

Captain Thomas Barlow,	} Artillery Company.
Lieutenant Thomas T. Hanford,	
„ George Waterberry,	

Captain William Scoullar, Lieutenant Charles Drury, " Alexander M'Grotty,	} Grenadier Company.
Captain Lewis Burns, Lieutenant John J. Roberts, " William Hutchinson,	} No. 1, Battalion Company.
Captain E. Barlow, jun. Lieutenant M. Hennigar, " David J. Merritt,	} No. 2, Battalion Company.
Captain Daniel Jordan, Lieutenant E. J. Jarvis, " W. Y. Theall,	} No. 3, Battalion Company.
Captain James Kirk, Lieutenant N. Disbrow, " E. J. Budd,	} No. 4, Battalion Company.
Captain John Smyth, Lieutenant William Morrill, " Henry Gault, " Daniel Smith,	} No. 5, Battalion Company.
Captain John Kinnear, Lieutenant T. L. Nicholson, " H. N. H. Lurgip,	} No. 6, Battalion Company.
Captain Thomas Nisbet, Lieutenant John Robertson,	} Left Flank Company.
Captain R. W. Crookshank, jr. Lieutenant Thomas M' Mackin, " William O. Smith, " Stephen James,	} Rifle Company.

Royal African Staff, as before ordered.

Agreeably to an Act of the General Assembly, passed on the 19th day of March, 1827, for regulating the Militia, as far as it respects the City of Saint John, Captains and Officers Commanding Companies in the First Battalion City Militia, are hereby required forthwith to furnish Captain James O. Betts, the Regimental Enrolling Officer, with correct lists of the persons belonging to their respective Companies at the time of the last General Inspection, including all persons at that time belonging to their Companies and absent from duty.

In all cases when the number exceed the complement allowed for any one company, the Captain or Officer commanding such company will select the complement to compose their companies, and the remainder shall be considered as unattached but still belonging to the First Battalion, and placed on the Regimental Enrolling Officer's list, or attached to some other company in the First Battalion for duty as the Law directs.

Captains or Officers commanding companies that are deficient in the proper complement of men, may complete their companies from the Regimental Enrolling Officer's list of persons unattached to any particular company of the Battalion, and any persons unattached, may, with the consent of the Captain or other Officer, enrol themselves in any company so deficient in number, until the same is completed.

By Command,

GEORGE D. ROBINSON, *Adjutant.*

Saint John, N. B. 14th July, 1827.

Captain B. then addressed the Court at considerable length, remarking on the irregularity and impropriety of a Junior Officer to appoint him to the command of a company, as an appointment of this kind could only, according to Military regulations, proceed from the Commander-in-chief.

The Court then ordered Captain Robinson to withdraw.

Here the case for the prosecution was closed, and Captain Burns was called upon by the Court to open his defence.

Captain B. then stated that he trusted the Court by this time were well aware of the lameness of the evidence which had been adduced to substantiate the charges, in this case preferred against him by Major Peters; and that, in fact, no such charges should have come before them. He said he was far from being desirous of protracting the business of the Court, or of detaining its members in town by entering upon a lengthy defence, and indeed, from the nature of the charges themselves, he did not see any necessity for his doing so.—He hoped, however, as he had to conduct his own cause himself, without the assistance of Legal or other advice, that the Court would indulge him with a day or two to prepare his defence.

The Court was then cleared. On re-opening the door, the Court informed Captain Burns that he should be allowed until 12 or 1 o'clock on Monday (this was Saturday,) for the purpose of providing the evidence which he intended to bring forward in his vindication.

Here the Court was interrupted by Adjutant-General Shore, whose feelings were evidently raised to a high pitch of irritation. He said he considered it as his duty as prosecutor *ex officio*, to object to the granting of any indulgence in point of time to Captain Burns, as Captain B. had already unnecessarily and improperly occupied the time of the Court and delayed its proceedings.

This conduct on the part of the Adjutant-General induced Captain B. again to address the Court. He expressed his astonishment that the respectable body of officers of which it was composed, would allow themselves to be dictated to, by the prosecutor, after they had already made up their minds to grant him one day's indulgence; he therefore requested that Colonel Shore would be called to order.

The President then told the Adjutant-General, that the Court, not he, must be the judges of their own proceedings.

The Judge Advocate then, with a considerable degree of warmth, said, that he did not conceive that Captain Burns was on any account entitled to any forbearance on the part of the Court, and wished Captain B. to be directed by the Court to proceed upon his defence immediately.

Captain Burns in reply said, that he conceived it highly improper for the Judge Advocate to attempt to direct the Court, or even to give his opinion upon the case at all at that stage of

the business, as he (the Judge Advocate) could be considered as acting in no other capacity than that of Servant of, or Recorder to, the Court.

The Court was again cleared and a considerable space of time was taken up in deliberating with closed doors. On re-opening, the Judge Advocate directed Captain Burns to attend the Court on Monday at 10 o'clock, in order to enter on his defence.

The Court then adjourned.

On Monday at 10 o'clock, pursuant to adjournment, the Court again met, and Captain Burns was called upon to produce his witnesses for examination.

Lieutenant-Colonel Drury was then sworn by the Court, and examined by Captain Burns.

Q. Did you call upon Captain and Adjutant Burns on or about the 9th October, 1826, and state to him that the Commander-in-Chief, in consequence of a complaint having been made to him by the Inspecting Field Officer, Lieutenant-Colonel Love, against him the said Captain and Adjutant Burns, had ordered the Field Officers of the City and County Militia to assemble at Colonel Drury's house for the purpose of investigating the said complaint.—And did you, when you then called, direct Captain and Adjutant Burns to consider himself under an arrest?

A. I recollect having received instructions from the Commander-in-Chief, directing me to assemble the chief Officers of the City and County Militia, in order to take into consideration a certain complaint made to His Excellency respecting the conduct of Captain and Adjutant Burns, by Colonel Love. Having notified those officers to meet at my house, I called on Captain Burns and directed him also to appear at the meeting.—I am not quite certain, but I think it is probable I did say to Captain Burns, that he must consider himself under an arrest from that date. When the Officers met, a copy of the complaint was read to Captain Burns. Captain Burns then asked whether he was to consider the present meeting a Court Martial or a Court of Enquiry—I told him I did not consider it either the one or the other.

He was then asked whether he pleaded Guilty or not Guilty to the charges therein contained. He replied that he would plead Not Guilty—that he did not consider his conduct in reference to the circumstances upon which the complaint was founded as in the slightest degree impeachable, and requested

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that an application should be made to the Commander-in-Chief, to allow him a Trial by a General Court Martial. I forwarded this request to His Excellency accordingly.

Captain Burns was then directed to withdraw.

Q. Did the Commander-in-Chief ever grant that Court Martial?

A. No.

Q. Do you recollect upon Captain and Adjutant Burns having called upon you on or about the 13th November, 1826, reporting to you the communication sent to him by Major Peters. And do you recollect Captain Burns requesting your opinion as to whether the Governor had power to displace him from the Adjutancy of the Battalion without the sentence of a Court Martial?

A. I recollect of such circumstances having taken place, but am not quite certain as to the date. I told him that in my opinion the Commander-in-Chief had power to displace any officer without the sentence of a Court Martial if he thought proper so to do. I even expressed a doubt as to whether Captain Burns could be considered an Officer in the Battalion of any rank after that date.

Q. Did Captain Burns ask you whether you considered him an Officer of your Battalion, and did you not answer that as he had been displaced as Adjutant he could no longer be considered as being attached to the Battalion?

A. I do not recollect precisely, but it is very probable I did tell him that he could not be an Officer of the Battalion if he was displaced as Adjutant; he having held the situation of Adjutant with the rank of Captain.

Examined by the Court.

Q. Did you release Captain Burns from that arrest, under which he was put to answer to the complaint which was preferred against him at the meeting of Officers which took place at your house?

A. I did not.

Q. Did you ever issue an order publicly for Major Peters to take command of the Battalion?

A. No. It is not usual in the service, the next senior officer takes the command.

Cross-examined by the Prosecutor.

Q. Did you issue a Regimental Order for the arrest of Captain Lewis Burns?

A. No.

Q. Is it not customary when an Officer is to be placed under an arrest for the Commanding Officer to issue an order to that effect?

A. No. But I beg leave by way of explanation to answer this question more fully. The meeting of Field Officers at my house appeared to me to be one of rather a novel nature. I recollect that at the close of it, Captain Burns asked me whether he should consider himself still under an arrest. I told him he should until further orders. I recollect also that Captain Burns called upon me at the time he observed in the Newspapers a "MILITIA ORDER" dated the 14th July last, which contained his appointment to the command of No. 1 company, and the opinion I expressed to him on that occasion is still the same, viz:—That he could not be appointed to the command of a company without a General Order from the Commander-in-Chief to that effect.

Lieutenant R. B. D. King, 2d Battalion City Militia, sworn by the Court, and examined by Captain Burns.

Q. Did you in reference to any particular meeting of officers held in this place on or about the month of December, 1826, call upon Captain Burns?

A. I did. If you will allow me gentlemen, I will tell you all about it. I was appointed one of the Managers of a Ball to be given by the Officers of the City Militia on account of the 2d Battalion's having received from England a set of Colours. I asked Captain Burns if he would become a subscriber to the Ball.—He said he would.—Subsequently I had an interview with Major Peters, in the course of which, I mentioned to him the circumstance of my having requested Captain Burns to subscribe to the Ball List, when Major Peters informed me that Captain B. was no longer an Officer—that he was removed from the service.

Cross-examined by the Court.

Q. Captain Burns belongs to the 1st Battalion, why was he requested to become a subscriber to a Ball which appeared to have been given on account of circumstances in which the Officers of the 2d Battalion were solely interested?

A. I must speak the truth, gentlemen. The Officers of the 2d Battalion are poor, and knowing that the Officers of the 1st Battalion were gentlemen could afford ———.

Here the witness was interrupted in giving his evidence by Captain and Adjutant Flaherty of the 2d Battalion, who objected to the question and also to the answer which he was giving; and requested that neither the question nor the part of the

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... was given to it, should be allowed to appear on the face of the proceedings of the Court.

Q. Did Captain Burns request you to bring him the Ball List in order that he might put his name to it?

A. He did not. I had only called upon him for the purpose of ascertaining whether he would sign it, if it were brought to him; and, as I stated before, he said he would.

—♦—

Lieutenant-Colonel Love, sworn by the Court, and examined by Captain Burns.

Q. Were you Inspecting Field Officer of Militia in this Province in the year 1826?

A. I was.

Q. Did Major Peters on the day of General Inspection of the City Militia in the year 1826 make any complaint to you regarding the conduct of Captain and Adjutant Burns?

A. Major Peters did state to me the circumstance of Adjutant Burns having dismissed the battalion on the first day of Drill at an earlier hour than was considered necessary under the plea that the weather was wet and unfit for Drilling. Major P. at the same time expressed his regret that the battalion on this account was deprived of the benefit of my instructions.

Q. Did Major Peters inform you that Captain Burns had endeavoured to dissuade the junior Officers of the 1st battalion from attending the Officers' Annual Dinner, and to breed a party amongst the Officers of the Regiment?

A. I was told, but cannot recollect by whom, that Captain and Adjutant Burns had endeavoured to persuade the junior Officers to absent themselves from dinner. I think Major Peters was present when this circumstance was mentioned: I certainly did not hear that Captain Burns did endeavour to breed a party in the Regiment.

Here Captain Burns closed his case, stating as his opinion, that the evidence of Colonel Drury alone was sufficient to exculpate him from being guilty of the charges for which he had been held under an arrest, and for which he had now stood his trial; and therefore considered it unnecessary to detain the Court by calling any more witnesses.—In the course of Captain B's closing address to the Court he referred to the nature of the evidence which had been brought before it, and also to the circumstances which led to his trial,—a detail of which will appear in the Appendix.

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APPENDIX.

IN order the more satisfactorily to go into the history of the circumstances connected with the proceedings of the Court Martial referred to, in the preceding Minutes, it may not be unnecessary to give the reader a brief sketch of the several incidents which have led to my late standing in the Militia, from the time I joined that Corps as an officer.

In the year 1815, I was solicited by Major JOHN WARD, who then had the command of the Saint John City and County Militia, to accept of the situation of Adjutant, with the rank of Ensign. I complied with this request, and received my appointment from the Commander-in-Chief, accordingly. At this time, and down to the year 1821, the Saint John Militia consisted of only one Battalion. At the latter period, it was, however, divided into two distinct Battalions—one called the City Militia, the other the County Militia: the former was considered as No. 1 Battalion, the latter as No. 2. When this arrangement took place, Major Ward retired, and No. 1 Battalion was put in charge of Major Drury, who had formerly been Captain in the Army,—and No. 2 Battalion, was placed under the command of Major Simonds.

In consequence of my having been previously attached to the old Battalion, as Adjutant, His Excellency was pleased to appoint me, in that capacity, to No. 1 Battalion, with the rank of Captain. This was rather an unprecedented appointment, as no instance, that I know of, exists in the standing army, of an Adjutant holding a rank higher than that of Lieutenant;—this deviation, however, from the general system, was judged proper, in as far as it enabled me to have additional control over the junior officers on drill days.

Shortly after this, the City Battalion was again divided—one part being called No. 1, and the other No. 3. Major Wheeler was appointed to the command of No. 3 Battalion. No other general alterations took place in the Saint John Militia, until the year 1824, when His Excellency Sir Howard Douglas, placed himself Colonel of the first Battalion City and County Militia, and, at the same time, promoted Majors Drury and Simonds.

to the rank of Lieutenant-Colonel. At this time also, the Commander-in-Chief issued a General Order, styling No. 1, a Light Infantry Battalion, and expressed a wish, that the Officers should equip themselves accordingly; which, as the Militia mania raged pretty extensively, was attended to without delay. His Excellency's desire was very much promoted, in this instance, by the appointment of Captain Peters, in 1824, as Major of the Light Infantry Battalion; for, with a zeal, laudable surely in itself, and truly becoming an Officer holding the rank to which he was then promoted, he appeared to spare neither time nor expense, in uniforming himself, and in persuading the Officers under him to do so also.—It is unnecessary here to take notice of the general opinion which now exists, not only in the public mind, but also in the minds of those officers themselves, regarding the wisdom by which they were then directed, as well as the great utility of the measure itself.—One thing is certain, a number of them would not at the present moment allow themselves to be so easily cajoled out of £40 or £50 for a Military dress as they then ordered.

But Major Peters' exertions were not merely confined to outward show, they were applied also to the actual discipline of the Battalion generally—more particularly so, as regarded himself and the other officers.—In 1825 he called upon me, requesting me, as drilling officer, to devote a certain number of hours every week to the instructing of the officers in military evolutions. To this, however, I objected—and I believe, from that moment, an unpleasant feeling was excited in the breast of the Major towards me.—I objected to his requisition on two grounds, namely, that I never understood or acknowledged him to have the *command* of the Battalion,* and, that the loss of time which would be necessary for me to suffer, was neither required by the Militia Law, nor consistent with my necessary avocations.—I might add also; that I could not see what benefit could arise from it, my opinion being, that any temporary drilling is ineffectual, unless in the immediate prospect of going into actual service.

No misunderstanding, however, of an overt description had, at this time, taken place, either between myself and the Major, or between myself and any other officer belonging to the Battalion; and I believe I can appeal to every officer under whom I served, from the time I was appointed Adjutant, down to the month of October, 1826,—that I faithfully attended to the discharge of my duty in that capacity, when the circumstances occurred which led to the Major's making a regular complaint of,

* As he never was Gazetted as Commanding Officer, and, as I knew that Colonel Drury had previously been so.

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what he called, my misconduct, to the Inspecting Field Officer, Colonel Love.—These circumstances I will now relate.

In the month of August, 1826, the City Militia was ordered out, according to Law, for Drill and Inspection, on or about the 6th or 7th of that month:—The 1st Battalion assembled accordingly about eight or nine o'clock in the morning;—causes of a domestic nature prevented Major Peters' appearing on the ground that day: neither did Colonel Drury the Commanding Officer attend the parade—the day was very wet and rainy, but as I was anxious that the opportunity afforded for instructing both the officers and men, should be improved as much as possible, I sent a Sergeant with a message to Colonel Drury, requesting that he would be pleased to give an order for the issuing of arms—I did this repeatedly, but Colonel Drury (very judiciously in my opinion) would not allow the arms to be taken out of the Armory, on account of the weather being so extremely wet.—A general feeling of discontent, also manifested itself in the ranks, both amongst officers and men, at being kept on the ground exposed to the rain,—so much so indeed, that both threatnings and persuasions, proved alike ineffectual in preventing them from running for shelter to the neighbouring houses. After consulting with the several officers commanding companies, regarding the propriety of dismissing the men for that day, we came to the conclusion, that the not doing so, would greatly increase the refractory spirit, which was then generally evinced. I accordingly dismissed them at eleven o'clock. Not only did my feelings on the occasion induce me to do so, but I conceived myself, as Commanding Officer on the ground, fully authorized in taking that step. Besides this, the Commanding Officer, Colonel Drury, approved of my conduct. And if any thing farther were necessary to be brought forward, in exculpation of that day's alledged offence, I might refer to a letter which I received from Major Peters himself, a copy of which is as follows:—

SAINT JOHN, AUGUST 30, 1826.

My dear Sir,

The illness of Mrs. Peters, who is at Gagetown, calls me from the City again in the morning, and I am fearful it will not be in my power to return for Monday's Militia duty, in which case, you will take charge of the Battalion and instruct it in the same movements that were practised last year, and by so doing you will oblige greatly.

Your Humble Servant,

BENJAMIN L. PETERS,

Major 1st Battalion City Militia.

To Captain LEWIS BURNS, *Adjutant.*

On the second day's drill, Major Peters was in Town, and attended the Parade, and, being senior Officer, took command of the Battalion. He assembled the Officers in front of the Battalion, and expressed to them the high sense, which he entertained of the manner in which they had performed their duty,

individually and collectively. And even after doing this, he invited me to his house to partake of some refreshment, where he repeated his sentiments of approbation, and thanked me personally for the assistance and support, which I had afforded him in the performance of my duty, as Adjutant, both upon that and the former drill day.—Even the Inspecting Field Officer himself, did not express any sentiment of disapprobation on account of the men having been allowed to retire from the ground at so early an hour on the first day of drill.—He, also, was at that time acquainted with all the circumstances relative to the transaction.

On the day of the General Inspection, the Battalions were on the ground at the usual hour. After having assembled, they were marched to the Flats for the purpose of being reviewed by the Inspecting Field Officer.—I was then asked by Major Peters whether it would be proper to receive the Inspecting Field Officer under a salute from the Artillery Guns.—I said it would not,—as he did not hold the rank of a General Officer. The Inspecting Field Officer's *Aid*, (if he may be so styled,) Major Wedderburn, on making his appearance, said to Major Peters, why was a Salute not fired on the reception of the Inspecting Officer?—To this question Major Peters seemed rather to be at a loss for a direct answer, being apparently unwilling to hurt the feelings of any party, but at last said, that he had not time to do so,—he having previously understood my opinion upon the subject.

The Inspection having been gone through in the usual way, Colonel Love rode up to me, and said that he understood from Major Peters, that I had dismissed the men on the first day of drill, at an earlier hour than was necessary, and, that I had not appeared, on that day, in full uniform :—With regard to the subject matter of the first part of this complaint, I told him that I, being commanding officer on that day, I only (not Major Peters) was the judge of the proper mode in which the Battalion should be disposed of.—With regard to my not appearing in full uniform, I merely told him that I had uniformed according to Law, and that as he appeared to be ignorant of what the Law required in this respect, my advice to him was that he had better go home and read it.—Even Major Peters himself, who joined us during the course of this conversation, admitted that, as I had appeared on the ground with a sword and belt, the Law did not require any thing more, and, that so far, I was in the right.

Whatever effect this conversation might have had on the feelings of Major Peters, it was evident that on the part of Colonel Love, it did not tend to exalt me in his estimation :—And I believe, that his subsequent orders to the Battalion, will bear me out in this opinion.

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Immediately after this, the three Battalions, then on the ground, were ordered to form a hollow square. This was done for the purpose of publicly reprimanding Captain Kinnear's Company, for having appeared on the ground without their uniform dress on the second day of drill.—The relation of this circumstance, however, is not intended to throw any reflection on the men belonging to that company, there previously having existed between them and their Captain (sanctioned also by the commanding officer of the Battalion) a written contract, that, provided they should have the use of arms, on any particular day in the year on which they might make a request to that effect, they would go to the expence of clothing themselves in military uniform—but as this had been refused them in the absence of Captain Kinnear, by Major Peters, they did not conceive themselves bound to attend drill in any other dress than that pointed out by the Law—neither were they. On this occasion, no officer belonging to the company being present to take command of it, after they were brought in front of the Battalions and reprimanded by the Inspecting Field Officer; the non-commissioned officers were called out in front of the company,—ordered to take off their caps, and to beg Major Peters' pardon,—it being supposed by the Inspecting Field Officer and Major P. that they had been instrumental in preventing the men from wearing uniform on that day. With this order, the non-commissioned officers peremptorily refused to comply; stating at the same time, that if they were sensible of being guilty of any misconduct towards an officer, they were perfectly disposed to make any reasonable apology;—but, as in this instance, they did not conceive themselves to be in fault, they considered any acknowledgment to that effect altogether unnecessary and improper. This order of Colonel Love's, appeared to me to overstep the bounds of the discipline prescribed by the Militia Laws of the Province, and I could not therefore refrain from expressing to the non-commissioned officers of that company, and to the Battalion generally, the impropriety there would be in obeying it. I took the opportunity also, at the same time, of stating publicly there, that I would not give my countenance to such arbitrary measures as the Inspecting Field Officer and Major Peters appeared to be desirous of introducing. I added also, that, that was the last occasion on which I should do the duty of an officer so long as Colonel Love and Major Peters had any controul over the Battalion, unless called so to do in case of an actual invasion. With this I bid the Gentlemen good morning, and left the field.

My observations on this occasion, seemed to have excited feelings of a very unpleasant nature towards me in the breast of the Inspecting Field Officer, and in that of Major Peters; for an

the 9th day of October ensuing, Colonel Drury called upon me, and informed me, that a complaint had been made against me by Colonel Love, to the Commander-in-Chief, on account of my conduct towards him (Colonel Love) on the day of Inspection—the 14th August last; and also, for having dismissed the Battalion at too early an hour on the first day of drill,—that I must therefore consider myself under an arrest, for that His Excellency had given directions for the assembling of the Field Officers at his (Colonel Drury's) house on the 11th, to investigate the complaint. I told Colonel Drury, that as the matter appeared to be assuming an arbitrary aspect, I should require him to furnish me with a written notification to attend the meeting of Field Officers, and also a copy of the complaint to be preferred against me on that day. He accordingly wrote me a note on the 9th, enclosing a copy of Colonel Love's communication to the Commander-in-Chief, containing the complaint against me. The following are copies of these documents:—

SAINT JOHN, 9TH OCTOBER, 1826.

Sir,

A complaint having been made to the Commander-in-Chief, by Lieutenant-Colonel Love, inspecting Field Officer of Militia in this Province, against you. His Excellency has directed the Field Officers of the City and County Militia should assemble on Wednesday the 11th instant, at twelve o'clock, at Lieutenant-Colonel Drury's House, to investigate this matter and to report to him thereon.—You are hereby ordered to attend this meeting.

I have the honor to be Sir,

Your obedient Servant,

CHARLES DRURY,

Lieutenant-Colonel Commanding City Militia.

To Captain and Adjutant BURNS, }
1st Battalion City Militia. }

(Copy.)

SAINT JOHN, SEPTEMBER 26TH, 1826.

Sir,

It is with much regret, I have to make a complaint against an Officer of the Militia, particularly as I have in every instance, except the present, met with the most cordial support from every individual in my endeavours to improve their discipline and appearance; but as it is impossible that I can perform the duty imposed upon me by the Commander-in-Chief if I am subjected to the highly insubordinate conduct I have to complain of; I feel myself called upon to forward through you a request to His Excellency for that support in the due performance of my duty, without which my appointment can be of no use.

Having in conformity with the 54th section of the Militia Law, received His Excellency's instructions to superintend the Drill and Instruction of the Militia, I repaired for that purpose to the parade ground of the 1st Battalion of the City Regiment, but found upon my arrival, that the Adjutant, Captain Burns, had, in the unavoidable absence of the Commanding Officer, taken upon himself to dismiss them, upon the plea as I understood, of the weather being wet, although it was by no means such, as to prevent the Battalion from parading. Upon the General Inspection of the Battalion on the 14th August, on the sands, Major Peters, the Commanding Officer, expressed to me his regret that the Battalion had been dismissed on the day of drill, as it was his intention they should have profited by my instruction. Thinking it therefore my duty to enquire into the cause, of the Law not having been complied with on that day, I addressed myself to Captain Burns, before his Commanding Officer, and received for answer, in the most insubordinate manner, and in the presence of the Regiment, that he as Commanding Officer, chose to dismiss them, not being obliged to keep men out in the wet, adding that he knew the Law as well as I did, had no right to wear uniform unless he pleased, and further he would tell me, that I had no business to be present on

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their private Dill days; had no command over them, my duty being merely to inspect them, when they were paraded for that purpose. This, as far as I can recollect, was the substance of what he said, though I am not quite positive of the exact words, but his conduct was so insubordinate and so officer-like as to draw down the disapprobation of all who heard him, and obliged me to command him to be silent.

It is unnecessary for me to point out to you, the dangerous tendency of such conduct, striking at once at the root of discipline, but will only add, that in addition to what I have been already obliged to call your attention, I was informed that after the parade, this officer not satisfied with the mischief he had already done, endeavoured to persuade the officers, particularly the younger ones of the Battalion, to absent themselves from the annual Dinner, (but without effect) thereby doing all in his power to create a party in the Regiment.

I have the honor to be, Sir,

Your most Obedient,

Humble Servant,

JAMES F. LOVE,

Lieut.-Col. and Inspecting Field Officer.

I attended the meeting of Field Officers on the 11th, the proceedings of which, need not be detailed; as they come out in the course of Colonel Drury's examination; I may however state, that as I observed the very persons with whom the complaint had originated, sitting there, in the capacity of judges or investigators of the same, I objected to the whole affair, as being irregularly conducted, and requested Colonel Drury to apply to the Commander-in-Chief for a General Court Martial. I was accordingly discharged for that day; but was directed to consider myself still under an arrest, until further orders.

Nothing farther transpired, relative to this business, until the 10th day of November, when I received a communication from Major Peters, enclosing, what he called a Militia General Order, The copy of the order appears in the minutes of the Court Martial. The following is a copy of the Major's note to me on the occasion:—

SAINT JOHN, N. B. November 10th, 1826.

SIR,—The Adjutant-General of Militia Forces directs me to acquaint you with a Militia General Order, under date of the 26th of October, 1826, a copy of which I have the honor to enclose.

With respect, I am your obedient Servant,

BENJAMIN L. PETERS,

Major Commanding 1st Battalion, City Militia, St. John, N. B.

To Captain LEWIS BURNS, 1st Batt. }
City Militia, St. John. }

On my receiving the copy of the Adjutant-General's communication referred to in the above note, I considered myself no longer an officer of the Militia; not that I conceived the document in itself regular, it having never been Gazetted as a Militia General Order; but I felt pleased to find that I had something in the shape of an excuse for retiring from the service.—The reader, by referring to the Minutes of the Court Martial, will see that the instrument is only a private letter from the Adjutant-General to his friend Major Peters—and not a General Order.

As appears on evidence in the Minutes, I had a conversation with Colonel Drury regarding this letter; when he stated explicitly to me, that if I considered the order as proceeding from the Commander-in-Chief, I could no longer consider myself an officer of the Militia.* I went away satisfied with this advice or opinion, and never expected to have any thing more to do with militia affairs:—Nor did I hear or see any thing more on the subject, until some time in the month of April, 1827, when I observed in some of the newspapers, a “MILITIA GENERAL ORDER,” which contained the following notice :

Head-Quarters, Fredericton, }
26th March, 1827. }

MILITIA GENERAL ORDERS.

His Excellency is pleased to make the following Promotions, &c. :—

1st Battalion St. John City Militia.

Captain George D. Robinsan, to be Adjutant, vice Burns.

By Command,

GEORGE SHORE, A. G. M. F.

On reading this order, I must confess I was very much surprised—I do not mean to say disappointed, or grieved; but, as Colonel Drury had promised to apply for a General Court Martial, I had always indulged the hope that I should have a fair trial—and the reason why this was denied me, I have never been able to find out. My readers therefore must, like myself, be left to form their own conjectures on taking a general view of all the circumstances connected with this affair. I again called on Colonel Drury, being doubtful whether the Governor himself had power to deprive me of my rank in the Militia, unless by sentence of a Court Martial.—I was fully satisfied, however, from what Colonel Drury said, that he had that power, and of course considered myself from that time as having no connection with the Militia—at all events not as an officer.

In the month of July, however, I observed in the New-Brunswick Courier of the 14th of that month, an *Advertisement*, (a regular order it certainly was not) headed MILITIA ORDERS, and signed “George D. Robinsan, *Adjutant*,” as referred to in pages 17 and 18.

I again called on Colonel Drury, who expressed his opinion to be the same as when I formerly called upon him, and the same also as he gave in his evidence before the Court, viz. that if I were displaced as Adjutant, I could no longer be an officer.†

* I always considered Colonel Drury to be the Commanding Officer of the Battalion, and of course the proper person to apply to in all matters relating to it.

† I told Colonel Drury, I had understood that, though this notice was signed by Adjutant Robinsan, and “by command” also, that the whole matter had originated with Major P. himself.

He then said, that Major P. certainly had not the power to appoint me Captain of a Company in the Militia,—that this appointment rested exclusively with the Commander-in-Chief,—and that, in the end, Major Peters would make himself appear very ridiculous, in having attempted to appoint any one to the command of a Company, who held no rank as an officer belonging to the Battalion.

The circumstances, however, connected with this notification, must not be here overlooked, as they were the fruitful source from whence all the subsequent trouble I have been put to, has proceeded. I feel well convinced, in my own mind, that Major Peters himself was aware, that he could not, under the circumstances in which I was then placed, appoint me to the command of a company. But he had his own ends to answer; and I believe, in this instance, as in other instances also, which have lately been brought to public notice, regarding his conduct when holding an official situation, he shews very little respect for propriety, or regard to principle,—his object generally is, to gain his point, whether it be right or wrong; and that no measure, however arbitrary, should be left unattempted, in order to accomplish it.

It so happened, that Major Peters had a nephew—a thriving sprig of the Law, and practising as Barrister in the Supreme Court. This young man had the management of a Suit in Court, (the nature of which it is not necessary to mention here,) upon which I was summoned as an evidence. He had the wrong side, however, and, with a view, I suppose, of shewing his abilities, employed his caustic powers in throwing out reflections on the conduct of Burns & Jordan. In doing so, he made use of insinuations, which I felt disposed to view in a light, rather bordering on implications against my personal character.—I therefore told him plainly, in open Court, that, so soon as an adjournment took place, I should do myself the pleasure of taking steps of a retaliatory kind—in plain terms, that I would wring his nose.—Whether I faithfully redeemed this pledge or not, it is of little consequence now to say.—I believe the Public are perfectly satisfied upon this point.—These circumstances took place about the month of September.

In the month of September, an order appeared in the City Papers, appointing a Court Martial to be held in this place, for the trial of Major Scott, of the Westmorland County Militia, on the 4th of October next ensuing.—In the interim, however, I received a notification from Adjutant-General Shore, to attend that Court Martial, to answer to certain charges, (a copy of which he enclosed) that would then be preferred against me.

A similar notice was also sent me by the Judge Advocate.—The following are copies of these notifications :—

HEAD QUARTERS, FREDERICTON, }
19TH SEPTEMBER, 1827. }

Sir,

In consequence of the highly contemptuous and improper conduct manifested by you in refusing to receive the Muster Roll of the Battalion Company No. 1, of the 1st Battalion St John City Militia to which you belong, when handed to you by Captain and Adjutant Robinson, by order of Major Peters commanding :—I have received His Excellency's commands to acquaint you, that you are to consider yourself under arrest at large, and to hold yourself in readiness to be tried by a General Court Martial, which is ordered to assemble at Saint John on Tuesday the 30th day of October next.

You will therefore, furnish me, without delay, with the names of such persons as may be required by you, as witnesses in your defence.

Enclosed is a copy of the charges exhibited against you.

By His Excellency's Command,

GEORGE SHORE, Adjutant-General,
Militia Forces.

Captain LEWIS BURNS, }
1st Battalion St. John }
City Militia. }

FREDERICTON, 6TH OCTOBER, 1827.

SIR,

I herewith transmit to you a copy of the charges which have been exhibited against you, and handed to me by Lieutenant Colonel Shore, the Adjutant-General, and on which you will be tried by the General Court Martial, ordered to assemble on Tuesday the 30th day of this month, at Saint John, at eleven o'clock in the forenoon.

I also send you a list of the Members of the Court Martial, any of whom you will have a right to object to, at the time of assembling, for good cause shewn to the satisfaction of the other Members of the Court.

I also send you a list of the witnesses who will be produced against you on the part of the prosecution, and it will be necessary that you transmit to me, with as little delay as possible, a list of any evidence that you intend producing in your defence at the trial.

You will please to observe also, that all witnesses must attend in person, as no affidavits can be received in evidence on either side.

Lieutenant-Colonel Shore, as Adjutant-General of the Militia Forces, will appear as the Prosecutor, by order of His Excellency the Commander-in-Chief.

You will, of course, take care to be in attendance, and in readiness for your trial at the time appointed.

I am, Sir, your most obedient Servant,

GEORGE FREDERICK STREET.

Judge Advocate.

To Captain LEWIS BURNS, of the }
1st Battalion, of the Saint John }
Regiment City Militia. }

On my receiving the above Letters, I was surprised ; having understood, as I have before stated, that in the opinion of the Commanding Officer of the Battalion to which I had formerly been attached, that I was no longer an officer in the Militia Service.—It is true, I had never been released from the arrest which Colonel Drury had directed me to consider myself under, "until farther orders"; but I certainly did conceive, that if any farther orders had been necessary, enough of time had elapsed to allow the appointment of the Court Martial which I had requested, and the bringing forward before it, the charges, which were made against me before the Officers, who met at Colonel Drury's house.

Having read over the charges for which I was summoned to answer at the Court Martial, I found they were quite different.

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from those contained in the complaint preferred against me at the meeting of officers, at Colonel Drury's house.—But the circumstances which I have stated of a family nature between myself and Major Peters, will partly, I believe, account for my being brought forward for trial on this occasion. Major Peters well knew, that notwithstanding the appearance of a MILITIA ORDER in July, I would not retain the appointment of Captain of a company to serve under him; he, therefore, with the view of giving me as much trouble as possible, and knowing that a Court Martial would be held for the trial of Major Scott in October, sent me the Muster Roll of No. 1 company, and upon my refusing to accept it, founded the charges against me, which appeared in the minutes of the Court.

I knew well from the nature of the charges, that the case was one of a frivolous and vexatious kind:—I knew also, that no power existed, that could then compel me to appear at any Court Martial as an officer:—I was well aware also, that the individuals whom I observed notified to be members of that Court, were not competent to try me. But as a great deal of excitement had been created in the public mind, regarding the whole of this business, and, being determined that nothing on my part should appear, that might lead any one to believe, that I wished to avoid a public investigation of my conduct, I *submitted* to be tried.

Having thus given a statement of the circumstances that led to my appearing at the Court Martial, which, at the time it was appointed, was intended for the purpose of trying Major Scott only; it only remains for me now, to make some brief remarks on the characters of the witnesses, and the nature of the evidence given by them.

But, before entering into this detail, it might be well to state, that when the warrant for holding the Court was read, *my name did not appear in it at all*; the impression on my mind therefore was, that the whole of the proceedings instituted against me, was a huddled up piece of business, arising altogether from personal feeling on the part of the Adjutant-General, the Inspecting Field Officer, and Major Peters,—the two former Gentlemen, in my opinion, having been induced by the ingenuity of the latter, to become parties in his cause, and to use their influence and authority, in aiding and assisting him towards the accomplishment of that base, mean, and revengeful design, which had rankled in his bosom, ever since the month of October 1826,—nor has any thing since occurred to alter this opinion.

With regard to Major Shore's conduct on this occasion; I understood that the Court was furnished by him with stationary, requisite for the purpose of minuting down its proceedings. As

I was sensible that the Adjutant-General was well paid from the Province Chest, for any expence he might be at, in the conducting of military affairs, I made a request to the Court, that I also should be supplied with paper, pens, and ink, to be used in conducting my defence; to this, however, the Adjutant-General objected, and, notwithstanding the President having given his opinion that I should be so furnished, they were not allowed me.

This circumstance, though trifling in itself, (for the expence of stationary did not weigh in my mind at the time) convinced me as to the nature of the Adjutant-General's feelings towards me, and, as to the conduct which I might expect from him, during the course of the trial.

It is a matter well known to the Public, that he receives from the Province £100 a year to defray the expences incurred by him in the performance of his duty as Adjutant General,—one part of that duty certainly is, the keeping of a GENERAL ORDERLY BOOK; but it was evident, that whatever he did with his salary, no part of it was expended in furnishing himself with a book of that description. To all men any way acquainted with military affairs, this circumstance will appear rather strange, as the General Orderly Book is the only authentic record which can be referred to, on all occasions, with respect to the names of officers, their rank, appointments, promotions, dates of commission, &c. &c. But however *strange* this may appear, it is nevertheless *true*, that when called upon by me to produce to the Court the General Order for the appointment of Major Peters to the *command* of the 1st Battalion City Militia, he could neither show (although he said he was in possession of it) the original order itself, nor the General Orderly Book containing a copy thereof.

Only one glance at the manner in which the Adjutant-General made his replies to my questions, is sufficient to convince any one, that, he himself clearly saw the point at which I was aiming, and therefore evaded coming to it.—It was, whether Major Peters were appointed or not to the *Command* of the 1st Battalion; this appointment, however, he ingeniously avoided giving any direct evidence about, being no doubt conscious of Major Peters's never having received it.

But neglect of duty, on the part of the Adjutant-General, was not confined to this instance only, in not having provided himself with an ORDERLY BOOK; for, upon his being asked whether, any order for the displacement of Captain Burns, as Adjutant, ever appeared in any newspaper, he answered,—that it had not. Now it has generally been considered necessary to insert all General Militia Orders in the Royal Gazette, and, in fact they are not considered as being put regularly in operation until this

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be done. The Adjutant-General himself, in the course of carrying on his prosecution against Major Scott, declared upon his oath, that Militia General Orders were to be considered valid and sufficiently made public, when they were published twice in the above mentioned paper. Was it not naturally to be inferred from this statement, that if such orders were *not* so published, they could not be considered valid?—The reason assigned by the Adjutant-General for my displacement not having been regularly published, was, that it was suppressed from motives of delicacy. It would really appear that the Gentleman's conduct, from the commencement, was altogether of a *delicate* nature, and that his *delicate* feelings, even up to the present moment, had never forsaken him, for it was at this stage of his examination that he appeared to be so overcome by his *delicate* sensations, (no doubt on my account) as to beg of the Court to be indulged with a chair. Poor man, his legs which I have understood, have assisted in *running*, on several occasions, failed him on this, when only put in requisition to support him in a *standing* posture.

But not only did the Adjutant General's *legs* fail him on this occasion, but his *recollection* also seemed to have gone a "wool gathering," whether amongst the sheep that pastured in the vicinity of *Fort Eric*, on the banks of *Stony Creek*, or among those which wandered along the fertile plains of *Prince Edward Island*, I am not prepared to say. At all events, he did not recollect whether all the Companies of the 1st Battalion City Militia were furnished with Captains or not, and actually referred the Court to the Commanding Officer for information on this subject.—He certainly did not produce any entry in the "ORDERLY BOOK" which could throw any light on the matter. I do not notice this circumstance, as feeling myself personally interested in it; but I think it cannot fail to impress every person enquiring into the circumstances, that the public money of the Province is misapplied and squandered, so far as it regards Militia Officers' salaries.—The very idea, of an Adjutant General's being appointed to manage these matters at Head Quarters—receiving £100 a year, and not being able, on an important occasion like this, to produce a GENERAL ORDERLY BOOK, or the original order itself, nor even to state from his *recollection*, whether the different companies of Battalions were supplied with Commanding Officers or not,—is preposterous.

The next witness brought before the Court, was Major Peters. As I consider him as having been the identical person with whom the charges then preferred against me originated, my readers must excuse me if my remarks upon his evidence should be somewhat lengthy. Indeed, were it not that I now

feel myself pledged to lay before the public, a full statement of the circumstances connected with my trial, I should consider both Major Peters and his evidence, as being unworthy of notice—in fact, almost below contempt itself. His evidence, throughout, is a tissue of fabrications. In order to make this assertion good, I shall notice the replies to the questions put to him, both by the Court and myself, *seriatim*.

Major Peters was asked whether I still belonged to the Battalion of which he was Major? he replied I did. This reply only goes to confirm the statement which I have already given, respecting the motives which operated on the part of the Major in bringing me before this Court; for he must, as well as myself, have previously understood his Commanding Officer's (Colonel Drury) opinion upon this subject. But besides this, it will appear, on a perusal of Lieutenant King's evidence, that he Major Peters, had explicitly stated to him, long before this period, that I (Captain B.) "was no longer an officer,"—and that I "was removed from the service." Now, if we are to attach an equal degree of credibility to the evidence given by Lieutenant King as we do to that of Major Peters, (who by the bye was a person interested,) what are we to think of the flat contradiction which was brought forth between them?

A question put subsequently to the Major by the Court, brought out his ignorance of Military affairs, most confoundingly.—He was asked what rank I held in the Battalion:—his reply was, the rank of Captain and *Adjutant*. Now I will venture to say, that if the records of the Horse Guards, or those of any Adjutant General's Office belonging to the British Government were searched, no officer's name will be found therein as holding the rank of *Adjutant*—the fact is, no such thing is known in the service as the rank of *Adjutant*. If Major P. was not previously acquainted with this, he is now welcome to the information.

The next question put to the Major does not appear to mend the matter, but on the contrary, places it in a more ridiculous point of view.—It was put by the Judge Advocate, who, whatever his abilities may be as a Barrister, seemed to be totally unacquainted with the technicalities belonging to Military tactics.—"Has he held *that* rank ever since? It would puzzle even a Philadelphia Lawyer to understand the object which the learned gentleman had in view, in putting this question; for the youngest drummer of any regiment knows that the term *rank* may be applied to a person holding a Captain's Commission or that of any Subaltern Officer, but can not apply to a person who is an *Adjutant*, although he might be an *Adjutant* with the rank of Captain, or Subaltern. The truth is, a Captaincy or

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Subalterncy is a *rank*, but an Adjutancy is not. The reply to this question is as absurd as the question itself. It evidently shows, that neither did the Judge Advocate and Major Peters understand one another, nor did they understand themselves.—The answer was “as Captain and not as Adjutant.” The question would imply, that the Judge Advocate thought there might be such a thing in the army as a *rank* of Captain and Adjutant, whilst the answer of the Major implies, that there is a rank of *Captain* and a rank of *Adjutant* also.

The next fault (not to give it a worse name) which I shall notice is, that which arises from the inconsistency which evidently appears between the testimony given by Major Peters, and that given by Lieutenant King. The question to which I refer, is “what rank did he (Captain B.) then hold?”—Answer, “The rank of Captain.” It must surely appear to every one to be a mysterious matter, how I could hold the rank of Captain and still be no officer,—that in the opinion of Major Peters I was not an officer, is clearly shewn by the evidence of Lieutenant King.

As the reader will perceive from the Minutes, that I openly charged the Major with prevarication, I feel myself bound, in going through his evidence, to take notice of every incident calculated to bear me out in having done so.

I therefore beg leave to observe, on his cross examination, the inconsistency which again appeared, between his statement and that of Lieutenant King's, respecting whether or not Major Peters considered me an officer.—The question I refer to is—“Did you after receiving that communication (viz. Shore's Letter of the 26th October,) consider Captain Burns as being an officer in the Militia?”—Ans. “I did.”—Having previously remarked on this circumstance, it is only necessary now to say, that the Major, through thick and thin, (and on oath too) appeared determined to support what he himself was sensible was not the fact.

I am aware it must be tedious for my readers to follow me over the same ground so often, but having received such a severe reprimand from the Prosecutor, in reference to this matter, I hope I shall be excused.—Another question was—“Did you, on any occasion, state to an officer or officers of the City Militia, that Captain Burns was no longer an officer and that he could not be considered as such upon public occasions?” Ans. “I did not.”—As Lieutenant King was the officer to whom he did say so, I must refer again to his evidence, in order to satisfy my readers that I had good grounds for charging the Major with wilful prevarication. It is impossible to consider it a mistake, or inadvertency, on his part, after the matter had been so fre-

quently adverted to.—Majocchi's famed "non mi recordo," was child's play, when compared with the Major's "*I did not*."—The Major, however, appears to have had some spice of Majocchi's candour about him, nevertheless—for he entirely forgot whether he had, or had not had, any communication with his Commanding Officer, respecting his appointing me to No. 1 Company.

His ignorance of military matters, as well as his recollection of past events, appears also to have been of a very accommodating nature, regarding the meeting of Field Officers at Colonel Drury's house.—If the evidence given by Colonel Drury be here referred to, the reader will see, that he explicitly declared, that it was not a *Court of Enquiry*.

The next subject matter in the Major's evidence which I shall notice, is, the ingenuity he displayed in endeavouring modestly to decline taking the credit of being a party concerned in preferring the complaint originally made to the Commander-in-Chief against me.—It is unnecessary to dwell on this point.—It will be sufficient to insert the copy of what the Major in his note to me (see page 31) styled a Militia General Order, and which at this time he terms "an official communication." Will the most sceptical, after looking at these things, any longer doubt the fallibility of human nature?—I think not. It is plain we are liable to lose our recollections, and to change our sentiments. A copy of the communication referred to appears on page 31.

I leave my readers to find out for themselves, whether it was a Militia General Order, or an official communication; for my part, I have never conceived it to be either the one or the other.—At all events, if we are to let the Major go clear of the implication of prevarication in this instance, we must necessarily lay it at the door of the Adjutant-General himself, for the words "Inspecting Field Officer and yourself," fly directly in the face of those, "a complaint preferred against him by the Inspecting Field Officer." Whether or not these gentlemen knowing that I was in possession of the letters, previously understood one another, and adopted this plan of getting over the inconsistency, I dare not say.—I however have my opinion on the matter, and leave my readers to form theirs.

In Major Peters' next reply he stated, that he did not "know any thing of it" (viz. the complaint) until he attended at Colonel Drury's house.—Those who can believe this, after reading Col. Love's letter, which I have just referred to, must be possessed of faith of just about as *easy* a description as that of the Major's own recollection is.

Notwithstanding I was rebuked openly for having delayed the business of the Court unnecessarily, I think it will appear to

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every candid person, that my questions were necessary, and pretty close to the point. It was this circumstance, I verily believe, which made the witnesses, particularly Peters and Shore, shew a disposition to be impatient.—It did not suit their purpose to have the *whole* truth pointed out. Regarding whether or not the Major had any correspondence with the Commander-in-Chief, or with the Adjutant-General, regarding the subject matter of the complaint, he evidently appeared embarrassed.—He said “*the impression on my mind is*, that no correspondence took place, &c. &c.” (see the reply itself.) It is a common saying, that consistent story-tellers should have good memories.—I have previously shown pretty clearly, that the Major was not a consistent truth-teller.—If the reader refer to the latter part of his evidence, he will even perceive that he was not a consistent story-teller, for he acknowledges having received communications from the Commander-in-Chief and the Adjutant-General, also.—Here the cloven foot cannot be concealed.—O tempora ! O mores !

I shall conclude the sifting of the Major's evidence by adverting merely to one other question, viz :—

Q. Did you make any complaint to Colonel Love respecting the conduct of Adjutant Burns?—(mark the reply, for it is worthy of the Major.)

A. I did not, &c.

How will this report tally with the statement made in Colonel Shore's letter to the Adjutant ?

In closing my remarks on the conduct of Major Peters, throughout this business ; and in order to shew that he was not governed by any principle, either of honesty or military discipline, I may refer my readers to his letter to me, wherein he states, the impossibility of his attending the Parade, on the first day of Drill, (1826,) in consequence of his having to go to Gage Town, and to the subsequent complaint he made to Colonel Love, for my having dismissed the men at so early an hour on that day. Now, I would ask any man acquainted with the usual state of the weather in Saint John, at that season of the year, could the Major be a judge, he being at Gage Town, whether it was a fit drill day, or not?—and his conduct will appear still more strange, if we take into consideration the expressions of satisfaction, which he subsequently made at my having dismissed the Battalion at the time I did.

But to wind up the history of the Major's conduct, in this instance, for I dare say my readers, as well as myself, are tired of it, I may in conclusion state, that he (Major Peters,) did wilfully, fraudulently, and contrary to the Law of the Province, grant a Certificate in favor of Sergeant-Major Thomas Smith,

certifying, that he had performed the duty of Sergeant-Major to the 1st Battalion for that memorable year 1826. Whilst at the same time; it is well known to the public, that he the Sergeant-Major Thomas Smith, was either in jail, or within the limits thereof. at the suit of the Major's own brother, on the days of Drill and Inspection for that year. The fact is, that I had to appoint Sergeant William Smith, of the Grenadier Company, to act as Sergeant Major on those days—the place fixed upon for Drill and Inspection being at least two miles distant from the Jail. And in order that I may be still farther borne out in my opinion, respecting the defects in the present system of Militia Laws, and their mode of being put in execution, this Certificate of the Major's (which by the bye the Law requires shall be signed only by the Commanding Officer,) which the Major could not be, (he being at the same time in Gagetown,) was the means of procuring, by the Governor and Council, a warrant for the payment of the Sergeant-Major's salary for that year, and which has since been paid to Thomas Smith, by the Treasurer of the Province.

My remarks on the evidence on Major Peters being so lengthily, I do not conceive it necessary, to enter far into that of the other witnesses, as I believe the Major was the sole cause of my being brought into Court.

With regard to the evidence of Colonel Drury, it will appear, evident to any impartial man, that in his opinion, (whether the Court of itself was competent or not,) not even the Governor himself had the power to bring me before this Court for trial, for he did not consider me to be an officer of the Battalion, after having been displaced as Adjutant. And, I should not be doing justice to my own feelings on this occasion, were I to omit stating, that the Colonel's conduct towards me, was consistent and gentlemanly throughout, both with regard to the advice he gave me previous to my trial, and also, as respects the candid and open manner, in which he gave his evidence in Court.—I trust my readers will find no difficulty in forming this conclusion, that, if that dependance, which ought to be placed on Colonel D's evidence be admitted, it will at once destroy the legality of the proceedings from first to last, and invalidate all the evidence, given at the time, either by Major Peters, or by those others whom I suspect, have been induced to lend their aid in prosecuting me at this time.

As to the evidence given by Colonel Love, its inconsistency, expressed in the last clause of the letter which contains his complaint against me, must, to every person, be as clear as the sun shining at noon-day. In the former, he states, upon oath, that he "did not hear that Captain Burns did endeavour to

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to breed a party in the Regiment;" while, in his official letter of the 26th September, 1826, (see page 30,) he says, that I *did* all in my "power to create a party in the Regiment." Any remark upon this, I should conceive, would be offering an insult to the understanding of my readers. Whether I did, or did not, endeavour to persuade the Junior Officers to absent themselves from the Annual Dinner, is now of no consequence. If I had advised them to that effect, and even if some *Field Officers* had been governed by the same advice, the public would not have had their feelings hurt, by hearing that Colonel Love, and his *Aid-de-Camp*. Major Wedderburn, on their return from the Loch Lomond inspection—I do not say, "fell among thieves"—but, either from the arduous toils of the day, or from partaking too largely of those *good things*, offered to people at an "*Annual Dinner*," did certainly fall among burnt stumps, spruce trees, &c. notwithstanding, their having been regularly mounted in Military Field Martial equipment! It was well for them, on that occasion, that Mrs. Tyson happened to keep a tavern near the scene of their disaster, as she, in duty bound, particularly so to persons of their rank, exerted herself to afford them such accommodation, as the nature of their circumstances required. And, as soon as possible after they had partially recovered from their indisposition, being fearful that they could not, even after being again regularly mounted, maintain their seats in the saddle, she, very good naturedly, went and provided an ox and team, to forward them on their *march* to Saint John. It is lamentable to state, that the *Aid-de-camp*, being Secretary to the Agricultural Society, and next day being appointed for a meeting thereof, he was under the necessity, from his exertions in military affairs on the previous day, and the consequent disfigurement of his countenance, to employ a barber's journeymen to paint the same for the occasion, in order that he might, with decency, present his report, and put on "as good a face" as he possibly could, for the purpose of meeting His Excellency the Lieutenant-Governor, to hear his speech—and, no doubt, with a view also of securing the Province grant for £100, next year, for his services as Agricultural Secretary.

With regard to the evidences given by Adjutant Robinson and Lieutenant King, I merely take notice of them, out of respect for those gentlemen; whom I conceive, up to the present moment, to have been totally unconnected with the collision which was evidently entered into, against me, by Major Peters, Colonel Love, and Adjutant-General Shore.

It now only remains for me to notice the remarks, which were published along with His Excellency's confirmation of the sentence of the Court Martial, a copy of which is as follows:

HEAD-QUARTERS, Fredericton, N.
January 30, 1828.

MILITIA GENERAL ORDERS.

At a General Court Martial held at St. John, on the 30th October, 1827, was arraigned Captain LEWIS BURNS, of the First Battalion of the Regiment of Saint John City Militia, upon the undermentioned charges, viz:

First. "For contemptuous and improper conduct as an Officer, in refusing to receive the Muster Roll of No. 1 Battalion Company, on the first of September instant, when handed to him by the Adjutant of the Battalion by order of the Major Commanding. He the said Lewis Burns having been duly attached to the command of the said company by a previous order for that purpose duly issued.

Second. "For neglect of duty, as an Officer, in not taking charge and command of the said company when duly appointed thereto, and not performing the duties belonging to that office, as required by the Laws for the organization and regulation of the Militia.

Third. "For disobedience of orders as an Officer, in not ordering or calling out the said company for Drill and Inspection, in the present year, at the several days and times for that purpose duly named and appointed, under and by virtue of the said Militia Laws."

Upon which charges the Court came to the following decision:

The Court having maturely weighed and considered all that has been adduced in support of the prosecution, as well as what has been brought forward on the defence, are of opinion that the prisoner, Captain Lewis Burns, is guilty of the first charge preferred against him.—And the Court do further find that the said prisoner, Captain Lewis Burns, is also guilty of the second charge preferred against him.—And the Court do further find that the said prisoner, Captain Lewis Burns, is also guilty of the third charge preferred against him in breach of the Militia Law, and of his duty as a Militia Officer, and they do therefore adjudge him the said Captain Lewis Burns to be cashiered.

The Court having performed their duty of awarding punishment in strict conformity to the Militia Law, which deprives them of all discretionary power, beg leave to observe, that although the conduct of Captain Lewis Burns, on the first day before the Court, was highly contemptuous, irregular, and improper, yet since that period his conduct has been regular and correct, and the Court being of opinion that his fault has arisen more from error in judgment, than from premeditated intent to disobey orders, beg leave to recommend him to the favorable consideration of His Excellency.

His Excellency the Lieutenant-Governor and Commander-in-Chief has been pleased to approve and confirm the finding and sentence of the Court.

His Excellency the Lieutenant-Governor and Commander-in-Chief did not fail to take under his consideration, the recommendation which the Court made of Captain Burns through their President to His Excellency's favourable consideration.

Captain Burns having availed himself of the adjourned opportunity afforded to him, of defending himself against the charges which have been preferred against him, the Commander-in-Chief in confirming the finding and sentence of the Court, might not have felt disposed to make any observations on Captain Burns' conduct at the opening of the proceedings; but, brought before His Excellency as an object of mercy, His Excellency is forced to revert to the highly contemptuous, irregular and improper manner in which Captain Burns then conducted himself, as reasons which preclude the exercise of any merciful consideration.

It cannot be imagined that Captain Burns was ignorant of the rules and customs of Military Service, or under any misconception as to its forms and usages.—He is understood to have been trained in the ranks of the British Army, in a station in which he must have observed subordination, respect and due decorum; and in which he should have learnt above all things what is due to the dignity of a Tribunal such as that which he has treated so contemptuously.

His Excellency therefore directs that the foregoing charges preferred against Captain Lewis Burns, together with the finding and sentence of the Court and His Excellency's approval thereof, shall be entered in the General Order Book of every Battalion in the Province, and read at the head of each Battalion and Detachment at their next General Inspection.

By order of His Excellency the Commander-in-Chief,

GEORGE SHORE, Adjutant-General.

With regard to the above General Order, as I have made my remarks ~~freely~~ freely on the conduct of those Officers, who attended the Court Martial as witnesses, 'tis my duty to state, that at least four of the Officers who composed that Court, viz. The President, (Colonel Drury,) Colonel Simonds, Major Anderson, and Captain Flaherty—the greater part of whom, are well known to have seen some service—were opposed to the passing of the sentence above alluded to, as, in their opinion, I was not guilty of any *one* of the charges preferred against me.

My defence was closed at 11 o'clock on the 10th of November, but in consequence of these gentlemen opposing the decision of the Court, for my being cashiered; the business was discussed till 4 o'clock in the afternoon, with closed doors; and, in consequence of this discussion, it was agreed, that in transmitting the decision of Court to His Excellency, the matter should be recommended to his favorable consideration.

Whether this recommendation ever accompanied the sentence of the Court Martial to the Commander-in-Chief, I know not—but if it did, it would appear by the remarks made upon the sentence, and which appear in the above General Order, to have been converted to a purpose, totally different from the intention of the Court.

I have conversed with a number of gentlemen who have previously held, and do now hold Commissions in His Majesty's service, on the subject of the confirmation of the sentence, who, to a man, gave it as their opinion, that in consequence of my being *cashiered*, any remarks, from the Commander-in-Chief, were altogether unnecessary, and highly improper. Had the sentence of the Court been a *reprimand*, the case would have been different, as the reprimand would, of course have appeared in a Militia General Order, and been published in the Newspapers, according to Law; but the above Militia Order appears to contain a *reprimand* AFTER I had been *cashiered*, which is certainly a deviation from all Military discipline which I have ever heard of, in the British Army.

The Commander-in-Chief never had, to my knowledge, any occasion to entertain any personal antipathy towards me; nor do I believe he now entertains any. But, whether he has allowed himself to be imposed upon in this case, from the report or insinuations of the PROSECUTOR *ex officio*, it is difficult to tell. One thing is certain,—I was an Officer in the Saint John Militia, previous to His administration in this Province, and it is not at all unlikely, that when it is placed in other hands, I may be again called upon to accept a Commission in the Provincial Militia, when it will be for me to judge, whether I will accept of it or not.

In consequence of the Militia Act, it is ordered
that His Excellency's order, relative to the reading
to be read at the head of every Regiment, Battalion, and Detach-
ment of Militia in the Province, that His Excellency
will not consider it improper to order the Adjutant-General
to furnish himself with a number of copies of this pamphlet, suffi-
cient to supply one to each Regiment, Battalion, and Detach-
ment; the same to be read at the head of each, on the next in-
spection day. As this measure, if adopted, might be the means
of occasioning an additional expense to the large sum now yearly
expended by the Province, in supporting the dignity and interest
of its military establishment, either His Excellency, or the
Adjutant-General, may have, on application to me, the neces-
sary number of copies, transmitted gratis.

LEWIS BURNS.

ERRATA.

The following errors escaped notice, in correcting, in consequence of my residing at such a distance from the press.

L. B.

- Page 6—2d line from the top, for *7th*, read *1st*.
- 25—13th line from the bottom, for *standing*, read *standing*.
- 26—14th line from the bottom, for *Batation*, read *Battalion*.
- 33—22d line from the bottom, for *management*, read *management*.
- 38—10th line from the top, for *crediability*, read *credibility*.
- 40—2d line from the bottom, for *31*, read *13*.
- 41—21st line from the bottom, for *Shore's letter to the Adjutant*, read *to the Major, see page 13*.
- 43—6th line from the bottom, for *collision*, read *collision*.

