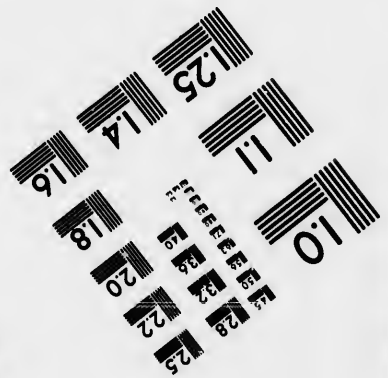
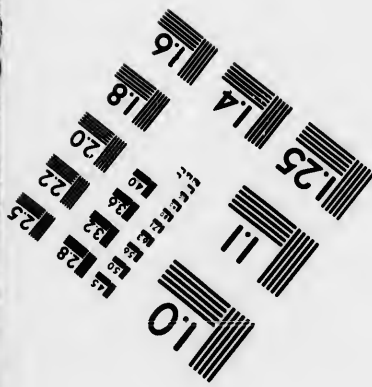
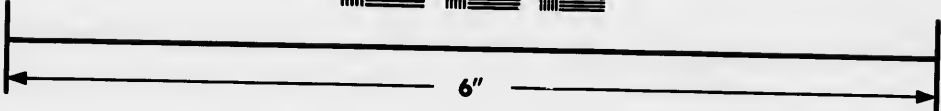
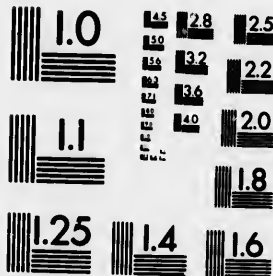


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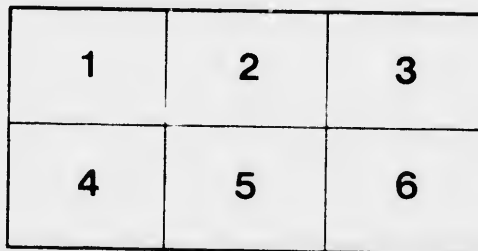
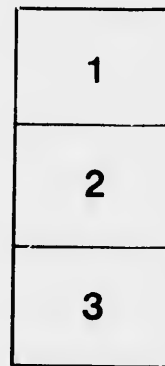
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REPORT
OF
THE TRIAL
OF
EDWARD JORDAN,
AND
MARGARET JORDAN HIS WIFE,
FOR
PIRACY & MURDER,
AT HALIFAX ON THE 15th DAY OF NOVEMBER, 1809,
TOGETHER WITH EDWARD JORDAN'S
DYING CONFESSION:

TO WHICH IS ADDED
THE TRIAL OF JOHN KELLY,
FOR
PIRACY AND MURDER,
ON THE 8th DAY OF DECEMBER, 1809.

Compiled
From Official Documents and Notes of the Trials.

By C. R. FAIRBANKS & A. W. COCHRAN,
STUDENTS at LAW.

HALIFAX, Nova-Scotia :

PRINTED BY JAMES BAGNALL, AT THE NOVATOR
OFFICE, SACKVILLE STREET,

1810.

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MECHANICS

CHAPTER 1

INTRODUCTION

1.1 Kinematics

1.2 Dynamics

1.3 Energy

1.4 Momentum

1.5 Angular Momentum

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TO

His Excellency, Lieutenant-General,

SIR GEORGE PREVOST, BART.

*Lieutenant Governor of the Province of Nova-Scotia,
&c. &c. &c.*

THIS REPORT

OF TWO IMPORTANT TRIALS,

AT WHICH HIS EXCELLENCY PRESIDED,

Is Respectfully Offered,

BY HIS EXCELLENCY'S

Most obedient and Humble Servants,

THE PUBLISHERS:

HALIFAX, 5th March, 1810.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

IN TWO VOLUMES

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SOME time has now elapsed since *Edward Jordan*, whose trial is related in the following pages, has suffered the punishment assigned by the Laws of God and of his Country. for the crimes of which, on that trial, he was convicted--crimes of so atrocious a nature, that, they must appear to surpass the supposed limits of human depravity; but however great may be the abhorrence and detestation, which every man, who has heard the tale of blood, must feel for the monster who caused it to flow in such profusion,--yet the very violence of those emotions will shorten their duration. In a few months the name and the crimes of *Jordan* will only be remembered by the few, whom accident may lead to the spot where his earthly remains are still exhibiting a terrifying example of the end of passions unguided by reason. In a few years, when those remains shall have been mingled with their native dust, even his name will be unknown, beyond the records of the Court which tried him; much less will be remembered the motives that induced the commission of his crimes, or the surprising and providential means by which they were discovered.

To add one feeble evidence, to the innumerable proofs which exist of the interest a Superior Being takes in the transactions of mortals, and to present another example of the punishment, which, in this life, inevitably overtakes the wretch, who, impelled by lawless passion, hath wantonly shed the blood of a fellow creature, were, among others, the reasons, which were thought sufficient for submitting the report of *Jordan's* trial, and that of his accomplice, to the eye of the public.

It is wisely intended by Providence, that the actions of mankind should be made known to each other,--that we may receive useful lessons from the fate of our fellow creatures, and, by reflecting on the incitements to the commission of crimes, learn to avoid them.

Reason tells us that we should observe the conduct of those around us, whether it be good or bad; that we should treasure up the recollection of the former, as a lamp to light and cheer us on the journey of life, and the latter, as a beacon to warn us from approaching, too closely the rocks and shoals which have proved fatal to others.

With this intention we may consider in the life of *Jordan*, his crimes, their causes, and his awful end.

From the brief account of his life, which is annexed to the Report of the trial, it may be collected, that his crimes originated in the sudden irritation of passions, rendered ungovernable by long indulgence, and inflamed by a continued state of intoxication, in which he sought to forget misfortunes brought upon him, perhaps, by his own misconduct. Revolving in his mind his poverty, the distressed situation of his family, the opportunity of retrieving his Fortune, and the hope of obtaining revenge for imaginary wrongs,--he precipitated himself into the dreadful scene of blood and destruction, the subject of this Trial.

When *Jordan* first began his career in the world--when living a domestic, perhaps an innocent life with his widowed mother, and cheering the evening of her days with all the dutiful attentions of filial love,--reason warrants the supposition, that the bare mention of such crimes as *Piracy* and *Murder* would have shocked him. He would then perhaps have confidently asserted, that not all the temptation of wealth, nor the stronger incitements of passion should ever induce him to violate the rights, or take the life of his brother man.

But the progress of Sin is slow, gradual and too often unsuspected even by itself. The steps of guilt are "noiseless and inaudible." It begins with small indulgences, which harmless, as *they may be considered*, are, in reality, the ground work of ruin. The greatest fault, perhaps of human nature, is too much confidence in its own strength: we are too apt to excuse the indulgence of passions, by whispering to our upbraiding conscience, that it is only occasionally reason resigns the reins, but

"Never let man be bold enough to say,
 "Thus and no farther shall my passion stray;
 "The first crime past, compels us on to more,
 "And guilt proves fate, which was but choice before."

Our passions undoubtedly were given us for the noblest purposes, and whoever is conscious of existence, must also be conscious, that every day of his life, he has opportunities of applying them, in some measure, to further the intentions of Providence; but we should always retain in remembrance this truth, plainly deduced from common sense, that, where passion rules and reason is overthrown, the still small voice of conscience is heard no more, and the course to destruction, rapid and inevitable.

These are some of the reflections which the crimes of Jordan should suggest to us;—they are true it must be confessed, but that does not lessen their value or their truth; and it is unfortunate, that, common as they are, we stand as much in need of being frequently reminded of them, as if we seldom heard them made.

When (to use the idea of the worthy Solicitor General) "the finger of Providence is seen, manifestly pointing, throughout the whole transaction, to the discovery and punishment of the offenders." The man whose ways are pure and innocent, however defenceless may be his situation,—however destitute of human assistance, when the hand of murder is raised against his life, feels a confidence that the God of Justice, the Avenger of blood, will not allow the guilty Criminal, even in this life, to pass unpunished. But let the sad example afforded by *Edward Jordan*, that, by whatever means he may try to escape the hand of justice,—by whatever artifices he may for a time "Drive the hell from his bosom,"—yet the day will come, and let him tremble at the thought, when the sleeping Lion will awake, and the stings of Remorse return with redoubled force, to torture his guilty soul,—when "a handwriting shall appear on the wall against him,†" and "he shall find no ease nor rest; for the Lord shall give him a trembling heart, and failing of eyes and sorrow of mind: and his life shall hang in doubt before him, and he shall fear day and night, and have none assurance of his life. In the morning he shall say would to God it were even, and at even he shall say, would to God it were morning;—for the fear of his heart wherewith he shall fear and for the sight which his eyes shall see."

* This forcible expression, we are told, was used, by *Jordan* himself, to the gentleman who took down the Confession, in describing the situation of his mind after the commission of the murder.

† Deuteronomy, c. 28, v. 64-65.

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REPORT OF THE TRIAL

OF
Edward Jordan & Margaret Jordan.

ON Wednesday the 15th day of November, 1809, the Commissioners, named in a Precept* issued under the Great Seal of the Province, for assembling a special Court of Admiralty for the Trial of Piracies, Felonies, and Robberies committed on the High Seas, met at the Court House in Halifax, when there appeared on the Bench :

His Excellency SIR GEORGE PREVOST, Baronet, Lieutenant Governor and Commander in Chief in and over His Majesty's Province of Nova-Scotia, and its Dependencies, &c. &c. &c.—PRESIDENT.

The Right Honorable SIR JOHN BORLASE WARREN, Baronet, K. B. and K. C. one of His Majesty's most honorable Privy Council for the Kingdom of Great Britain, Vice Admiral of the White, and Commander in Chief of all his Majesty's ships of War on the coast of North America.

The Honorable SAMPSON SALTER BLOWERS, Esqr. Chief Justice of the Province, and President of his Majesty's Council for the same.

The Honorable JOHN BUTLER BUTLER, Esquire,

The Honorable ANDREW BELCHER, Esquire,

The Hon. MICHAEL WALLACE, Esquire,

The Hon. EDWARD BRADAZON BRENTON, Esqr.

The Hon. CHARLES HILL, Esquire,

The Hon. RICHARD JOHN UNIACKE, Esquire,

The Hon. CHARLES MORRIS, Esquire,

Members of his Majesty's Council

ROBERT LLOYD, Esquire, Commander of His Majesty's ship *Guerriere.*

JOHN CONN, Esquire, Commander of H. M. ship *Swiftsure.*

*See, Appendix No 1.

6 TRIAL OF EDWARD AND MARGARET JORDAN.

The Right Honorable LORD JAMES TOWNSEND,
Commander of H. M. ship Æolus.

JOHN SIMPSON, Esquire, *Commander of H. M. ship La Furieuse.*

SAMUEL HOOD GEORGE, Esquire, *Secretary of the Province.*

THOMAS NICHOLSON JEFFERY, Esquire, *Collector of the Customs for the Port of Halifax.*

CROFTON UNIACKE, Esquire, acted as Registrar of the Court, under a special Commission, appointing him to that office.

His Majesty's Commission, under the great Seal of the Admiralty of England, issued pursuant to the statute of the 11th and 12th of William 3rd, appointing certain Persons, therein named, Commissioners for the Trial of Piracies, Felonies, and Robberies, committed on the High Seas, and bearing date the 30th of October 1784, was read; after which the Commissioners names were called over by the Registrar, and His Excellency the President having first taken the oath* prescribed by the aforesaid Statute, administered it to the other Commissioners except the Hon. *Andrew Belcher*, Esq. who, being an underwriter on the Schooner *Three Sisters*, declined taking the oath, and withdrew.

The Registrar was then sworn, by the President, to perform the duties of his office; after which he read the Precept, which had been issued to *Jones Fawson* Esq. (who had been appointed *Provost Marshall*) for summoning the Commissioners, and the return thereto. The Court was then opened by Proclamation.

The Commissioner's names having been again called over; *JAMES STEWART*, Esq. *His Majesty's Solicitor General for the Province*, who, together with *Foster Hutchinson*, Esq. conducted the prosecution, delivered to the Registrar, Articles of Allegation against *Edward Jordan*, and *Margaret his wife*, wherein they were

* See Appendix No. 2. — *Richard John Uniacke*, Esq. *Attorney General of the Province*, had taken his Seat on the Bench, as being a Member of his Majesty's Council.

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TRIAL OF EDWARD AND MARGARET JORDAN 7

charged with *Murder, Piracy, and Robbery*, committed on the high seas.

The Registrar read the Allegation which contained six articles, viz.

The *First* charged, That *Edward Jordan*, late of Gaspé, in the Province of Lower Canada, Dealer, on the 13th day of September, in the 49th year of the King's reign, feloniously, wilfully, and of his malice aforethought, did kill and murder one *Thomas Heath*, a seaman belonging to the schooner *Three Sisters*, whercof *John Stairs* was then Master, with a Pistol, on board the said schooner, and on the high seas, where the Admiral or Admirals have power, authority, and jurisdiction; and that *Margaret Jordan*, the Wife of the said Edward Jordan was, then and there, aiding and assisting the said E. Jordan to commit the aforesaid murder.

The *second* article was the same as the first, except that it charged the murder to have been committed with an *axe*,

The *third* article charged the Prisoners, in the same manner as the first, with the murder of *Benjamin Matthews* a seaman belonging to the said schooner, with a *pistol*.

The *fourth* was the same as the preceding, except that it laid the murder to have been committed with an *axe*.

The *fifth* article charged that the prisoners, wickedly confederating with one *John Kelly*, to turn Pirates and Robbers, and to run away with the said schooner *Three Sisters*, under the command of one *John Stairs*, did in pursuance of the said confederacy, on or about the 10th day of September in the year aforesaid, embark at Gaspé, in the said schooner, as passengers, and being so embarked, did, on or about the 13th of September in the year aforesaid, *piratically and feloniously* take the command of the said schooner from the said *John Stairs*, against his will, and having compelled him to leap into the sea, did, *piratically and feloniously*, run away with the said schooner and her cargo, and convert the same to their own use, against the statutes in that case made and provided.

The *sixth* article charged the prisoners, *generally* with having *piratically, and feloniously* stolen, taken, and run away with the said schooner and her cargo, against the will of the said *John Stairs*.

The Allegation being read, the Registrar was directed to issue an order to the Provost Marshall, to bring up the Bodies of Edward Jordan and Margaret Jordan; the order being delivered to the Provost Marshall, he returned, that he had the Prisoners ready in Court; He was then directed to place them at the Bar, which being done, they were arraigned by the Registrar upon the foregoing Allegation, to which they severally pleaded *Not Guilty*, and being asked when they would be ready for their trial, they named the following day.

8 TRIAL OF EDWARD AND MARGARET JORDAN.

President.—"Prisoners if you have any Witnesses, whom you wish to appear on your behalf, you will now give in their names that they may be summoned to give their attendance."

Margaret Jordan named William Crewe and John Pigot as Witnesses on her behalf.

President.—"Prisoners, the articles upon which you have been arraigned are plain matters of Fact, but that you may not complain of any hardship, the Court will order a copy of the articles, exhibited against you, to be delivered to you, and will allow any Gentleman of the Bar, whom you may think proper to employ for your assistance, to offer any matter of Law to the Court in your behalf upon your Trial."—The Prisoners named Lawis M. WILKINS and S. R. ROSE, Esquires, for their Counsel. They were then remanded to the custody of the Provost Marshall, and the Court adjourned until Thursday at eleven o'clock.

On Thursday the 16th of November, the Court met pursuant to adjournment when the Commissioners names having been called over and the Court opened, the Prisoners were placed at the Bar, and M^r. HUTCHINSON on the part of the Crown, proceeded to open the Pleadings of the Court,

Majesty please your Excellency and Honour.

This is a Court of Special Commission, assembled under a Statute, made in the 1st and 2nd years of King William the third, for the suppression of Piracy. The Prisoners at the Bar stand for Trial on an Allegation, filed by his Majesty's Solicitor General, by which they are charged with having committed the crimes of Murder, Piracy, and Robbery on the high sea, near the coast of Nova-Scotia, and within the Jurisdiction of the Court. [*Mr. Hutchinson then opened the Allegation, and proceeded with several observations, the substance of which is briefly as follows.*] If the crimes, with which the Prisoners are charged, were of frequent occurrence, and came often under the cognizance of the Court, I should think that I had already sufficiently performed my duty by opening the Pleadings; but as Cases of Piracy have seldom occurred of late years, it may not be amiss to explain the nature of that Offence, and to say a few words on the Origin, Constitution and Powers of the Court, by which the Prisoners are now to be tried.

Piracy is said, by my Lord Coke, to be derived from a Greek word signifying roving; but it is defined by Lawyers to extend to any Robbery or Depredation committed on the High Seas. It is an offence against the Law of Nations, a Pirate being considered, according to the same author, as *Hostis humani generis*, for having renounced all the benefits of society, and reduced himself to a state of nature, by declaring war against all mankind, all mankind must declare war against him, so that every society may lawfully inflict

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that punishment, which, in a state of nature, an individual might, for an invasion of his person or property; and indeed it was anciently held that any Person, who overcame a Pirate, might put him to death without the formality of a trial.

By the ancient Common Law, Piracy, if committed by a subject, was held to be a species of Treason, being contrary to his natural allegiance, and by an Alien, to be Felony only; but since the statute of Treasons, of the 25 E. 3. c. 2. it is held to be only Felony in a Subject. The Court of King's Bench had certainly a concurrent jurisdiction with the Admiralty, in cases of Felony done upon the Narrow Seas or Coasts, though it were high Sea, because within the King's Realm of England. But this jurisdiction of the Common Law Courts was interrupted by a Special order of the King and Council 35 E. 3. since which it does not appear that the Courts of Common Law took cognizance of Crimes committed upon the High Seas. Lord Coke says, "There is a Felony punished by the Civil Law, because it is done upon the high Sea, as Piracy, Robbery, or Murder, whereof the Common Law did take no notice, because it could not be tried by twelve men."

PIRATES were tried by the Courts of Admiralty, which proceeded, without a jury, in a method much conformed to the Civil Law, but the exercise of a Criminal Jurisdiction of that nature was contrary to the genius of the Laws of England, and became very odious to the Nation, inasmuch as a man might be deprived of his life by the opinion of a single judge, without the judgment of his Peers: and besides, as innocent persons might thus fall a sacrifice to the caprice of a single man, so very gross offenders might, and frequently did, escape punishment; for the Rule of the Civil Law is, that no judgment of death can be given against offenders, without proof by two witnesses, or a confession, of the fact by themselves. This was always a great offence to the English Nation, and therefore in the time of Henry 6. it was endeavoured to apply a Remedy in Parliament, which then miscarried for want of the royal assent. Afterwards the statute 28 Hen. 8. was passed, which enacted that all Felonies and Robberies, committed on the Seas, or in any place, where the Admirals have jurisdiction, should be tried by Commissioners to be nominated by the Lord Chancellor, namely the Admiral or his Deputy, and three or four others, (among whom two common Law Judges are constantly appointed, and who in effect try all the Prisoners,) the Indictment being found by a Grand Jury, and afterwards tried by a Petit Jury, as at Common Law, and that the proceedings should be according to the Common Law. By this Court, Piracies have been ever since, and now are, tried in England, but, as it was established before the settlement of the Colonies, it was entirely confined to England, and therefore when persons charged with the crime of Piracy were brought into the Colonies, it became necessary to send them to England for trial, and I believe *Kidd* was the last person who was sent home for that purpose. To remedy so great an inconvenience and expence, the statute of William 3d, was passed, which after reciting the difficulty and expence of bringing persons, who had committed Piracies in remote parts, to trial in England, enacts that all Piracies, Felonies, and

10 TRIAL OF EDWARD AND MARGARET JORDAN.

Robberies, committed upon the Seas, or in any place where the Admirals have jurisdiction, may be tried and determined, at sea, or upon the Land, in any of His Majesty's Islands or Plantations, &c. by Commissioners to be appointed by the King's Commission, under the Great Seal of England, or the Seal of the Admiralty, directed to any of the Admirals, &c. and such persons and officers by name, for the time being, as His Majesty shall think fit, who shall have power, jointly or severally, by warrant under the hand and seal of any of them, to commit any person, against whom information of any such offences shall be given upon oath, and to call a Court of Admiralty, which shall consist of seven persons at least, and shall proceed, in the trial of the said offenders, according to such directions as are set forth at large in the statute.

This Statute was found so beneficial, that it was made perpetual by a subsequent Act. The Statute of 28 Hen. 8, was also extended to the Colonies by 4 Geo. 1. c. 11 par. 7. so that, if there had been any Commission for this Province under the 28th of Henry, the Prisoners might have been tried under that Statute, or the 11th and 12th of William 3.

It is under the latter Statute, that the Court is now assembled to try the Prisoners, for the Crimes of *Murder* and *Piracy*.—Lord Coke defines *Murder* to be "the unlawful killing any reasonable Creature in being, and under the King's Peace, by a Person of sound memory and discretion, with malice aforethought, either express or implied." *Piracy* is defined, by Sergeant Hawkins, to be any act of Robbery and Depredation on the High Seas, which, if committed on the Land, would have amounted to Felony.

It is unnecessary for me to take up the time of the Court, in considering how far the charges against the Prisoner Edward Jordan come up to the explanation I have given of Piracy and Murder, as the evidence, which will be produced, will be sufficient to bring him within every part of the definition of those offences; but, with respect to the Prisoner Margaret Jordan, it must be allowed, that there are many shades between her guilt, and that of her husband, and therefore it may be necessary to observe, that although a Feme Covert is so much favoured, in respect of that power and authority, which her Husband has over her, that she shall not suffer any punishment for committing a bare Theft, in company with, or by coercion of her Husband, yet if she commit a Theft, of her own voluntary Act, or by the bare command of her Husband, or be guilty of Treason, Murder, or Robbery, in company with, or by coercion of her husband, she is punishable as much as if she were sole. In this case the Allegation charges the Prisoner *Edward Jordan* with the crime of Murder, and *Margaret Jordan*, as aiding and assisting him to commit it; she therefore stands charged as a Principal, and may be convicted and punished as such, as much as if the crime had been laid to have been jointly committed by them.

But even if she should be considered in the light of an Accessary, that will not avail her, because the Statute of William directs that Accessaries to Piracies shall be tried, in the same manner, as their Principals, and, by the 10th Section of the 8th Geo. 1. Accessaries are made Principals, and rendered liable to the same punishment.

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TRIAL OF EDWARD AND MARGARET JORDAN 11

This Court sits here both as Jurors and Judges, to try the Fact, and to administer the Law, and if your Excellency and Honours shall be satisfied, by the evidence, which will be produced, of the guilt of the Prisoners, it will only remain for you to sentence them to receive that Punishment, which the Statute has directed to be inflicted on persons convicted of the atrocious crimes, wherewith those Prisoners now stand charged.

MR. SOLICITOR GENERAL.

May it please your Excellency and honours.

It is my province, upon this solemn occasion, as Solicitor General of His Majesty, to state at large the Evidence, upon which the articles of allegation against the prisoners at the bar have been founded. I can have little to say upon the subject of the Law, under the authority of which this Honourable Court is now sitting, as my learned friend, upon opening the allegation, has, with his usual precision and ability, given it the fullest explanation. My sole duty will therefore be, to give to your Excellency and Honours, a detail of the awful case, as it stands upon facts which the testimony, in support of the Prosecution, will disclose, and upon that Testimony to urge for the conviction of the prisoners. This duty it is painful to me upon all occasions to perform but, in the present instance, I can do it with far less difficulty and reluctance than usual, as I am fortified by every species of Evidence required in the investigation of truth.

In the course of my long practice at this Bar, I have never met with a criminal case, in which the finger of divine providence has, throughout every turn and course of the evidence, so conspicuously pointed to the conviction of Guilt.—In addition to the force of direct positive Evidence, I shall produce to the Court a chain of the most providential presumptive Proof, that ever appeared upon a Trial of this solemn nature; and I feel a perfect confidence in the result of it, as it respects the fate of the wretched man at the Bar, whatever doubts may exist, even in my own mind, as to the conviction of the unhappy woman.

Your Excellency and Honours compose a high and respectable Court, convened under a Statute framed by the wisdom of our Ancestors, than whom there cannot have been greater or wiser men upon earth, and under that Statute and the oath prescribed by it, you are called upon to pronounce the Guilt or Innocence of the Prisoners at the Bar, upon the Evidence which, on behalf of the Crown and of the Prisoners, will be produced to you.—I shall now proceed to a recital of the Case, keeping as near to the Evidence as my memory will allow me, and although a shocking Tale of Blood and Murder, I must call to it the steady attention of this Honourable Court. (*Here the Solicitor General minutely detailed the whole of the Evidence on the part of the King and, during the detail and at the conclusion of it, made the followings and other observations.*)

12 TRIAL OF EDWARD AND MARGARET JORDAN.

Should the Evidence come up to my detail of it, of which I have not a doubt, your Excellency and Honours can have no Difficulty, in your minds, as to what course your sentence should take towards the Prisoner Edward Jordan. With regard to Margaret Jordan, I admit there are many shades of Guilt between her conduct and that of her husband, in the horrid transaction ; but it is my duty to add that, although in the eye of our Law and of Humanity, the coercion of a husband may, in many cases of Guilt, extend a great way towards the exculpation of the wife, the principle cannot be applied to a Crime of so heinous a nature as *Murder* ; I must also add that, in point of fact, I do not conceive it will appear that any coercion of her husband existed in the part she took, for, on the contrary, her interference must have been voluntary, and her feelings could have been under no restraint from the scene of Blood presenting itself to her view, when she exclaimed, in reply to Stairs calling for Kelly." "Is it Kelly you want? I'll give you Kelly."—Her conduct, however, and her fate I am willing to leave, without further observation, in the hands of your Excellency and Honours : Although acting for the King and for the Public, I am not ashamed to declare that, should your judgment acquit her, it will be no disappointment to the prosecuting Counsel, and the Public will, I am confident, apply the humane maxim of their forefathers, so peculiar to the Common Law of our Land, that, "It is better ninety-nine guilty persons should escape, than one innocent person suffer."

With regard to the prisoner Edward Jordan, I cannot but consider his life as inevitably forfeited, for it is not in the power of the human mind to reject the force of such testimony, as will soon appear in his presence, fraught with such circumstances of horror, as cannot but raise a blush in the face of human nature.—The crime of this unhappy man has been committed under the diabolical influence of almost every bad passion, that could irritate and ferment his disturbed soul, nor could the presence of his wife and his children rouse a sentiment in him to oppose the instigation of the devil.—From the time of his quitting Gaspè, until his departure from the Bay of Bulls for Ireland, one would imagine that the sole occupation of his mind was blood and murder. On the other hand, how evident will the testimony show the interference of God in throwing continued obstacles in the way of his escape, that he might be brought to the place where he now stands, and in favouring the preservation of evidence, that his guilt might not go unpunished. The wonderful manner in which STAIRS has been saved to confront him, and the forthcoming of such intelligent witnesses, as I shall produce to the Court, produced by the hand of the Prisoner himself, after the commission of the horrid deed, shew the manifest aid of a providence.

As further evidence of the same providential interference, I may refer to the constant interruptions he met with, in the prosecution of his design to go to Ireland, to the many times the vessel was forced into Ports, to which the prisoner never intended to go, to the delays of departure which so incessantly

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occurred; and, last of all, to the sudden appearance of His Majesty's schooner Cuttle, which met him at the very moment of his flight, and after he had pronounced, in his hurry to be off, the words of "Go or BLOOD," to strike terror into those around him, by whose hands he vainly hoped to effect his escape, but soon whose evidence, the prosecution of him is now in a great measure founded. So plain and so forcible will be the impression of the proof, upon the minds of your Excellency and Honours, substantiating, beyond the possibility of a doubt, the guilt of the prisoner Edward Jordan, that I shall not take up the further time of the Court, in reasoning upon the evidence, or making any additional remarks upon the nature of it: the tale is tedious, but it is an awful and an interesting one.

To your Excellency and to your Honours I now commit the Prisoners.-- You compose a Court, to which the eye of an Englishman, it is true, is not much accustomed; but you are a Court high and honourable, to whom the prisoners may well trust their lives, in full reliance upon your ability, your integrity and your independence. The Prisoners may be looking round for a Jury, a sight familiar to us all in a British Court, and dear to every one of us, for I verily believe we imbibe the love of it in our mother's milk; but, upon the present occasion, the forms of a law, different from our own, are for the wisest purposes, directed to be observed. This can work no injustice or injury to the prisoners, who, if not tried here, must have been sent to England to be there tried, by a jury it is true, but in a strange land, in which they never could have been known, or heard of; but in the recital of the sad tale to be told against them; and where they could have been, but *nominally*, tried by their *Peers*, the great and just boast of our Common Law Tribunals.

Thus far I have discharged my duty in opening this important case to your Excellency and Honours.--You, Sir, and the honourable Men on each side of you, have a more serious part to act upon this occasion, which, I have no doubt, will be most conscientiously and religiously performed, and in the performance of which, you will have the satisfaction of doing a duty, which you owe to your King, to your fellow Subjects, and to your God.

Mr. Solicitor General said he should proceed to examine the Witnesses for the Crown.

John Stairs, being called and sworn, was examined,* and deposed as follows:—

I am a Mariner and Ship Master, and had last the command of the Schooner Three-Sisters, which I received, on or about the 15th day of July last, from Messrs. Jonathan and John Trémain at Halifax. I sailed from this place, in the same Schooner, on or about the 17th day of the same Month, bound to Percée In-Gaspé, for the purpose of procuring a Cargo of Fish from Edward Jordan the Prisoner at the Bar. The crew consisted of John Kelly the Mate, Thomas Heath Pilot and seaman, Benjamin Matthews a seaman,

* Each witness was examined by questions in writing, delivered to the Registrar, who read them to him; but, for the sake of brevity, the greater part of the questions have been omitted; and the answers to them condensed in many places; care, however, has been taken to preserve, as much as possible, the words used by the witness.

14. TRIAL OF EDWARD AND MARGARET JORDAN.

E. Jordan and Patrick Sinet, a sick man, Passengers. We arrived at Gaspé about the latter end of July, and took in part of a Cargo on Freight, consisting of Two hundred Quintals of dried Cod Fish from Theophilus Fox, about three hundred from William Driscoll, and about ninety or an hundred from Jordan, which last were for Messrs. Tremains. With that cargo I sailed from Percé, about the 10th of September last, bound to Halifax. The crew and passengers on board were, myself, John Kelly the Mate, Thomas Heath, and Benjamin Matthews, seamen; Edward Jordan, Margaret Jordan his wife, and their four children, (three girls and one boy) passengers. On the 13th of September, the schooner being between Cape Canso and White Head, and the wind coming off the land, all the crew, except Kelly, who was at the helm, went forward to trim the sails. Between eleven and twelve o'clock, I went below for my quadrant to take the sun; I was standing in the cabin turning over the leaves of a book, and Thomas Heath beside, and rather behind me, when, happening to cast my eyes up to the skylight, I saw a pistol in the hands of Jordan. At the sight of the pistol I started back, and Jordan instantly discharged it. He was stooping, and, I think, he aimed it at me. I was almost blinded by the powder, but the ball only grazed my nose, taking some of the skin with it, and struck Heath in the breast. Heath fell on his knees, crying out, "Oh, my God! I am killed." I put my hand to my face and wiped away blood, but cannot say whether it came from Heath or myself. Heath then scrambled on deck, and, as soon as I came to myself, I ran to my trunk for my pistols, but it was broken open, and the pistols gone. I then searched for a cutlass, but could not find one. At last I determined to go on deck, and, as I was going, I met Jordan coming down—he had one foot on the ladder, a pistol in his left hand, and an axe in his right.—I seized hold of him by the arms, and said, "For God's sake save my life."—I shoved him backwards, upon which he snapped the pistol, which I instantly seized by the muzzle, wrested it from him, and threw it overboard; at the same time I was calling out to Kelly, for God's sake to come to my assistance, but he gave me no answer.—B. Matthews came running aft, apparently wounded, and fell down. By this time I had taken the axe from Jordan, and was trying to hit him with it, but he held me so fast that I was unable to do so; I, however, threw the axe overboard.—While I was calling Kelly to my assistance, Margaret Jordan struck me several times with a boat-hook handle, saying, "Is it Kelly you want, I'll give you Kelly." Before I came out of the cabin, I heard distinctly the reports of three or four pistols, and when I got on deck I saw Heath lying dead, and bleeding very much.—After getting myself clear from Jordan, I ran forward in search of a handspike, or some other weapon of defence; he went aft and got an axe, with which he returned, and, passing by Matthews, struck him three or four strokes on the back of the head.—Finding these was no chance of my life, if I remained on board, I threw the hatch into the sea and, jumping after it, swam to it, and got upon it. While I was struggling with Jordan, Kelly appeared to me to be in the attitude of loading a pistol.—I remained on the hatch in the water, about three hours and a half, and was at last picked up, almost senseless, by an American Fishing Schooner.—After I came to my senses I went upon deck, and, with a spyglass, could perceive

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one or two sail at a great distance to Leeward.—Upon the captain's asking me what was the matter with my nose, and how gunpowder came into my ears, I told him what had happened, and requested him to bear up, and perhaps we might recover the Schooner Three Sisters; but he said he would not deviate from his voyage, as he was insured, and, if any thing should happen, the underwriters would not be answerable. I then asked him to put me on shore at Halifax, but he refused, for fear of having his men pressed.—I arrived at Hingham in the State of Massachusetts Bay, where I extended a Protest, and came on to Halifax, having first published an account of the Murder and Piracy in the Newspapers, and caused circular letters respecting it to be sent to the different Collectors in the United States.

Solicitor General. Were the persons on board, or any of them, intoxicated when you went down into the cabin for your quadrant? *Answer.* No, they were all sober.

Q. Where were Jordan's children at this time? A. They were all ast sitting down; I believe there was a feather bed before them.

Q. Where was the prisoner M. Jordan? A. On the quarter deck.

Q. When you went into the cabin, were all the crew and passengers on deck? A. Yes.

Q. When were you last at your trunk on that day? A. About ten minutes before the first pistol was fired.

Q. Did you lock your trunk then? A. Yes, and went upon deck.

Q. Were your pistols then in your trunk? A. Yes, I observed them there.

Q. Were they loaded? A. They were.

Q. Was the pistol which Jordan fired through the skylight, or that which he had in his hand, when he met you on the ladder, your own? A. I do not know, I was too much confused to observe.

Q. Did you observe any other person have a pistol besides Jordan? A. I did not.

Q. Where was Kelly all the time? A. At the helm.

Q. When you came on deck where was M. Jordan? A. On the quarter-deck.

Q. What particular part did she take? A. She struck me with a broken boat-hook handle.

Q. Of what thickness? A. I cannot say exactly.

Q. At what time, and how often, did she strike you, and where did she aim her blows? A. She struck me two or three times, when I and Jordan were struggling together, and aimed at my head and legs.

Q. Were the children on deck the whole time? A. They were.

Q. During the whole of the voyage before, had the vessel been making the best of her way for Halifax? A. She had.

Q. When you came on deck how was she standing? A. Off her course, before the wind.

Q. Did you observe, after you went on the hatch, how she steered? A. She went at the rate of about five knots, steering to the Southward; she once hauled up for me, but again put off before the wind.

President. Are you clear and positive that Margaret Jordan was on deck, from the time that you went for your quadrant, until you returned? A. I am

Pres. On what part of the deck was she, when you came up, after the pistol was fired at you, and had she then the boat-hook handle in her hand, or what was she then doing? *A.* She was on the quarter-deck, and had the boat-hook handle in her hand.

Pres. Had either of the prisoners been in the cabin, from the time you first went to your trunk until you went for your quadrant? *A.* I do not know.

Pres. Are you positive that, when Jordan snapped the pistol on your coming on deck, it was directed at you? *A.* I am positive.

Pres. Did you receive any material injury from the blows given you by Margaret Jordan, or did they at all disable you from defending yourself against Edward Jordan? *A.* No, they hurt me a little.

Pres. Did you see Margaret Jordan with the boat-hook handle in her hand, the moment you came on deck? *A.* I had enough to do to take care of myself; when I got on deck, and was able to observe any thing, I saw her.

Pres. Had there been any dispute between you and Jordan before the firing of the pistol into the cabin? *A.* No.

Pres. Can you give any account how your pistols were taken from the cabin? *A.* I can not.

Pres. Did Matthews say any thing, whereby you could understand how he came to be wounded? *A.* He only said "for God's sake don't kill the Captain."

Cross Examined.

Edward Jordan---Had you any Pistols of your own on board the schooner when you sailed from Gaspé? *A.* I had.

Edward Jordan---Did you, or did you not, sell your pistols in Gaspé?

A. I sold a pair of Pocket Pistols to an officer in the army.

The Witnesses then withdrew.

John Pigot was then called, and being sworn and examined, he deposed as follows:

I am a Fisherman and Labourer in Fortune Bay in Newfoundland. I have lived there nearly five years, and to-morrow will be eight weeks since I left it. I came away in company with the prisoner Edward Jordan, who then went either by the name of John or Edward Tremain. I first saw him in Little Bay in Fortune Bay, on or about the 24th of September last. On that day, which was Sunday, I went on board the schooner Three Sitters in order to get a passage to Halifax; I was told she was short of hands, and I shipped, with the prisoner Edward Jordan, to come to this place. On Monday I was sent by Jordan into the hold to do some work; I saw the fish tossed about in an unusual manner, and not like a vessel going to sea; and perceived that part of the hatch was gone; I called William Crewe, who was shipped as well as myself, and told him, I did not like to go in this schooner to Halifax; he asked me for what. I told him I thought she was on the run-away account; Crewe then said "If you don't go, I won't either." We were going on there, all hands of us, in the

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evening; as I and William Crewe, and a man, who called himself John Stairs,
and went by the name of Captain, were in the boat, I told the man called Stairs
to get me the protection that he promised me on my going to Halifax---he
said that he would give it to me when we went to sea, but I told him that, if
he did not give it to me before, I would not go. I went to Captain *Hibernan*
and asked him if Stairs could give me a protection---he said "No."---As I
was not inclined to go in the schooner, I thought that, if I did not get the pro-
tection, it would be a good excuse for my not going; so I asked Stairs again
for it, and, on his answering me that he could not give it to me, I told him to pro-
vide a man in my place; he then went into the counting house of Mr. Thorn,
and told Jordan that I would not go; Jordan then came out and asked me what
was the reason that I would not go; I told him I did not want to go; he went
in again, and told Mr. Thorn, that William Crewe and I would not go;
upon which Mr. Thorn and a Justice of the Peace came out, and asked the rea-
son why we were not going; Crewe made him some answer which
I do not recollect, but Mr. Thorn turned round to me, and said "Pigot
"this is some of your doings;" I told him it was my doings; he asked me for
why; I told him because Jordan and Stairs would not fulfil their bargain;
he asked me what it was, and I told him it was to protect me from the press.---
Jordan then told Mr. Thorn to give me a bill of Lading for a hundred quintals
of fish, and he accordingly gave it to me; but, after getting that, I betrouglt
myself not to go, if I could help it, but Mr. Thorn and the Justice of the Peace
told me that, if I did not go on board, they would tie me to the flag staff, and
punish me, and give me man of war for my money. I then went and carried
my things on board, and came on shore again, two days after, for my bills and
accounts. I went to the counting house, and asked for them, and told Mr. Thorn
I thought he had put me into a hobble; he asked me how was that, and I told
him I suspected we were not going to Halifax; he asked me why I thought
so,---I told him I judged so from the things which Jordan was buying there,
and which he could get much cheaper in Halifax,---and I had a mind to have
the woods for my money, and leave all my things on board; he told me that
if I did not go on board, he would put me in Irons, and if I ran away, that he
would publish me in the papers, so that I should not be able to shew my nose
in Newfoundland. I then returned on board, and Jordan asked me, what was
my objection to going. I told him I expected he was on the run-away ac-
count; he said he was not. We put out to sea shortly after: I did not think
he was steering for Halifax, and I asked him where he was bound,---he said
"to St. Mary's in Newfoundland." We went to that place, and remained
there six or seven days or more, I do not know for certain how many. Nei-
ther William Crewe nor myself would put to sea again without a Pilot, or a
Navigator;---We took in a pilot afterwards for St. John's, Newfoundland; but,
before we could make any harbour, we met a boat, bound to St. John's. Jordan
called the boatmaster, and asked him to let him have a passage to St. John's. Jor-

dan and I went in the boat to St. John's to get a Navigator, leaving the schooner out at sea, as she had not wind to carry her into any harbour. We got a Navigator at St. John's, and went to several harbours in search of the schooner, and at last found her at Trepallev. We went on board the night of our arrival. Soon after, Jordan, who, I supposed, was drunk, and Kelly, (the man who formerly called himself Stairs, but whose name I then knew) had some words and struck one another; the former ran to a trunk, where two pistols always lay, but could not find them there, as Kelly had them under his bed. I saw Kelly taking the pistols from under the bed, and called to Power, who came and took them from him. Jordan, several times, wanted one of the pistols, or the musquet to shoot his wife, and would have done it only for myself. The next morning Margaret Jordan called me up, an hour before day, and asked me to put her on shore, and let her take some of her clothes with her, as she was afraid her husband would kill her. I told her he should not, while Crewe and I were on board. She then said she would leave her life on my hands. I told her I would go on shore, and bring a neighbour of her's, who might take her on shore if he chose. She told me, if I would carry her ashore, she would tell me something that would be of service to me. Crewe, Power, and I then pulled up our chests through the main hatch; upon which Jordan said he would shoot the next person, who should start his chest out of that. He said then, and several times before and after, that he would shoot his wife because she was the only person in the world that could hang him. I often asked her, what he meant by that expression, and she said it was only the effect of liquor. Jordan told me, that he owed some money in Halifax, and that he wanted to go to some market, where he might dispose of his cargo to the greatest advantage, in order to discharge the debt.

Solicitor General.—Where did you first discover that his name was Jordan? A. At St. Mary's, but cannot recollect when.

Q. When did you discover that the man, who called himself John Stairs, was John Kelly? A. I cannot recollect when or where, but I think it was at St. Mary's.

Q. Did Jordan go much about the streets at St. John's, and by what name? A. He seldom went about the streets, but, when he did, he sometimes went by the name of Jordan, at other times, by the name of Tremain.

Q. How was the wind while on the passage from Trepallev to the Bay of Bulls? A. Sometimes calm and at other times a free wind, we had no head wind.

Q. What made you put into the Bay of Bulls? A. To get Sea Stock.

Q. Did you get enough? A. That would be according to the place where we were bound.

Q. To what place were you bound from the Bay of Bulls? A. I did not know where; Jordan mentioned so many different places.

Q. The morning you sailed from the Bay of Bulls, was the Prisoner Edward Jordan in a hurry to get off? A. Yes, he was very anxious that morning, and indeed always, to get away, but I do not know the reason:

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Q. Were you near him, the morning you failed from the Bay of Bulls, and did you see him cut the cable? A. Yes, I was present, and near him, and saw him cut the cable.

President.—How did you discover that the man, who called himself John Stairs, was not John Stairs, but John Kelly? A. By one of the prisoners calling him John Kelly.

President.—Did the prisoner Edward Jordan ever say he was bound to a port in Ireland? A. Yes, to Limerick.

Cross Examined.

Mr. Wilkint.—Do you know what caused the Prisoner Edward Jordan to utter the threats, you have said he made at Trepassy, against his wife? A. I do not.

Q. Had Edward Jordan any arms in his possession at that time? A. He made an attempt to get a charged musket, which was in the Cabin, the place of which I had before taken out, and went the house-ward.

Q. Was he taken of the arms after that? A. Patrick Power took them into his cell, and gave them to the head-ward, the next morning.

Q. Were they ever delivered into the Prisoner's possession, after that?

A. I think very positively that he did not have them again; I locked the pistols up in my chest, and hid the musket among the fish, by Patrick Power's order.

Q. Did the Prisoner Margaret Jordan, at all times, from the time you first saw her, appear to be in great fear of her husband, and altogether under his authority? A. Yes she did.

Q. When were the arms taken away from the Prisoner Edward Jordan by you, and locked up or rendered useless, in the manner you have stated, and were was the vessel at that time? A. At Trepassy, I do not recollect the day of the month.

Q. Was it before the taking away the arms, that the chests were brought upon deck? A. The arms were taken away the evening before.

Q. Did the Prisoner Edward Jordan know the arms were taken away from him? A. He did the next day.

Q. At what time the next day? A. I think it was in the afternoon.

(Here the Witness hesitated a little and then said,) I now recollect he missed the Pistols the same night, but did not know where they were, until the next day.

Q. As Edward Jordan's arms were, by your account, taken from him, the evening before the chests were brought upon deck, how was he to execute the threat, he afterwards made, of shooting any person, who removed his chest? A. It was unlikely that any one would have kept the arms from him, as they knew they belonged to him, and were in a boat alongside the Schooner.

Q. When you asked the Prisoner Margaret Jordan, what her husband meant, when he said she was the only person in the world that could hang him

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was Edward Jordan present, or on board the Schooner? A. He was not present but I think he was on board.

Q. Did the Prisoner Margaret Jordan, from the time you first saw her, appear to be afraid of Kelly, as well as of her husband? A. No, not as I saw,

Q. How, and in what manner, was she used by the Prisoner Edward Jordan, and Kelly? A. Very indifferently by the Prisoner Edward Jordan, but I did not see her ill used by Kelly.

The Witness then withdrew, and the Court adjourned until ten o'clock the next day.

On Friday the 17th of November, the Court assembled, pursuant to adjournment, and, being called over by the Registrar, the same members appeared present as before.—The Court was then opened, in the usual manner, by the Deputy Provost Marshall, and the Solicitor General proceeded to call Patrick Power, who was sworn by the Registrar, and being examined, deposed as follows:—

I first became acquainted with the Prisoners at the Bar, at St. John's in the Island of Newfoundland.—I had come from the French shore to St. John's with a Cargo of fish.—When I came to the Wharf, the boatman, who had brought Edward Jordan the Prisoner at the Bar, (who then went by the name of John Tremain,) told me, he was very happy to meet me, as I had been in the habit of going home to Ireland, every fall, for supplies for the fishery.—He also told me that Jordan wanted a navigator, and that he had a vessel and cargo lying at the Bay of Bulls. He then went and told Jordan that he had met with a navigator.—Jordan, John Pigot, and I, went to a private room, where Jordan told me that he had a vessel lying at the Bay of Bulls, laden with fish, and that he had four hands on board, and wanted me to navigate her to Limerick or Galway, in Ireland, I accordingly agreed with him for that voyage.

Here the witness produced the shipping paper, of which he gave the following account:

I wrote it on the 19th of October last, in St. John's at the request of Jordan, who subscribed it by the name of John Tremain: it was to engage me to go to Ireland.

The paper was then read by the Registrar, and was as follows:

19th October, 1809.

I do hereby acknowledge to have agreed and settled with John Tremain, to serve as Master of the schooner Three Sisters, bound to Limerick, in Ireland, and is to have as wages £.11 per month. (Signed,) JOHN TREMAIN.

From the day of the date hereof until the 6th day of May in the year 1810, and the same pay per month to remain longer. (Signed,) JOHN TREMAIN.

The witness then proceeded.—In consequence of this agreement, I was employed as Master, on board the schooner Three Sisters, on a voyage to Limerick, in Ireland, and took charge of her, as Master, on or about the 25th of

A. He was not present

Q. You first saw her, ap-

A. No, not as I saw.

Q. Prisoner Edward Jor-

A. Edward Jordan, but I

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A. October, 1809.

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Q. JOHN TREMAIN.

A. Any in the year 1810.

Q. JOHN TREMAIN.

A. Agreement, I was em-

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A. About the 25th or

6th of October in Trepassy. When I agreed with Jordan in St. John's, he told me I should go with him the next day, for he was in a great hurry.---I told him I would be ready.---We could not find a boat, for two or three days to carry us round to the Bay of Bulls, where Jordan told me the vessel lay.---During that time, I asked the prisoner to take a walk, and we would look for a boat, and asked him, why he kept himself so confined, to his lodgings; he told me that he owed some money in St. John's, and he was afraid of being detected if he walked out.---We got a boat at the end of three days, and sailed from St. John's to the Bay of Bulls, but did not find the vessel there.---A schooner was there bound to St. John's, and I demanded a passage back to that place.---Jordan then earnestly intreated me to go to a place called Aqua-Fort, where he said he was sure he would find the vessel;---He told me at the same time, that, if he did not find the vessel there, he would give me an order on a merchant in St. John's, for the full amount of my wages.---We went to Aqua-Fort, but the vessel was nothere:---He requested, as I had come so far, that I would go to Trepassy with him.---We went, and found the vessel there. About an hour after dark we went on board, and found John Kelly and William Crewe, and the prisoner's four children.---Jordan demanded of Kelly where his (Jordan's) wife was. Kelly told him she was ashore.---Jordan then desired two men to go ashore in the boat after her.---Kelly told him that no person knew where to find her but himself, (Kelly).---Jordan was much disturbed at this, and told Kelly that he would go with him after her.---Jordan and Kelly went on shore, and returned, in a short time, with the woman.---When Jordan came on board, he went to bed immediately.---The boatmen, Pigot, Kelly, and myself, sat up drinking grog in the cabin, with the prisoner, Margaret Jordan. Shortly afterwards, Jordan came out of bed, and said, "You whore, I hear you talk."---There being a musket, supported by some nails, in the beams of the cabin, Jordan laid hold of it, upon which the woman screamed, and told me to take it from him,---I did so, and gave it to one of the boatmen to secure in his boat until morning.---Jordan, Kelly, and Margaret Jordan began to fight.---Jordan demanded his pistols and the musket from Kelly or his wife, as he said, and reprimanded her several times, for being ashore with Kelly. Kelly then said, he should not take his life for nothing, and turning round, went to the head of his bed, from which he returned with two pistols, one in each hand.---I seized him, and took the pistols away.---He told me that he was only going to hide the pistols from Jordan, for that I did not know what kind of a man Jordan was.---Margaret Jordan then went upon deck, and I followed her to give the pistols, which I had taken from Kelly, to the boatmen to keep until morning. Margaret Jordan then requested me to throw the pistols overboard, saying, at the same time, "Power, Power, you do not know what mischief they have done," and repeated her request several times.---I said I would not throw them overboard.---Kelly followed me on deck, and told me again, that he was only going to put the pistols where Jordan could not come at them, saying, at the same time, "Do not let the pistols

come into Jordan's hands any more, until you get to Ireland, or you will be sorry for it," adding, that he did not intend to go with us.---I told him that I would not let Jordan have them again, and also asked him if there were any more arms on board;---He said there was a half musket and a cutlass, and told me to get them also, and put them away, or I would be sorry for it: I found the half musket, but could not find the cutlass.---We pacified Jordan.---Margaret Jordan said, "Give him some rum and he will go to sleep;" I accordingly did so, and he went to sleep; but, before he went to bed, he said, "Do not let that woman come to bed with me to-night, or I will take her life."---Margaret Jordan lay on the locker until about an hour before day, when she called John Pigot out of his berth, with whom she talked some time, and I overheard her saying several times to him, "Take me ashore or he will kill me."---Pigot went on deck, and she went to her trunk and took out some clothes; I got out of my berth and went upon deck: she followed me stotily after, and requested me to let Pigot put her on shore, or else to do it myself.---I told her that I would not do either, and added, that I had heard her conversation with Pigot, and that she would be sorry for it if she went on shore. She then said, "That man will take my life before I get to Ireland," and told me that I had better let her go on shore, saying, at the same time, that I was a stranger, but Pigot knew what a cruel life she led with Jordan.---Jordan got out of his berth, and went upon deck.---He was running toward Margaret Jordan and I went between them, upon which he laid hold of me by the breast, and demanded his arms.---While he and I were thus entangled Margaret Jordan, coming behind me, stepped me on the shoulder, and said she would blame me with her life, because I did not let her go on shore in the morning; Jordan then said, "You, Power, have been with her all night as well as the rest;" upon which I replied, "Use her as you please now."---She screeched and said, "Power, are you going to let him take my life." I then laid hold of him again, and told him that he should not hurt her, and pacified him a little.---He said, that if she would go into the cabin with him, he wanted to speak to her, and would give me his hand and word that he would not strike or hurt her. Then they both went into the cabin, and were on good terms the remainder of that day.---Jordan had promised the boatman £10, for bringing him round, and the boatman asked me to go and request Jordan to pay him; I went into the cabin and mentioned it to Jordan, who was then lying in his berth. He said that he was short of money, but that there was some leather forward, and desired me to give the boatman some of it.---One of the men brought up some of the leather, but the boatman said, it was no payment to him, and refused it; I told Jordan what the boatman said, and he desired his wife to give me the watch to give to the boatman, together with some leather. She gave me a silver hunting watch, which, with some leather, I gave to the boatman. After this I overhauled the vessel to see what

* This was Captain Stairs' watch.

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provisions and water there were on board, and found that there was not enough.---When I saw the vessel in such a situation, I began to suspect something.---I asked Jordan if he had any way of getting provisions there, and he said he had not, but that he thought there was enough on board to last us to Ireland, saying, at the same time, that if he was at the Bay of Bulls, he could get enough, as he had friends there.---I put to sea that evening for the Bay of Bulls.---Jordan told me to put into some private harbour, from which, he said, he would send a boat to the next harbour, where supplies could be had, and give fish and oil for provisions.---We were going into Fermoofe with a fair wind, when suddenly it came a-head, in consequence of which we were prevented from getting in, and were forced to put to sea again; after that, as we were going into Capelin Bay, I told him there was a schooner going in right a-head of us.---He asked me where I thought she came from I told him, that, from the plank on the deck, she looked like a vessel from Nova-Scotia, upon which, he desired me not to go in there, but to put to sea again.---We hauled the wind, put out to sea and went into the Bay of Bulls; it was about ten or eleven o'clock at night, when we got in there: Jordan said he would go ashore, and get people to cut wood and bring water.---He went the next day with two men, and when he returned in the evening, he asked what I and the rest of the men had done that day; I told him we had been employed in repairing the rigging, upon which he said that I was too much of a gentleman to be a poor man's servant, and that he was sorry he did not make me go to sea, on our way from Trepassy to the Bay of Bulls.---The next day he went on shore again, and sent on board some wood, three casks of water, and some provisions. While he was absent, Margaret Jordan asked me to let her go ashore to wash some of the children's things; but I told her I would not;---She said that I might go and watch her, and Pigot and I accordingly went with her: I left her at a house, washing clothes, while I went to look for Jordan. When I found him, he asked me why I came on shore, and I told him I came with his wife; he then seemed much disturbed, and asked me how I dare bring her on shore, and directed me to go immediately, and take her on board again.---Pigot and I took her on board.---When Jordan came on board he ordered me to go to sea that evening, but I told him I would not, as the wind, (what there was of it) cast into the harbour.---He went on shore, saying, that he would get men enough to tow her out.---While he was away, I brought the vessel farther into the harbour.---He brought on board a great number of men, I cannot say how many, and asked me to get under weigh; I told him I would not; upon which one of the men he brought on board enquired my reason; I told him I did not wish to go. The man then called me some name, which I do not recollect.---Jordan called me forward and told me, that a cutter had failed from St. John's that evening, and would be round in the Bay of Bulls the next morning, to seize on the schooner Three Sisters, and he begged me to go to sea. I asked why the cutter was coming, and he said he was in debt in Halifax.---I then said that could not be the reason, as they

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would not send a King's schooner for that: Jordan replied, "I wish I had met with some other person but you, as I would now have been half way to Ireland." I told him he need not be sorry for it, and that he might provide another, as I would go on shore.---He desired the men who came on board to remain with him, and they said they would stay a twelvemonth if they could serve him, but, as I would not go to sea, they might as well go on shore that evening; they said, that if he would get the schooner under weigh, they would tow her half way to Ireland, if it could be done.---They went on shore, and Jordan remained walking up and down the deck, apparently in great confusion.---Kelly came to me and told me to come on shore, and he would tell me something that would serve me.---Before that, I had asked for a passage in the boat, but, on Jordan's desiring the men not to take me, they refused to give me a passage. I told Kelly to wait until Jordan should go to bed, and I would go on shore with him.---I asked Jordan why he did not go to bed, and he said he should see me in bed first.---I told him that I was going on shore with Kelly, and would not remain long; he replied, that I might as well take his life, as go on shore that evening, and that he would remain up all night to prevent me. I went to bed and Jordan remained on deck. The next morning, just at day light, Jordan, coming to my bedside, told me that there was a fine fair wind, and asked me to rise immediately and get under weigh. I rose and told him that I would not get under weigh, as it blew too hard. I returned to the cabin and sat there, but Jordan remained on deck in a great rage. A short time after, I heard some one say that Kelly had taken the boat away, upon which I went on deck, and finding it was true, I called to Kelly, and asked him to give me a passage; he told me he would send the boat off for me when he got on shore, but he could not stop. Kelly was alone in the boat, and had none of his things with him; he was about twenty yards from the vessel.---I went into the cabin to gather up some loose clothes, and while I was there, I heard the men say the cable was cut. I went on deck, and found it was true; and on my demanding who had done it, they said it was Jordan. The whole crew were on deck, and Jordan likewise, and the jib was up. I looked round, and saw Jordan standing aft of the companion, with an axe in his hand. I said to him, "I see you have her under weigh," and he answered, "*I have, and you shall go to sea or blood!*"---Suspecting him to be a terrible kind of man, I went forward to Pigot, and told him to take the axe from Jordan, which he did. I went aft and sat down, and shortly after I saw a sail at a distance; I took the helm, and ordered all sail to be made.---Jordan requested me to keep the vessel for Halifax, in order to deceive the people in the Bay of Bulls, and I told him I should until I got clear of the head, and had room to jibe the boom; I then changed the course for Ireland, but Jordan told me it was rather too soon, and desired me to shut up the Bay of Bulls first. About half an hour afterwards one of the men said that there was a sail a-head. When Jordan heard that, he came on deck in great hurry and confusion, and asked me what it was; I said I believed she was a fishing boat, as she had no

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replied, "I wish I had have been half way to that he might provide in who came on board a twelvemonth if they might as well go on shore under weigh, they went on shore, apparently in great force, and he would had asked for a party to take me, they refused Jordan should go to bed, why he did not go to him that I was going on, that I might as well remain up all night on deck. The next day, told me that there and get under weigh. It felt too hard. I felt on deck in a great rage. When the boat away, called to Kelly, and and the boat off for me alone in the boat, twenty yards from the clothes, and while I on deck, and found said it was Jordan. The jib was up. I in a boat, with an axe in hand," and he answered respecting him to be a man to take the axe and shortly after I saw he made. Jordan received the people on the head, and Ireland, but Jordan the Bay of Bulls str. there was a fall a-head. and confusion, and about, as the had no

TRIAL OF EDWARD AND MARGARET JORDAN. 25

yards across. The man said she was a brig or a schooner, which again put Jordan into great confusion; and he desired me to keep the schooner for Halifax, until we should discover what the sail was, but I refused to do so; upon which he went aft to the man at the helm, and told him to keep towards Halifax.---I told the man that, if he changed his course, I would strike him with a handspike.—Jordan asked me again what I thought the vessel was, and I told him he might depend upon it she was a King's schooner, upon which he seemed in great confusion and trouble, and said, "Lord, have mercy on me---what will my poor children do." He then went down into the cabin, and, returning soon after, requested me to say we were bound to Halifax; I told him it would be of no use for they saw the course we were steering, and would know we were not bound to Halifax.---He repeated his request, and I said I would, if that would satisfy him.---The cutter fired at us to bring us to, and then came up and spoke us. I told them we were bound to Halifax; upon which they desired us to put out our boat, and come on board. I told them we had no boat.---They then put out one from the cutter, and Mr. Simpson came on board the Three Sisters, took possession of her and brought her to Halifax.

Sol. Gen. Who were on board at the time she was taken possession of by His Majesty's schooner? A. The prisoners Edward Jordan, and Margaret Jordan, their four children, (a boy and three girls) myself, John Pigot, Martin Whelan, William Crewe, Nathaniel Ryder, and an Indian called Davy.

Sol. Gen. Who were taken on board of the cutter? A. Myself, William Crewe, Nathaniel Ryder, Edward Jordan, his wife, and four children.

Sol. Gen. Did you hear the prisoner, Edward Jordan make any acknowledgment, or use any expressions, from which you believed that he had been guilty of the murders or piracy, with which he stands charged; if so, repeat as nearly as you can recollect, the words he made use of, and say when and where they were spoken?

Mr. Robie, on the part of the prisoner, objected to this last question, on the ground that the Court is directed by the Statute of William, under the authority of which it is held, to hear, and finally determine, any case of Piracy, Felony, and Robbery, according to the *Civil Law*, and the methods and rules of the Admiralty: and by the rules of the Civil law, which are recited in the preamble of the statute of Henry VIII. no judgment of death can be given, against any offenders, before they have plainly confessed their offences, or else such offences be plainly and directly proved by witness indifferent,—such as saw them committed:---that, with respect to confessions, the rule of the Civil Law is, that they cannot be used as evidence against the party confessing, unless they are made at the time of his trial, and in the presence of the judge, in order that he may determine, from the manner of their being made, whether they proceed from a disposition to relate the truth, or whether they are extorted from the party, by the influence of those hopes and

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fears, which must so powerfully affect the minds of persons in the situation of the prisoner; and, unless confessions are made in that manner, they cannot be received as evidence against the party making them: that, on account of the strictness of this rule, it became necessary, in cases where the number of witnesses, required by the Civil Law to prove the fact, could not be procured, and the offender had previously confessed the charge, to compel him to repeat such his confession by the force of torture. But as our laws do not, in any case, permit the use of torture, the prisoner, if he had in reality made a confession, could not be compelled to repeat it, nor can such confession be proved by the testimony of witnesses.

Mr. Robie added, that the Court was directed to proceed according to the rules of the Civil Law, because those rules required a greater number of witnesses to prove any fact, than were necessary to establish a fact before a jury; and that when a man was deprived, by statute, of that mode of trial to which he had a constitutional right, and was subjected to the jurisdiction of a Court, which proceeded according to the rules of a foreign law, it seemed but reasonable, that the rules of that law should be adhered to, as well when they operated in his favour, as when they were disadvantageous to him.

This objection was answered by the Solicitor General, in substance as follows:

If the objection be answered upon the Common Law rule of evidence, there cannot be a doubt as to the admissibility of the question; indeed it is so conceded by my learned friend's recourse to the aid of the Civil Law, which, he contends, must guide the Court in this instance. It is by no means an established point, that the statute of William had it in contemplation to make the Civil Law the law of this Court, to the extent *Mr. Robie* would wish to apply it: on the contrary, I conceive it was intended by that statute, that the forms of proceeding in the Court, and nothing more, should be, for the purpose of easy and summary justice, according to the practice of the Civil Law, and in this opinion I am fortified by the waiver of an objection, taken upon a similar ground, in *Quelch's case*, at *Boston*, in the reign of Queen Anne.—There it was well observed by the Queen's Advocate, in these words: "As to the part of the new statute, relating to piracy, that says, This Court is to proceed according to the Civil Law, with submission, we understand it to be, of the summary way of proceeding by the Commissioners, and depriving the prisoner of a jury; for it is most certain, that the late statute against Piracy doth strengthen and establish the statute of Henry VIII. and it would be very odd to suppose that, what the first Act of Parliament, in these cases, had rejected and condemned, the method of the Civil Law in the trial of pirates, &c. the second Act of Parliament should be reconciled to that method to reiterate and set it up in the plantations."

The question, with its tendency, was thoroughly considered by my learned colleague and myself, before it was put; we are desirous of adhering to it,

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 as likely to introduce, into a Criminal Court, a system of Law very foreign to
 that happy constitution, to which Englishmen have been for ages accustomed,
 and very unfavourable to the liberty of the subject, in support of which my
 learned opponent has ever been so firm an advocate.

President.—The question may be put, and the answer taken, the effect of
 which will be considered by the Court.

*The witness then proceeded to answer the question:—*He was in irons on
 board of the Cuttle, near my birth: as there was no partition between us, he
 used to discourse with me concerning the crimes with which he was charged.
 He said he thought his life would be saved, if I would only say that the
 schooner was bound to Halifax.—I was afraid for my life, lying so close to him,
 and always told him I would say so.—He then said that, if he had killed *that*
Stairs, while he was on the hatch, all would have been well; and that he
 wanted Kelly to let him load a pistol or musket, but that Kelly said there was
 no necessity, as Stairs would drown before he reached the shore.

Cross Examined.

Mr. Robie.—You knew the Prisoner Edward Jordan at Newfoundland;
 Do you recollect dining in company with him at the house of a merchant there?
 What was the name of the merchant, and by what name did he call the pri-
 soner? A. I did dine once in company with the prisoner, at the house of a
 merchant in St. John's, whose name was Mr. Goff,—I heard Mr. Goff call the
 prisoner, Ned.

Q. Did you hear Mr. Goff give Edward Jordan any other name than Ned?
 What character did Mr. Goff give of the prisoner? Did you hear Mr. Goff say
 that Jordan had served his uncle honestly for five years, and that every man
 in that employ made money but Jordan? A. I heard Mr. Goff say, that Ned
 had served his (Mr. Goff's) uncle, and that every person who was in the same
 station had made money except Ned.

Q. Who gave you the papers of the schooner? who exhibited them at the
 Custom-house in the Bay of Bulls? and did you know the danger of sailing
 under false papers? A. Kelly gave me the papers of the schooner.—There
 was no Custom-house at the Bay of Bulls.—I did not know the papers were
 false, as I never opened or looked at them, intending to leave the vessel.

The *Solicitor-General* requested that *Thomas N. Jeffery*, Esq. the Collector
 for the port of Halifax, who was one of the Commissioners, might be sworn, to
 answer some questions relating to the Register of the schooner *Three Sisters*;
 which was accordingly done.

Sol. Gen. Are you the Collector of the Plantation Duties for the Port of
 Halifax? A. I am.

28 TRIAL OF EDWARD AND MARGARET JORDAN.

Q. Have you the Office-book containing the original registers of Ships registered in this port? A. I have.

Q. Is there, in that book, the original register of the schooner Three Sisters of Halifax, Nova-Scotia?—if yea, what is the date of the Register, when and where was she registered, and who are the registered owners?—
A. There is, in the book, the record of the Registry of the schooner Three Sisters.---Number six, dated 16th January 1809; she is registered in the Port of Halifax; Jonathan and John Tremain, of Halifax, Nova-Scotia, are the registered owners.

Q. Is the parchment writing, which you hold in your hand, the Certificate of Registry of the schooner Three Sisters? A. Yea.

The Registrar then read the Certificate; after which he was requested to read the examination of the prisoners, which had been taken before His Majesty's Council; but, an objection being made by the Counsel for the prisoners, the Solicitor General consented to withdraw them, and then informed the Court that he would here rest the case on the part of the Crown.

The President then said "Prisoners, if you have any thing to say in your defence, the Court is now ready to hear you."—Upon which the prisoner Edward Jordan, made a defence, the substance of which was:—That he came, in the month of June 1808, from Percée, in the county of Gaspé, to Halifax; and being recommended by Mr. Pyke of Quebec, to John G. Pyke, Esq. of this place, he was introduced by that gentleman, to Messrs. Jonathan and John Tremain, with whom he then first commenced dealing, and purchased goods from them on credit, to the amount of about seventy pounds.--- That with those goods he went back to Percée, sold them and procured about four hundred quintals of fish, with which he returned to Halifax in September following, and paid his debt to the Tremains. At the same time he informed them, that he had a large schooner on the stocks at Percée, and offered to sell her to them, as he was in want of rigging to complete her, and did not wish to run in debt for it. Messrs. Tremains, told him they would take her into their employ, and send her two voyages to the West Indies, provided he would complete her; upon which he purchased a quantity of rigging from them, carried it to Percée, and having fitted the vessel for sea with it, sent her soon after to Halifax.---That, to enable Messrs Tremains to procure a Register for the schooner, he sent them a General Power of Attorney, together with other necessary papers, and a Bill of Sale of the schooner, to them, the consideration mentioned in which was one hundred and fifty pounds, and, at the same time, requested them to perform their promise, of sending her to the West Indies.--- That in June 1809, not having heard any thing of the vessel, he came to Halifax, where he found her lying at the wharf, with no person on board to take care of her; but on his complaining of the situation in which she was,

MARGARET JORDAN.

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Messrs. Tremains placed a master and crew on board, and informed the prisoner, they wished to send her to Carolina for Naval stores; but as he refused to let her go on that voyage, it was finally agreed, that she should return with him to Gaspé; and accordingly *Captain Stairs* was shipped as master to take her there; that the prisoner returned to recede, where he discovered, what before that time he had no suspicion of, that *the Tremains* wished to take the vessel from him, and had caused her to be registered in their own names, instead of his; that soon after his arrival, a report was circulated through the place that he owed the *Tremains* eleven or twelve hundred pounds; in consequence of which his creditors there demanded payment, and, not being able to satisfy all of them, his property was seized, and sold for one third of its value: that being thus left destitute, he with his family embarked in the schooner, with determination to go to Halifax, and work in *Messrs. Tremain's* stables, or in any capacity, in which they should choose to employ him, until he should have paid the balance he owed them.

The prisoner then proceeded to state that, on the morning of the 13th of September last, he was lying on the deck of the schooner, and had just recovered from a fit of intoxication, when his little boy came and told him that *Captain Stairs* was abusing *Mrs. Jordan*; that he, the prisoner, immediately ran into the cabin, and knocked *Stairs* down. As soon as *Stairs* recovered himself, he ran to his chest and got his pistols, one of which he fired at the prisoner,—but the ball missed him and struck *Heath* on the breast, who had come to the assistance of *Mrs. Jordan* on hearing her cry murder. That he, the prisoner, then ran on deck for a handspike, to defend himself against *Stairs*, who followed in search of an axe, but, not being able to find one, he threw part of the main hatch overboard, and jumped after it; that he, the prisoner, being greatly alarmed, begged *Kelly*, who was at the helm, to put the vessel about, and pick *Stairs* up, for, if he did not, they should be without a navigator, and would all be lost; but *Kelly* appeared stupid and put the vessel before the wind.—They shortly afterwards arrived at Newfoundland.

The prisoner then asserted that all which the witnesses had testified, relative to his conduct in Newfoundland, and his changing his name, was a made up story, and totally untrue: that they had perjured themselves, and would swear any thing that came uppermost.—He declared to the Court, that he was intirely innocent of the charges brought against him, and requested that the *Tremains* should be ordered to produce his Letter of Attorney to them, and their account current against him.—He said that *Colonel Pyke* could prove that the schooner belonged to him, the prisoner, and that he had never sold her to the *Tremains*.—He added that he wanted no more mercy than the law would give, and was not afraid of death, but only desired that justice should be done to him.

He then produced a number of accounts and papers respecting his deal.

ings with the Tremains, wherein, he said, he had been charged with every penny of the vessels disbursements, and had received no credit whatever on her account. Those papers he delivered to the Registrar, and again asserted his innocence of the murder.

His Excellency the President observed to him, that he stood charged with Piracy.—To which the prisoner replied, that, if he understood, correctly, the explanation which had been given of the word *Pirate*, by the Counsel for the Crown, it meant a *Rover*, and it was pretty plain he could not be *one*, because, he understood nothing of the management of a vessel, and did not even know one ship from another, being rather a ploughman than any thing else; that the vessel was his own; and, further, that it had not been proved that he had altered or defaced any of her papers.

Margaret Jordan was then asked what she had to say in her defence to the Charges against her; upon which Mr. WILKINS, one of her Counsel, stated to the Court that he had consulted with the prisoner as to her Defence, and found that she had Facts to state to the Court; but, from her situation, was incapable of communicating them; that he had, therefore, while sitting at the Bar, written a Defence for her, and prayed permission of the Court to read it. The President asked her, if the paper, in the hands of her Counsel, contained the Defence she wished to make, and, receiving an answer in the affirmative, he requested Mr. Wilkins to read it, which he did and afterwards handed it to the Registrar.—It was as follows:

May it please your Excellency and the Honourable Court,

I stand before you, accused of a crime of the most shocking nature, that can be committed by one human being against another: and what adds to the awfulness of my situation, is being brought to trial, in a strange land, where my character and past conduct are unknown, and where no person can be called in my defence. Under these afflicting circumstances, I have nothing to support me, in this hour of deep distress, but an entire consciousness of my innocence, and a perfect assurance that my life is in the hands of Men, of the most exalted Rank and Character, who can have no object, in the present Trial, but the justice of their country, and who, I am sure, will view my situation with commiseration; and, I trust, upon hearing the few observations I shall make in my defence, pronounce me innocent.

I married EDWARD JORDAN, my unhappy husband, in Ireland, about ten years ago, and while we remained in that country, about five years, lived happy and comfortable; but, unfortunately for me and my unhappy family, we left that country, and went to the United States of America, where my wretched husband became jealous of me, and commenced a course of severe treatment towards me, which continued to increase, until it arose to the most violent and cruel treatment, which could be offered by a husband to his wife;

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and I assure this Honourable Court, that I should have parted with him several years ago, had it not been for my little children, for whose sakes I have, for six long years, submitted to every species of ill treatment.—At the time the schooner *Three Sisters* came to Percée from Halifax, I was looking out, with anxious expectation for her arrival, expecting, in her, clothing and necessaries for my children, who were almost naked, and in want of every comfort; but I found, to my disappointment, that the articles I expected were not brought. In that situation, my children naked and comfortless, I applied to Captain Stairs for some cotton to make clothes for them, who furnished me with some calico for that purpose. When my husband discovered that I had taken the calico from Stairs, he conceived that it had been given as a reward for improper conduct on my part, and beat me in a severe and cruel manner; and I now declare to this Honourable Court, that his resentment towards me has not diminished even at this hour.

I will now proceed to the most wretched morning that human nature ever witnessed; I mean the *Thirteenth of September* last; on which morning, to my memory and recollection do not deceive me, (for on that day and since, until the present hour, I have been in such a state of wretchedness, that I believe, at times, my reason has in mercy been taken from me;) I was in bed when Captain Stairs came into the cabin, and came near my birth, and knowing the disposition of my husband, I was afraid of his resentment, should his jealousy be awakened; to prevent which, I sent my little boy, to ask one of the men to come into the cabin, when he called his father, who came down, and immediately a quarrel ensued. I was alarmed, and got out of the berth, in which I was, as fast as I could.—Before I got on deck I heard pistols fire; my alarm still increased, and with difficulty and trembling I reached, to the best of my knowledge, the Companion, where I saw the unfortunate Heath lying on the deck, apparently wounded and bleeding, and my husband and Captain Stairs contending together,—Stairs, I think, having an axe and pistol in his hands. They in a short time separated, when my husband ran forward, and Stairs, with half the hatch, jumped overboard. I will not, to this Court, undertake, *positively*, to state, that I did not lift my hand against Stairs; I might have done it, though, to the best of my knowledge, I did not; but, if I did, it was in a state of distraction arising from the scene which then presented itself to my view:—my husband distracted with rage,—Heath lying bleeding on the deck,—the sound of pistols in my ears,—an axe and pistol in the hands of Captain Stairs, who appeared determined on destruction; added to all, my children were screaming with fright.—This closes the scene on the *thirteenth*.—From that to the time of the schooner's being taken, I suffered all that I could bear, and was frequently almost tempted to cast myself into the sea, and would have done it, but for my children, who still chained me to misery.—I do not take up the time of the Court further than to assure them, that I have, all times, owing to the violence of my husband's temper, and his treatment

to me, been under the greatest fear of his resentment; that I was and am ignorant of the object of taking the schooner; and that I took no part whatever, either directly or indirectly in the business; and that when I sailed with my family from Percée, I thought I was going to Halifax, and no where else.— These, may it please your Excellency and the Honourable Court, are the facts which I offer in my defence, and I confidently hope, when you consider my situation, you will be of opinion that I am innocent of the crimes with which I stand charged.—Relying on the influence of the Almighty, which I trust will be exerted in behalf of innocence accused, I leave myself in the hands of the Court.

The prisoner produced several certificates from inhabitants of Quebec and Percée, relative to her character and conduct, at those places, and wished to have them read, but it was agreed to leave them with the Court.

About three o'clock the prisoners were taken from the bar, and the Court cleared, for the purpose of collecting the opinions of the Commissioners.—In about twenty minutes the doors were opened, when Edward Jordan being placed *alone* at the bar, and the usual proclamation for silence made, *His Excellency the President* addressed the prisoner in the following words:—

“EDWARD JORDAN,---The Gentlemen Commissioners, before whom you have been accused of Piracy, Felony, and Robbery, have deliberately examined the Articles of Charge exhibited against you, and having maturely weighed and considered the several evidences produced against you on behalf of His Majesty, as well as what has been alledged in your favour, upon the whole, have, *unanimously*, found you GUILTY of the several articles of Piracy, Felony, and Robbery, wherewith you are charged, and have agreed, that sentence should be pronounced against you for the same accordingly.”

Here the *Registrar* asked the prisoner if he had any thing to say why sentence should not be passed upon him, and execution thereof awarded against him. He only enquired if his accounts and papers had been examined. He was told they had been.

His Excellency the President then proceeded to pronounce Sentence as follows:—

“The Court, by which you have been tried, has examined your case, with every just and merciful disposition towards you, and I have already informed you that the Commissioners have unanimously pronounced you Guilty ---Nothing, therefore, now remains, but for me, as President of this Court, to perform the painful duty of pronouncing the dreadful Sentence, which the law directs to be executed upon you; not only, as a just punishment for the horrid crimes of which you have been, this day, convicted, but as an example to all others, of the vengeance which always pursues the

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Reps of the Murderer, whom no art can fave from the fword of juftice in
his life; and whofe only hope in the world to come, muft depend on the
mercies of the Almighty;—You, who have fhewn neither mercy nor com-
paffion to your fellow-creature, can have none to receive from the hand of
man: Let me, therefore, exhort you, during the fhort time you have to live,
that you do, with a contrite and penitent heart, humble yourfelf before God
and feek forgiveness of your fins, through the merits and interceffion of our
Bleffed Saviour, JESUS CHRIST.—

"You, *Edward Jordan*, fhall be taken from hence, to the place from
whence you came, and from thence to the place of Execution, there to be
hanged by the neck until you are dead; and may God Almighty have mercy
upon your foul."

The *Provoft Marshall* was then directed to take the prifoner from th^e
bar, and keep him in clofe cuftody. After which, *Margaret Jordan* was
placed at the Bar, and the President addreffed her in thefe words:—

"*Margaret Jordan*—The Court has confidered the charges brought
againft you, and, from fome favourable circumftances which have appeared
in your cafe, has been very indulgent to you, and adjudged you NOT
GUILTY."

She was accordingly difcharged by Proclamation, and foon after the Court
was adjourned *fine die*.

From motives of humanity to the unhappy convict, whofe hardened be-
haviour during the trial, and at the paffing of the Sentence, had fhewn him
totally unprepared for meeting the awful punifhment, which he had been fo
juftly condemned to fuffer, His Excellency the Lieutenant Governor was
pleafed to defer the execution of the Sentence until *Thursday* the 23^d of the
fame month; on which day about ten o'clock in the forenoon, *Edward
Jordan* was taken to the beach at Fresh Water River, the place appointed for
his Execution. He remained for about four hours employed in the moft careful
devotion and prayer, and joining with the reverend Gentleman who attended
him, in the holy exercifes of his religion.—About half after two o'clock in the
afternoon, he afcended the fcaffold with much apparent firmnefs, and after
advifing the crowd of fpectators to take warning from his awful fate, and to
fhun the vices which had brought him to his end, and informing them that his
Confeflion was in the hands of the *Provoft Marshall*, and would be printed,—
Edward Jordan was launched into eternity.—After hanging the ufual time,
his body was taken down from the gallows, and hung in chains at Point Plea-
fant, on the beach below Fort Ogilvic.

The Confession

Alluded to by Jordan, had been drawn up the night before, in his presence, at his own request, and in his own words, and was signed by him about two hours before he was conducted to the place of Execution. How far it may strictly be called a Confession, we will not pretend to say; but feel it a duty, which we owe to the public, to insert it, not only as an interesting account of the Criminal himself, but also because it was his earnest desire, and last request, that it should be published.—It is as follows:—



I was born in the Parish of *Boris Idrone*, in the County of *Carlow*, in the Province of *Leinster*, and Kingdom of Ireland, of respectable parents, who educated me in the fear of God, and in the Roman Catholic religion. My father dying when I was sixteen years of age, left me his farm, under my mother's directions; from which time, until the unfortunate Rebellion of 1798, I behaved myself as a dutiful son, and was respected by all who knew me. My landlord, *Mr. Bagnall*, noticing me for my good behaviour, made me Deputy Receiver of the rents of part of his estate, which trust I discharged to his and his tenants' satisfaction. In the latter end of 1797, some persons told my landlord that I was concerned in the rebellion, and had a party of men, on a certain hill, exercising them in the night, which I declare was untrue: although innocent, I was taken by a party of the 9th Dragoons to the Guard-House in *Bagnall Town*; I was confined eight days and nights in the Guard-House, during which time my landlord would not see me; on the 9th day I received information from a Cornet of Horse, that I would be shot the next day at twelve o'clock, with eight more who were in prison with me; I never knew my prosecutor. On the same night I went out of doors, under a guard of two men, from whom I made my escape, by leaping over a wall. The sentinel at *Mr. Bagnall's Hall* fired at me in the street, but I made my escape, though pursued by horse and foot, until I got to a strange part of the country, where I was not known, and hired as a servant man at a farmer's house, where I laboured all the winter until April, 1798, when the times becoming desperate, I was obliged to leave the house, and take to the mountains and woods, often suffering hunger and cold, until the latter part of the month of May, I was informed that the Irish army was encamped upon the mountains of *Forth near Wexford*, and also that our house was burned down, and that the Dragoons had thrown my mother into the fire: on hearing of which I came out of the woods, and rode to the Irish camp, where I was welcomed by many who knew my sufferings. I was brought to the General *Bagnall Harvey*, who gave me the command of a party of men.—In about an-hour after, the British

before, in his presence, signed by him about two o'clock. How far it may be true, I do not know; but feel it a duty, to give an interesting account of the rebellion, and last of all, to give the names of the persons who were killed:—

In the County of Carlow, in the year 1798, I was the daughter of respectable parents, who were of the Catholic religion. My father gave me his farm, under my name, during the Rebellion of 1798, and was known by all who knew me. My behaviour, made me desirable to the rebels, and I was charged to his house by some persons told my father that a party of men, on a day which was untrue: afterwards I was taken to the Guard-house, and on the 9th day I was confined in the Guard-house, and on the next day I was taken to the doors, under a guard, and was taken over a wall. The next day I made my escape, and was taken to the part of the country, where I was taken to a farmer's house, where I was becoming despicable, and was taken to the mountains and woods, and on the 15th of the month of May, I was taken to the mountains of Forth, and that the Draft which I came out welcomed by many persons, and by Edward Maginnis, who was afterwards, the British

army came out of Wexford and drew up for battle.---We engaged them, and our numbers being superior, they retreated to Wexford, and from that to the north of Duncannon. We next encamped on the hill of Carrickbun, where we remained a few days, until, being reinforced, we marched on the fourth of June to Carbet-hill near New Ross, and on the morning of the fifth, we engaged the King's troops at day break, and beat them twice from the town over the bridge, but our ammunition being exhausted, they returned into town, and beat us out at six o'clock in the afternoon.

I continued with the Irish army until the rebellion was over, and, in that time, I saved three protestants by my intercession, who were on their knees to be shot by the rebels. I also saved Mr. Cullamore, a merchant of Ross, with a large sum of money, who would have been robbed and murdered but for me. And I now declare that I never had, before, during, or after the Rebellion, any act or part in the murder or robbery of any person or persons, out of battle; and that I did all I could to prevent such crimes, and I once apprehended a man for robbery, and gave him up to the king's troops to be tried.

After the Rebellion was over, I gave myself up, on the Proclamation under the Amnesty Act, and received a protection from Col. Kavanagh of Boris, and having been married in 1798, I lived with my father-in-law, John Croke, and dealt in Corn. I remained steady at my business until Nov. 1799, when I was taken up for not having my protection signed by the Lord Lieutenant, by Col. Kavanagh, who committed me to Gaol, and it was advertised in different counties, to discover if I had been guilty of murder or robbery in the Rebellion.—I was acquitted and returned to New Ross, and did business for a company of merchants for four years, with credit to myself, and to the satisfaction of my employers, until they failed; which caused me to come to America to New York. I from thence went to Montreal, where I lived on a farm of Sir John Johnson's, but, finding it did not answer, was returning to Ireland with my family, but was persuaded to stop at Quebec, where I lived on a farm two years, till it was sold for debt, when I removed to Percée, in Gaspé, and being recommended from Quebec, to John Wenman Pyke, Esq. and his brother, Colonel Pyke, they recommended me to Jonathan and John Tremain, who commenced dealing with them;—they gave me £70 on credit in June, September 1808, I returned to Halifax, with about 400 quintals of fish, which I delivered to Messrs. Tremains and for balance of account took West India produce. I told them I could not get a vessel to bring the fish sooner, and also told them that there was a large schooner on the stocks at Grand-River, and that, if they wanted her, to send rigging and men. I told them that, as it was the first of the winter, and the schooner could earn me nothing, I did not wish to run in debt for the rigging. They said they would take her into their employ, and send her two voyages to the West Indies, and give her two full cargoes home. I took rigging and hands down to Gaspé and fitted the schooner and sent her to Halifax, sending also a Bill of Sale, and General Power

Attorney to the Tremains to get out a Register, the consideration money for the vessel being £500. I came up to Halifax in the month of June, and found that the vessel had arrived. Messrs. Tremains kept me sixteen days waiting for my accounts. Finding the vessel in debt to a large amount on balance of account, I changed the Captain with the consent of Jonathan Tremain. They charged me with all the expences of the vessel during the time they had her, and turned out Captain Morin whom I had shipped, and put in J. Stairs, who took the vessel down to Gaspé. He produced his papers at the Custom-House at Gaspé, when the Custom-House Officer said to me "I thought the vessel was yours, but I see it belongs to Messrs. Tremains;" I said, I considered them as Gentlemen, and that they would not take any hold on my vessel, as they had charged me with her expences. Stairs, having a letter in his pocket from the Tremains, stating that I owed them a large sum of money and that the vessel was Messrs. Tremains, added that I had been in Gaol in Halifax, for debt, and had no credit with the Tremains. This report being spread, and the Court sitting in my own House at Percée, every one I owed demanded payment and those I could not satisfy sued me, and sold my property at one third of its value, which drove me to Despair. I was intoxicated every day at Percée. I never sold the vessel to the Tremains, they having it in trust for me, which Colonel Pyke knows.

We set sail from Gaspé, and continued on the course till the 13th September, on which day, about 11 o'clock, on recovering a little from the state I had been in, I considered that I was going with my family to Halifax to be put in Gaol by the Tremains, which drove me to distraction. I here declare that full credit may be given to *John Stairs'* testimony, except that I never struck *Matthews* with an axe, nor had I any intention of killing either of those Men, *Matthews* or *Heath*, but only *John Stairs* himself, who escaped in the manner he mentioned. I also declare that my wife never struck, or laid her hand on any of them, to my knowledge, and had nothing to do with the design of killing them; and I also declare that *John Kelly* is perfectly innocent of any hand in it, that I never communicated my design to *Kelly*, nor had he any knowledge of the business; and that, from the time of the men being killed, he appeared deranged till he left the vessel, and said, at different times, he would put a bad end to himself, and that *Stairs* was a Brother Mason of his. And as another report is circulated in Halifax, of my having been an informer in Ireland, I declare it to be wholly untrue, and that I never gave evidence against any man in my life, or brought any man to trouble on that account. And whereas *Mrs. Marcatti* at Gaspé had reported that she had lost £600, and that my wife had taken it, I declare she is wholly innocent, as well as myself.

(Signed)

Ed. Jordan.

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REPORT

OF THE

TRIAL OF JOHN KELLY.

ON Friday the 8th of December 1809, another Special Court of Admiralty, for the Trial of Piracies, Felonies and Robberies, assembled at the Court-House in Halifax.

PRESENT.

His Excellency SIR GEORGE PREVOST, Baronet, Lieutenant Governor of the Province of Nova-Scotia, &c. &c. &c.—PRESIDENT.

The Hon. SAMPSON SALTER BLOWERS, Esq. Chief-Justice of the Province, and President of his Majesty's Council.

The Hon. JOHN BUTLER BUTLER, Esq.

The Hon. MICHAEL WALLACE, Esq.

The Hon. EDWARD BRABAZON BRENTON, Esq.

The Hon. CHARLES HILL, Esq.

The Hon. RICHARD JOHN UNIACKE, Esq.

The Hon. CHARLES MORRIS, Esq.

Members of his Majesty's Council.

JOHN SIMPSON, Esq. Commander of His Majesty's Ship La Furieuse.

WILLIAM H. BYAM, Esq. Commander of His Majesty's Sloop of War Opossum.

JOHN LAWRENCE, Esq. Commander of His Majesty's Sloop of War Driver.

SAMUEL H. GEORGE, Esq. Secretary of the Province.

THOMAS N. JEFFERY, Esq. Collector of the Customs for the Port of Halifax.

CROFTON UNIACKE, Esq. REGISTRAR.*

* A new Commission had been issued appointing him to that Office.

The President, Commissioners, and Registrar having been sworn, and the Court opened, in the same manner as on the trial of Edward Jordan, JAMES STEWART, Esq. His Majesty's SOLICITOR-GENERAL, delivered certain Articles of Allegation against *John Kelly*, charging him with Piracy, to the Registrar, who read them as follows :—

PROVINCE OF NOVA-SCOTIA, }
SPECIAL COURT OF ADMIRALTY, } IN THE NAME OF GOD, AMEN.

Before His Excellency *Sir George Prevost*, Baronet, Lieutenant Governor and Commander in Chief in and over His Majesty's Province of Nova-Scotia, &c. &c. (*Here the names of the other Commissioners were inserted*) Commissioners appointed and assigned by His Majesty's Royal Commission, under the Great Seal of His Admiralty of England, bearing date the 30th day of October, in the 25th year of His Majesty's Reign, for examining, enquiring of, trying, hearing, determining and adjudging, according to the directions of the several Acts of Parliament therein mentioned, in any place at Sea or upon Land, at his said Province of Nova-Scotia, all Piracies, Felonies and Robberies, and all accessories thereto, committed in and upon the sea, or within any haven, river, creek or place, where the Admiral or Admirals have power, authority or jurisdiction, Coma *James Stewart*, Esquire, *Solicitor General* of our Sovereign Lord the King within the Province aforesaid, this eighth day of December, in the fiftieth year of the reign of our Sovereign Lord George the Third, King of the United Kingdom of Great-Britain and Ireland, &c. &c. and hereby complaining, on behalf of our said Sovereign Lord the King, doth say, allege, and in Law articulately propound as follows :—

First : That *John Kelly* late of Halifax in the Province of Nova-Scotia, Merchant, and late Mate of a certain merchant ship or schooner, called the *Three Sisters*, combining and confederating with one *Edward Jordan*, to turn Pirate and Robber, and to run away with the said merchant ship or schooner called the *Three-Sisters*, being of the value of five hundred pounds of lawful money of the Province of Nova-Scotia, belonging to Jonathan and John Tremain of Halifax aforesaid Merchants, and having on board a cargo of dried Fish of the value of three hundred pounds of like lawful money, belonging to divers persons unknown, and bound from Gaspé in the Province of Lower Canada, to Halifax aforesaid, under the command of John Stairs, the Master of the said merchant ship or schooner, he the said John Kelly, being Mate of the said merchant ship or schooner, in pursuance of the combination and confederacy so as aforesaid made between him, and the said Edward Jordan, who was then a passenger on board the said schooner, did, on or about the thirteenth day of September in the year aforesaid, on the high sea, near the coast of Nova-Scotia aforesaid,

Registrar
in the same
man, JAMES
GENERAL,
against John
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God, Amen.

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and whete the Admiral or Admirals have power, authority, and jurisdiction, betray his trust, and in confederation with the said Edward Jordan, with force and arms, *piratically* and *feloniously*, seize and take the charge and command of the said merchant ship or schooner, from the said John Stairs, the Master thereof, against the will of the said John Stairs, and having aided and abetted the said Edward Jordan, in compelling him the said John Stairs to leap into the sea, from on board the said ship or schooner, by putting him in great bodily fear, and danger of his life; and having aided and abetted him, the said Edward Jordan, in wilfully murdering Thomas Heath and Benjamin Matthews, manners on board the said ship or schooner, he, the said John Kelly did, in confederation with the said Edward Jordan, as aforesaid, *piratically* and *feloniously* run away with the said merchant ship or schooner, and the said cargo, and dispose of, and convert the same to his own use, and the use of the said Edward Jordan, contrary to the form of the statutes in such case made and provided, and against the Peace of Our Lord, the King, His Crown and Dignity.

Second.—That the said John Kelly, on the *thirteenth* day of September in the year *aforesaid*, with force and arms, upon the high sea, near the coast of Nova-Scotia aforesaid, and within the jurisdiction aforesaid, being then Mate of the said merchant ship or schooner, called the Three Sisters, whereof the said John Stairs was then Master, then and there did betray his trust; and the said merchant ship or schooner, and the apparel and tackle of the same ship or schooner, of the value of five hundred pounds, of lawful money of Nova-Scotia aforesaid, of the goods and chattels of one Jonathan and John Tremain, together with six hundred quintals of dried salted fish, of the value of three hundred pounds of like lawful money, then being in and on board of the said ship or schooner, of the goods and chattels of certain persons as yet unknown, and then and there, upon the high sea aforesaid, in the ship or schooner aforesaid, and within the jurisdiction aforesaid, being under the care and custody, and in the possession of the said John Stairs, he, the said John Kelly, with force and arms, from the care, custody and possession of the said John Stairs, then and there, to wit, on the high sea aforesaid, in the ship or schooner aforesaid, and within the jurisdiction aforesaid, *piratically*, and *feloniously*, and against the will of the said John Stairs, did steal, take, and run away with, contrary to the form of the statute, in such case made and provided, and against the Peace of Our Lord, the King, His Crown, and Dignity.

Third.—That one Edward Jordan, on the *thirteenth* day of September, in the year *aforesaid*, being a passenger on board the said merchant ship or schooner, called the Three Sisters, whereof the said John Kelly was then Mate, bound on a voyage from Gaspé aforesaid, to Halifax aforesaid, the said John Stairs being then master of the said merchant ship or schooner, he the said Edward Jordan, on the *same day*, and in the year *aforesaid*, on the high sea, near the

coast of Nova-Scotia aforesaid, and where the admiral or admirals have power, authority, or jurisdiction, with force and arms, *piratically* and *feloniously*, did seize and take the charge and command of the said merchant ship or schooner, from the said John Stars, against the will of the said John Stars, and having compelled him, the said John Stars, to leap into the sea, from on board of the said ship or schooner, by putting him in great bodily fear and danger of his life; and having wilfully murdered Thomas Heath and Benjamin Matthews, two seamen belonging to the said merchant ship or schooner, did *piratically* and *feloniously* run away with the said merchant ship or schooner, and her cargo; and that the said John Kelly, so being Mate of the said merchant ship or schooner, as aforesaid, on the *same day*, and *year aforesaid*, on the high sea, and within the jurisdiction aforesaid, did betray his trust, and did then and there, *piratically*, *feloniously*, and *voluntarily*, yield up the said merchant ship or schooner to the said Edward Jordan and did then and there combine with the said Edward Jordan in *piratically* and *feloniously* running away with the said schooner, contrary to the statute in such case made and provided, and against the Peace of Our Lord the King, His Crown and Dignity.

Lastly.—That all and singular the premises were and are true, public, and notorious; and thereof there was and is a public voice, fame, and report; of which legal proof being made, right and justice ought to be fully and effectually done and administered in the premises; and that the said John Kelly ought to be punished according to law, and the statutes in such case made and provided, for such the Murders, Piracies, and Felonies by him committed as aforesaid.

(Signed.)

James Stewart.

The Allegation being read, the *President* directed the *Registrar* to issue a warrant to *Jones Lawson*, Esq. (who had been again appointed *Provost Marshal*), commanding him to bring the body of John Kelly before the Court. A warrant was accordingly issued, and the prisoner being brought up and placed at the bar, he was arraigned, in the usual manner, upon the foregoing Allegation, to which he pleaded *Not Guilty*.—Being asked by the *President*, at what time he would be ready for his Trial, he named the following Monday. He was then directed to give in the names of such persons, as he should wish to call as witnesses in his behalf on his trial, in order that they might be summoned to attend; upon which he gave in the names of *Margaret Jordan*, *John Brown*, and *John Curtis*. The prisoner was then informed by the *President*, that the Court would order a copy of the Allegation to be sent to him; and would allow any gentleman of the Bar, whom he should employ, to offer any matter of Law to the Court, in his behalf, upon his trial: The prisoner named *S. B. Robie* Esq. for his Counsel.—After which he was remanded to the custody of the *Provost Marshall*, and the Court adjourned until nine o'clock on the following Monday.

On Monday the 11th of December 1809, the Court met pursuant to adjournment, when the Hon. ALEXANDER CROKE, L. L. D. *Judge of the Court of Vice-Admiralty, and one of His Majesty's Council for the Province*, appearing on the Bench, the Commissioner's oath was administered to him, and he took his seat on the left of the *President*.

The Court being opened, *Mr. Robie*, the prisoner's Counsel, said, he considered it his duty to move the Court to put off the trial, on the ground of the absence of a material witness, which fact appeared from an affidavit, made by the prisoner, stating that, as soon as he got on shore from the schooner *Three Sisters*, at the time he last left her, he applied to a *Mr. Ryan*, a constable at the *Bay of Bulls*, and informed him of the murder, which had been committed on board the said schooner, and requested him to send a boat after her, which *Mr. Ryan* declined to do, on being informed there were arms on board; that *Mr. Ryan* could prove the above fact, and was therefore a material witness for the prisoner.

The *Solicitor-General* objected to the application on two grounds;—*First*, Because the prisoner had himself named the day for his trial, and given in the names of his witnesses, therefore the application came too late:—*Secondly*,—Because the witness was out of the jurisdiction of the Court.

After some consultation on the Bench the *President* said, “*Mr. Solicitor-General*, you will proceed on the trial.”

The *Solicitor-General* and *Mr. Hutchinson* being of Counsel for the prosecution, the *Solicitor-General* addressed the Court as follows.

“*May it please your Excellency and Honours*,—

“The prisoner at the Bar stands charged as a Confederate and Aider in the awful scene, which has been lately disclosed to this Honourable Court upon the Trial of *Edward Jordan*; so that the Evidence in support of the prosecution will, in a great measure, be a repetition of the dreadful tale, that has been already told. As my learned friend, *Mr. Hutchinson*, upon that occasion fully explained the Constitution of this Court, and minutely defined the legal nature of the crime of Piracy, with which the present prisoner, *John Kelly*, stands chiefly charged, I will immediately proceed, without taking up the further time of the Court, to a recital of that evidence.

The allegation contains three Articles. By the *first*, the prisoner is charged with having confederated with *Jordan*, in piratically running away with the schooner *Three Sisters*, and her cargo, and with having aided and abetted him in the murder of *Heath* and *Matthews*. The *second article* charges him generally, with having piratically run away with the same schooner and her cargo; and the *third article* charges him, under the Statute of the eleventh and twelfth of *William III.* with having voluntarily yielded up the schooner *Three Sisters* and her cargo to the Pirate, *Edward Jordan*.

Under this Allegation, and the evidence which I shall adduce in support of it, the prisoner can be considered in no other light than as a confederate or aider, if not an actor or principal. An accessory must be either before or after the fact, but the prisoner will, I trust, in this transaction, as it may regard the piracy in particular, be proved an aider in the crime, and as such must meet his fate. If, however, he should be considered as an accessory, he may still be found Guilty under the allegation, as the Statute of the 8th of George I. declares all accessories to any Piracy or Robbery to be Principals, and directs that they shall be enquired of and adjudged as such. I proceed to the detail of the evidence in this case, with feelings rather different from those which entered my mind, upon the late trial of that wretched man, who has so justly paid the forfeit of his life. In the part this prisoner has taken in the Deed, some circumstances of mitigation may be found, but of his guilt I have not a doubt, although he may have acted under the melancholy impulse of coercion.

Here the Solicitor General entered into a full detail of the evidence, and then proceeded with the following and other observations.

The recital of this horrid affair leads me into a conjecture of what may, probably, be the defence of the Prisoner; and when I view the brutal conduct of *Jordan* throughout the whole scene, and contrast it with the criminal timidity of the prisoner, I am led to suppose that your Excellency and Honours will be told, by the unhappy man at the Bar, that in all his doings he has been under the woeeful compulsion of *Jordan*. This cannot be inferred from the evidence, and if it could, the Criminal Law of our country, humane and indulgent as it is beyond that of all others; would not support him in his defence. Independent of the special duty he owed, as Mate of the Ship, to protect the property of his employers, and, above all things, to stand by and defend his Captain, he owed it to his fellow-creatures, to give all the assistance in his power towards the preservation of their lives, while in the hands of the Murderer,

By the Constitution of *Salon*, Co. wardice was punished; and if ever that unhappy impulse could deserve the lash of the Law, it would be upon an occasion like the one in question, upon which nothing could have justified inaction, but actual imbecility of both mind and body, produced by a most sudden and extraordinary panic.

It is laid down by my Lord *Hale*, that a man cannot even excuse the killing of another, who is innocent, under a threat, however urgent, of losing his own life unless he comply. Mr. *East* however, in his excellent Treatise, of the *Pleas of the Crown*, observes that, "if the commission of Treason may be extenuated by the fear of present death, and while the party is under actual compulsion, there seems no reason why the offence of Homicide may not also be mitigated, upon the like consideration of human infirmity." In the same book, upon the subject of high Treason, it is said, "if the joining with Rebels be from fear of present death, and while

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"the party is under actual force, such fear and compulsion will excuse him. "It is incumbent, however, upon the party setting up this defence, to give "satisfactory proof, that the compulsion continued during all the time he staid "with the Rebels."

This being the Law of our Land in cases of Treason, let us, by analogy, apply it to the conduct of the Prisoner, to the fullest extent of indulgence, and your Excellency and Honours will then see how little it will avail him. If he be innocent of the murder, or however pardoned he may have been at the time of its commission, it will evidently appear that, immediately after that deed was done, he must have instantly aided in the *Piracy*, for upon his arrival with the schooner in the first port she reached in *Newfoundland*, he there appears at the Master of her, being called Captain by Jordan, and having the entire management of the vessel in that capacity.---There he had a happy opportunity, if he had pleased to have availed himself of it, of disclosing the whole truth. He might have done it with the most perfect safety to his person, in defiance of the threats of Jordan, not only on shore but afloat, as His Majesty's armed schooner *Mackarel* was lying near him, in the very harbour where the *Three Sisters* was at anchor. He might have done it with equal safety at *St. Mary's*, where the *Mackarel* again appeared; and at *Trepassey* in particular, where, during the absence of Jordan for several days, he had the most unqualified freedom of acting and speaking as he thought proper, without being under any possible apprehension from any quarter whatever. At the *Bay of Bulls*, another favourable opportunity was offered him of making a disclosure, but this, it will appear, was not only rejected by him, but he there flies from the hand of Justice, upon hearing that his Majesty's Schooner *Cuttle* was in pursuit of the *Three Sisters*.

That he may have been under the dread and influence of that extraordinary character, to a certain and perhaps great degree, I am willing to admit; but it lies upon him to prove under what force of compulsion he has been acting in the dreadful scene. Were I of Counsel for the prisoner, it would be the main object of my defence to delineate the terrific *Jordan*, and to expose the brutality of his conduct in every stage of the dreadful affair, that, if I had a hope upon the ground of coercion, the threatener might appear in his strongest colours. If I can peep into the defence of the Prisoner, the amount of it is this, that *Jordan* was instigated by the Devil, and the Prisoner by *Jordan*. But in the eye of the law such an excuse cannot serve him.

He is now in the hands of your Excellency and Honours, who, painful as your duty may be, will, I have no doubt, execute it with a due and solemn regard to the oath you have taken. Upon the Evidence, which it is my duty to lay before you, together with what he may offer in his defence, the Prisoner must be tried, and the result of his trial, I am inclined to anticipate, will be his Conviction. To that Conviction, however, may be attached, if the Court should think it proper, a recommendation of the prisoner for mercy to the best

THE TRIAL OF JOHN KELLY.

of King's. His case may be laid before his Majesty, and a representation made of the wretched timidity of the unhappy man, which caused him to submit to a savage ferocity, he had not the spirit to resist for the preservation of others. His youth and his contrition may be also pleaded for him, and those facts, which cannot avail him at the Bar of Justice, may lead to a pardon of his crime when told to the ear of Mercy. On the other hand, should I be mistaken in my conjecture as to the judgment of your Excellency and Honours, and should you think fit, upon a full consideration of the whole evidence to acquit the Prisoner, I have the hope that I shall have done my duty to the best of my ability, and I shall consider your sentence as proceeding from those feelings, which are the safest, and the most creditable to the heart of man.

Mr. Solicitor General said that he would first call *John Stairs*, who, being sworn and * examined, deposed as follows:—

I am a Mariner and ship Master, and first became acquainted with the Prisoner at the Bar in July last. He is a seaman, and was shipped as mate of the schooner *Three-Sisters*, of which I was Master. Messrs. Jonathan and John Tremain are the registered owners of that vessel, and are the persons who gave me the command of her. The last voyage I failed upon in that vessel, was from Gaspé to Halifax, but I did not complete it. At the time we failed from Gaspé I was master of the schooner, *John Kelly*, the Prisoner at the Bar, Mate, and Thomas Heath, and Benjamin Matthews, seamen, Edward Jordan, his Wife and four Children were passengers on board. The cargo of the schooner consisted of dried fish, and belonged to Theophilus Fox, Wm. Driscoll, Messrs. Tremains, and myself. We proceeded on the voyage until the thirteenth of September last; on that day, the vessel being between Cape Canso and White Head, I was in the cabin, and Heath was standing behind me, when, looking up towards the skylight, I saw Edward Jordan standing behind *Kelly*, and pointing a pistol at me down through the skylight. I started back, upon which Jordan fired the pistol, and the ball struck Heath, who ran upon Deck. As soon as I could see, I went to my Trunk for my pistols, but it was broken open and the pistols gone. I then searched for my cutlafs, but could not find it. As I was going on deck, I met Jordan on the companion ladder with a pistol in one hand and an axe in the other. I pushed him back on the deck, and called for *Kelly* to come to my assistance, but he gave me no answer, and did not come to my assistance. By this time Heath was dead, and Matthews came running aft apparently wounded. While I was calling *Kelly* Mrs. Jordan said, "*He would give me Kelly,*" and struck me with a boat-hook handle, I wrested the pistol and axe from Jordan, and threw

* Each witness was examined on this trial in the same manner as on that of Jordan, but here the questions have been omitted, and the evidence carefully condensed.

them over-board, and when I got disentangled from him, I ran forward for something to defend myself with. I looked at the prisoner, and he appeared to me to be in the attitude of loading a pistol. Finding there was no chance for my life, I threw the hatch into the sea, jumped overboard and swam after it.—After remaining in the water about three hours and a half, I was taken up by an American schooner, and carried to the United States, from whence I came to Halifax. During the whole of the contest, *Kelly* neither assisted me, nor said any thing, and did not take any part in what was going on, but only remained at the helm. At the time *Jordan* fired the pistol into the cabin, *Kelly* was standing about three or four feet from the skylight.—When I came on deck, the vessel was off her course; the wind blew from the North, and the proper course was West and by South. During the whole of the contest, I was calling *Kelly* to my assistance; at the beginning, *Matthews* came running aft to assist me, but, during the latter part, he was lying on the deck apparently wounded; after I got clear from *Jordan*, I saw him strike *Matthews* on the head with an axe.

On his Cross-examination by Mr. Robie, the prisoner's Counsel, the Witness said,---

When I called *Kelly* to my assistance, he was standing at the helm, and appeared frightened,—he moved his body as if inclined to come to assist me, but I cannot say what prevented his coming.—I do not recollect that I was in the act of handing a glass of fog to him, when *Jordan* fired the first pistol, although it might have been so.—When I say that *Kelly* appeared to me to be in the attitude of loading a pistol, I mean, that his back was towards me, and himself in a fixed posture.—I do not know *Kelly* to be a timid man;—he always bore a good character with me, and was always obedient until that time.

Being examined by the Court the Witness said,---

I do not know what course the vessel was steering, when I came on deck in consequence of *Jordan's* firing the pistol;—the true course was West-South-West; I do not know at what time, or by whose order it was altered.—When I went below the schooner was steering West-South-West along the land, and, when I returned on deck, she was off the wind.—I knew, by looking at the land, that she was off her course.—When the contest commenced I suppose we were distant about three or four miles from the shore. If *Kelly* had assisted me I could have overcome *Jordan*.—*Kelly* was at the helm during the whole time, but I cannot say that he altered the course; it was changed about four or five points; it is possible, however, that the schooner might have made a yaw.—I have every reason to believe that the course was changed for the purpose of getting the vessel off the Nova-Scotia shore;—after I left her she steered about South, before the wind, but sometimes she would take a yaw.

I.

TRIAL OF JOHN KELLY.

Here a question was put by the prisoner with the leave of the Court, to which the Witnesses answered.

After I was overboard, the schooner at first steered an irregular course, but in about half an hour she steered steadily to the Southward;---the sails were not trimmed, before I went overboard, to answer the altered course;--- After I came on deck, I did not give Kelly any orders respecting his steering. The witness then withdrew.

William Crewe being called and sworn, was examined and deposed as follows.

I first became acquainted with the prisoner at the Bar at *Little-Bay*, in *Fortune-Bay*, in *Newfoundland*.---On a Saturday afternoon in September, I think it was the 23d day of the month, a man came on shore in a boat from the schooner *Three Sisters*, and said they wanted hands;---I and two other men went on board the schooner, where we saw *Edward Jordan*, who told us he had come in for wood and water, and that his men had been pressed;---He asked the men, who were with me, if they would ship on board the schooner, and gave them until the next morning to consider of it, after which they returned on shore. When *Jordan* found that the men had gone, he requested me to stay on board that night, and take care of the vessel, as the people wanted rest, and promised to pay me whatever I should ask; I told him I would oblige him by staying; and accordingly I remained on board all night. The next morning the two men returned on board, and told *Jordan* either that they could not, or would not ship with him. He then asked me if I would ship; I told him I could not give him an answer, as I was not cleared from my master. I remained on board all day, and saw there *Pigot*, *Jordan*, and *John Kelly*, the prisoner at the Bar, the latter appeared to act as captain;---*Jordan* called him either *John* or *Captain*.---I shipped with *Jordan*, who then called himself *John Tremain*, to assist in working the schooner to *Halifax*;---*Kelly* was not present when I was hired.---I observed that part of the schooner's hatch was missing---*Kelly* told me that it had been washed overboard,---He made the new hatch.--- While the *Three Sisters* lay in *Little Bay*, His Majesty's schooner *Mackarel* came there, and remained, I believe, two nights and a day, but, as I was on shore, I cannot say whether *Kelly* or *Jordan* were on board of her, nor whether *Kelly* could have gone if he had pleased.---He went on shore occasionally at *Little Bay*, and I think he had full liberty to do so, as I never heard *Jordan* deny him.---The *Three Sisters* sailed from *Little Bay* on the Friday after her arrival there, and went to *St. Mary's* in *Newfoundland*;---*Kelly* went in her, and acted as master.---After she arrived there the *Mackarel* came in; I do not know how long she remained, because we left her there;---We went into that port on a Monday, and left it on the Tuesday week following.---*Kelly* was on shore there at different times.---While the *Three Sisters* lay at *St. Mary's* a boat from the *Mackarel* boarded her, *Kelly* was on board at the same time; *Jordan*

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went in the boat on board the Mackerel, but Kelly did not accompany him.--- There was a Custom-House Officer at Little Bay, but I do not recollect of their being any Officer of government at St. Mary's, as I had never been there before.---From that place the Three Sisters went to Trepassy;---on the way thither Kelly continued to act as master, but the Pilot had the command of the vessel. She lay at Trepassy from the afternoon of Sunday until the Saturday following;---Jordan left her at sea on the Tuesday before her arrival at Trepassy, and went in a shallop to St. John's;---he did not return to the vessel until the Friday week following;---during his absence, only Kelly, the Pilot, and myself remained on board the schooner.---Kelly went on shore while we lay at Trepassy.---I do not know that there was any Custom House Officer or Magistrate there, as I had never been at the place before.---We left Trepassy on a Saturday evening in October, bound to Agua Fort, or the Bay of Bulls; the next evening we arrived at the latter place.---From the time we left Trepassy, Captain Power, who had come with Jordan from St. John's, commanded the vessel.---She remained at the Bay of Bulls until the Wednesday after her arrival. On the morning of that day she sailed, and I heard Captain Power say she was bound to Ireland.---The same morning, a few minutes before the schooner sailed, Kelly went on shore and did not return.---I dare say Kelly might have disclosed what had happened on board the Three-Sisters, with safety to himself as to any attempt from Jordan, either at Little Bay, or at any place where he was ashore. At Little Bay he might have told Mr. Thorn, who is a Custom-House Officer, and an Agent for Mr. Newman of Dartmouth in England.

On his Cross-Examination the Witness deposed,

I do not know the reason why Kelly did not go on shore at Trepassy, and make a disclosure of what had taken place on board the schooner, but I think it was from fear of Jordan.---During the time I was on board the schooner, Kelly appeared to be under the controul of Jordan, because he obeyed him in every thing.---Kelly often appeared dejected, but I did not know the cause.---During the time the vessel was at Trepassy, and while Jordan was absent, two men came on board the schooner, and made some agreement with Kelly before the Windlass; I do not know what it was, but I believe it was to carry the schooner to Halifax.---I went on shore with Kelly at Trepassy to hire a man for the purpose of going to Halifax with the schooner, Jordan was then at St. John's; Kelly hired a man to go, (as the man afterwards told me) to Halifax: I do not recollect that Kelly told me not to let Jordan know that the man was hired to go to Halifax, or that he said that, if Jordan knew it, he would kill him.---Kelly told me that Jordan was in debt, and was running away with the schooner, and, to the best of my knowledge, Kelly also told me he was afraid to disclose it.---At Trepassy Kelly, in endeavouring to get into a boat, leaped into the sea; he however succeeded in getting into the boat, and sculled it to the shore; Captain Power

and I pursued him, took the boat from him, and brought it back. We left him on shore. I do not know how long it was before he was brought back to the vessel, to the best of my knowledge, it was on the same day; neither do I know the people that brought him back. I suppose his intention, in going ashore, was to disclose what had happened. When he got to the shore, he had neither his coat, nor his hat.---I saw Power strike Kelly on the shore, and afterwards take the boat on board, but I do not know the reason that Power did not take him at the same time. After Kelly had got his hat and coat, he again attempted to go on shore, and put his chest and things into the boat, for that purpose, but he did not go; I heard Power say that he had been ordered by Jordan not to let Kelly go on shore.---During all the time that Kelly was on board the schooner, he seemed to be very much cast down, and appeared to be always in fear of Jordan.---I had no knowledge or intimation of the arrival of His Majesty's schooner Cuttle, until I saw her at sea; I believe Power and others on board knew it but they did not inform me.---I do not recollect to have seen Kelly in his on board the schooner.

Being examined by the President the witness said:--

I believe an Officer and four men came in the boat from the *Mackarel* to the Throo Sitters. The Officer alone boarded; Kelly could have informed him of what had been done; at that time the Pilot had the command, but Kelly acted as Captain.---After Jordan left the vessel to go to *St. John's*, we had no sufficient hands to come to *Halifax*, because the man, whom Kelly had hired to assist in working the vessel, did not come.---Kelly told me that, if Jordan did not return soon, he would not wait for him, but he did not say at what time he would go.---I do not recollect that Kelly tried to get hands or supplies.---My reason for believing that he was endeavouring to hire the two men, who came on board the *Three Sisters at Trespasser*, to assist in carrying her to *Halifax* is, that the men asked me where we were bound; I told them to *Halifax*; they then enquired how many hands we had, and if the Captain wanted hands; I said I supposed he did, as there were only Kelly and I on board.---It was while the vessel lay in *St. Mary's Bay*, that Kelly told me that Jordan was in debt, and was running away with the schooner, and that he (*Kelly*) had not disclosed it.---I never heard Kelly called by the name of John Stairs. The name of the Captain of the Vessel is not in my shipping paper, I was shipped by Jordan, who then called himself *John Tremain*. (*Here the witness produced his shipping paper, which was read by the Registrar. From this it appeared that the Witness had been hired by a person calling himself John Tremain on the Witness's behalf proceeded.*) I never checked that shipping paper to Kelly.---There was nothing to give me Kelly's name going on shore, while Jordan was absent from the vessel.---After Kelly had gone on shore without his hat and coat, he was brought on board by two men, who belonged to the shore, but I do not know whether it was by force or not. I never heard him complain that he had been brought back by force.

The Witness then withdrew.

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Patrick Power being called and sworn, was examined and deposed as follows :

I was shipped at St. John's as Master of the schooner *Three-Sitters* by Edward Jordan, and went on board of her in that capacity at *Trepassey* on the 23th of October last; the prisoner at the Bar was then on board of that vessel. The day after my arrival at *Trepassey* he went on shore with me, and wanted to remain there, but I would not let him; he said he was going to be married that night; I told him that I had not a man, upon whom I could depend to take the vessel to the *Bay of Bulls*, except him and *Crewe*, but that, when he got there, he might go on shore if he liked. I brought him on board and went into the cabin, and while I was there he took the boat and went on shore again. There was a shore boat along side, in which I followed him and overtook him on the wharf, I asked him why he took away the ship's boat; he made me some answer, upon which I knocked him down upon the wharf, and took the boat away from him.—I went on board and got the vessel under weigh, and as we were going out of the harbour, he came on board; he brought his chest and bed on deck from below, and put them into the boat; upon which I told him he should not have the ship's boat; but should stay on board, and work the vessel to the Bay of Bulls. He said it was no use, he would not work, and that he was not inclined to go in the vessel.—I prevailed on him to remain, and he went into the cabin, and to the best of my knowledge, did not come up till we got to the Bay of Bulls.—We were becalmed at sea, and when I asked him to assist us, he refused.—*Kelly* remained on board the vessel all the time we were at the Bay of Bulls, and did not leave her until the morning we sailed from that place, when he demanded the boat and leave to go on shore, but I told him I would not let him go.—He was master until I went on board, and then Jordan said he should go as mate, but he said he would not.—The morning we sailed, the wind was blowing fresh, and *Kelly* wanted me to drop the other anchor, but I refused.—I went into the cabin, and while I was there he took the ship's boat, went on shore, and did not return.—The night before we sailed from the Bay of Bulls, Jordan informed me that a king's schooner was coming after him, but I cannot tell whether *Kelly* knew it or not before he quitted the Schooner.—

On his cross examination the witness said :—

The reason of my striking *Kelly* when he went on shore in the boat, was because he had taken the ship's boat when we were getting under weigh.—I cannot say who it was that brought him on board after he went on shore that time; he came on board for his things, and returned on shore in about two hours.—I was directed by Jordan to prevent *Kelly* from leaving the vessel.—He appeared to be much in fear of Jordan, and at times he seemed to be in very low spirits and would not assist in the business of the ship;—I heard that he had sits one day while I was on shore, but I never saw him in any.—I do

not *know* that it was *Kelly's* fear of Jordan that prevented him from making a disclosure of what happened, but I *think* he wished to disclose it at the Bay of Bulls, when he wanted to go on shore, and I prevented him.

Being examined by the Court, the witness said:--

My reason for supposing that *Kelly* wished to go on shore, at the Bay of Bulls, for the purpose of making a disclosure is, because he put on his best clothes, and said he had business on shore.--I never heard *Kelly* called by the name of *Stairs*, and never heard the name mentioned until the Cuttle boarded the schooner.--The first information that I received of the schooner's having been run away with was from Mr. Simpson, who boarded us from the Cuttle.

The witness then withdrew.

Thomas N. Jeffery, Esquire, one of the Commissioners was sworn and examined, and gave his testimony from his seat on the bench as follows:--

I am the Collector of His Majesty's Customs for the Port of Halifax.--The schooner *Three Sisters* is registered in this Port; the Certificate of her Registry is No. 6, dated 16th January 1809; the registered owners are Jonathan and John Tremain of this place, merchants;--Solomon Jennings was the original master;-- the name of *John Stairs*, stands endorsed as master 15th July last.-- There has been no transfer of the property, that I know of, since she was so registered.

President.--Mr. Solicitor General, have you now done? A. Yes Sir.

President.--"Prisoner, you have heard the evidence against you, if you have any thing to offer in your defence you shall be heard."

Mr. Robie then said, "The prisoner has a written defence, but as he cannot read well, he wishes one of us * to read it, if your Excellency and Honours will permit."

Permission being given, *Mr. Robie* read the defence as follows:--

May it please your Excellency and the Honourable Court to give your attention to the facts I shall now state in my Defence to the charges, which have been brought against me, and of which I hope I shall be able to prove that I am entirely innocent.

I am a native of *Dublin* in Ireland, and from my youth have followed the occupation of a seaman; I came to this country about three years ago, and since that time have been employed in the service of different persons in this Town, some of whom I intend, with the permission of this Court, to call as witnesses to prove that my conduct, ever since they became acquainted with me, has never been other than it ought to have been.

I was last summer shipped on board the schooner *Three-Sisters*, of which *John Stairs* was then Master, and my name entered on the ship's articles as Mate of the vessel, and as such I received a protection from being impressed,

* S. G. W. Archibald, Esquire, was one of the Counsel for the prisoner.

but I did not receive more wages than the other seamen of the vessel, nor did I consider myself as possessing more authority on board than they.

About noon on the 13th day of September last, I was at the helm of the schooner, and Capt. Stairs, being with Thomas Heath in the cabin, asked me if I wished a drink of grog; I thanked him and said I did; at that time Mrs. Jordan with her children was sitting on a cable, which had been coiled on the after part of the quarter-deck under the helm; Edward Jordan was standing on the starboard side of the quarter-deck, near a bed and bedding belonging to his wife, which had been brought on deck to be aired. As the tiller of the schooner *Three Sisters* projects over the skylight hatch-way, and, from the contraction of the vessel's quarter-deck, is pretty high from it, I was obliged to stoop a great deal to receive the glass, which Captain Stairs was then holding to me thro' the skylight, holding at the same time the end of the tiller in my left hand; at the instant I received the glass, Jordan fired a pistol from behind me, thro' the skylight into the cabin.---Stupified to the greatest degree by an act so terrifying, and supposing the pistol intended to destroy me, I started and fell across the tiller, in which position I continued for some time, under the most dreadful apprehensions of losing my life, for the first object I saw was Jordan armed with three or four pistols, and appearing determined to destroy all who should oppose him.---Benjamin Matthews was near the main hatchway, and Heath had reached the deck, when Jordan pointed a pistol towards Heath, who was in a line with Matthews, fired, and both of them fell on the deck.---As Stairs was coming up the Companion Jordan advanced to the door, and while going, pointed a pistol, and used the most threatening and violent gestures towards me; this added so much to my intimidation that I lost all power of moving, and was almost deprived of my reason. Captain Stairs, after struggling some time with Jordan, got disengaged, and pushing part of the main hatch overboard jumped after it; and I here most solemnly declare that I did not hear Captain Stairs calling me, while he was struggling with Jordan, to his assistance, and I trust it will be proved that the only words he was heard to say were, "For God's sake spare my life, and I will take vessel wherever you like."---I was so confounded and stupified by this horrid transaction, that I remained, as it were, chained to the spot, expecting that I should be the next victim of Jordan's desperation. After Stairs was in the sea, Jordan came aft to fire at him, I put the helm down and Jordan immediately lost sight of him in the wake of the vessel.---Jordan then presented the pistol at me and said, "I'll blow your brains out with the rest."---I fell on my knees and begged my life of him, and he at length turned away and went to Matthews, who was not yet dead, and struck him on the back of the head with the boat-hook handle, and threw him and Heath overboard, and afterwards washed the blood from the deck.---During this time I was lamenting the transaction I had witnessed and exclaimed, "What shall I do;" Jordan overheard me and

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TRIAL OF JOHN KELLY.

ordered me to put the vessel before the wind, which I was compelled to do. The same night, it will be proved, my terror and grief threw me into fits which came on several different times afterwards. About two days afterwards, as well as I can recollect, Jordan brought a prayer book and pistol on deck, and making me observe that the latter was heavily loaded, threatened to blow my brains out if I did not solemnly swear never to divulge what had happened; this bath I was compelled to take, tho' with the greatest reluctance, and with a determination to disclose the whole, as soon as I should come to a place, where I could do it with safety to myself, for Jordan had sworn that, if I ever made the slightest attempt to discover the business, he would take my life, and that he did not care for his own life.

At the first Port we made in the Island of Newfoundland, I wished to disclose the transaction, but feared to do so because there was but one Merchant there, and his assistance might not have been enough to secure Jordan; added to that I expected to have other and better opportunities. At another place where we went, I was watched so closely by Jordan, that I had not the least opportunity of informing.—When the armed Schooner boarded us Jordan's precautions were such that the least attempt on my part to give information would have been attended with my immediate destruction.

Jordan had by this time shipped Crewe, Pigot, and a pilot on board, and was proceeding to St. John's, but not being able to get there in the schooner, he went in a boat accompanied by Pigot. At this time I hoped I should be able to effect my purpose of making a discovery; We were unfortunately driven off to sea;—after some days we got into the Bay of Bulls, this I think was on a Sunday, and the Pilot remained on board till the Wednesday following, when he left the vessel; as I dared not confide either in Crewe or the Pilot, I determined to land at the Bay of Bulls and inform some Magistrate of the whole that had passed, but the entreaties of Mrs. Jordan prevented me from doing so; she was afraid my account would not be credited, and Jordan's arrival which was hourly expected, would again expose us to his revenge; I then, as it will be proved to the court, formed the design of going off to Halifax with the vessel, as soon as I could procure some hands to assist Crewe and myself to navigate her there; this plan I communicated to Mrs. Jordan and she approved of it. On the Thursday I went ashore, and engaged two men to go to Halifax, and, not daring to confide the whole business to Crewe, I told him that I should set off with the vessel to Halifax without Jordan, if he did not come the next day. In pursuance of this intention, I employed the men in cutting wood for the vessel, and resolved to get out of the harbour as soon as possible. As it could not be done that evening, I was obliged to defer it, until the next day, but to my great disappointment Jordan arrived on Friday evening, after dark, accompanied by Power and Pigot. My designs having been thus entirely frustrated, I attempted to escape to the shore; and jumped overboard twice and swam to the jolly boat of the schooner to get ashore

in her, but pursued and brought back by Patrick Power, once even after I had reached the shore. On the morning that the schooner put to sea for the last time, I succeeded in getting ashore, and went to the house of a *Mr. Ryan*, a constable at the Bay of Bulls, and after relating to him all that had happened, desired him to send a boat after the schooner, and bring her back; he enquired what arms they had; I told him they had some pistols, upon which he declined to send after the vessel on account of the danger which might attend the attempt to detain her. I then hired a man to conduct me to St. John's, towards which place we proceeded until we were met by an Officer and a party of Soldiers; on enquiring of me if I had heard of the schooner *Three Sisters*, I told them I was the mate of that vessel, and, having made my escape from on board her, was on my way to St. John's to endeavour to get a cutter sent after her. I was informed that a cutter had gone in pursuit of her, and a Newspaper was then shewn me, containing an account of the transaction, upon which I was conducted back to Trepassey, and was afterwards sent to this place.

This, may it please your Excellency and Honours, is my defence, many parts of which I shall be enabled to substantiate by satisfactory evidence, and I trust, when your Excellency and Honours consider the effects, which the savage rage and desperate determination of a man like Jordan must have produced on me, and the horror and consternation excited by the scenes I had witnessed, and when are also considered my continued attempts to escape to some place where I might disclose those dreadful deeds without subjecting myself to undergo the effects of Jordan's revengeful disposition, and that, finally, I did disclose all I knew to *Mr. Ryan*, that your Excellency and Honours will acquit me of the charges brought against me; and consider the anxiety and imprisonment which I have already suffered, as a sufficient atonement for the only offence I have been guilty of—the *misfortune* of having been on board the schooner *Three Sisters* at the time those crimes were committed, and being so overpowered by terror as to be unable to afford to Captain the aid he wanted, and which a man possessed of more strength of body and mind, than I am conscious of possessing, might have given. Some parts of my defence are, from their nature, incapable of proof; my intentions can only be inferred from circumstances; . . . and I humbly hope, the Being, to whom my innocence is known, may assist your Excellency and Honours in forming a determination that shall declare it.

The *President* then said, "How old are you *Kelly*?" A. Near twenty-two years of age."

The Court was then adjourned until the next day at ten o'clock.

Tuesday, December 12, 1809.

The Court met pursuant to adjournment, and being opened in the usual manner, the President informed the Prisoner that the Court was ready to hear any witnesses he wished to examine in his defence.

The Counsel for the prisoner then proceeded to call *Margaret Jordan*, who was sworn by the Registrar, and being examined deposed as follows:—

I was on board the schooner *Three Sisters* on her voyage from Gaspé to Halifax in the month of September last;—I know the prisoners at the Bar, he also was on board.---The schooner (I know not for what reason) proceeded to Newfoundland, instead of Halifax;---it was, I think, about the 9th or 10th of September that we sailed from Gaspé;---We were on board about four days before the murder;---between ten and eleven o'clock in the forenoon of the 15th, *Kelly* was standing at the helm;---*John Stairs* and *Thomas Heath* went into the cabin, and the former handed up a glass of grog, through the skylight to *Kelly* at the helm.---My husband fired a shot through the skylight, into the cabin from behind *Kelly*, at which *Kelly* seemed very much frightened, and leaned on the helm with the glass of grog in his hand.---My husband ran forward to the cabin door, and fired a shot at *Thomas Heath*, and was then going down into the cabin, with an axe in one hand, and a pistol in the other, but *John Stairs* met him, and seized him, and took the pistol and axe from him.---*Stairs*, *Matthews*, and my husband were entangled together on the deck.---*Stairs* got himself out of *Jordan's* hands, and hove the axe and pistol overboard and then took the hatch, flung it overboard, and threw himself upon it.---After that, *Jordan* struck *Matthews* with a boat-hook.---I do not know whether the men were thrown overboard, or went overboard from the pain of their wounds. My husband then went to *Kelly* with a pistol, and asked him what he meant to do, and said that if he would not face the vessel before the wind, he would blow his brains out.---We went off in a gale of wind to a place called *George's Bay*, and it was ten or twelve days before we reached *Little Bay* in Newfoundland.---We got two men there, and then went to *St. Mary's*, where we shipped a pilot to carry us to *St. John's*; after we got the pilot, *Kelly* wished to go on shore, in order to come here by the way of *St. John's*, but I would not let him, because I was afraid I and my children would be left alone, and I prevailed upon him to stay,---but he said he would go on shore at the next harbour we went into.---We left *St. Mary's* to go to *Trepassey*, and my husband left us near *Cape Race*, and went to *St. John's* with one *Pigot*.---We were from Tuesday to Sunday evening before we got into *Trepassey*;---my husband expected us to go to the *Bay of Bulls*.---After our arrival at *Trepassey*, *Kelly* shipped two men, intending to come to Halifax in my husband's absence; but on the night of the day that *Kelly* got the men on board, my husband and *Power* came from *St. John's*.---When *Kelly* found that my husband had returned, he thought to go on shore the next morning, and for that purpose got his things ready; but my husband told *Power* not to let him go.---When

Kelly found that he was not allowed to go on shore, he threw himself into the sea, and swam after a boat that was going to the shore with some other people, but he was brought back by force;— He threw himself over again, and overtook the boat; *Power* followed him in another boat that was alongside, and struck him, when on shore, for taking away the boat, and cut his hand and mouth.--- When *Kelly* came on board, he struck *Power*, who returned the blow and knocked him down on the hatchway.---*Kelly* said he would have his trunk on shore, upon which *Power* told him that he should not take the boat from the vessel, and if he did, that he (*Power*) would shoot him.---In order to prevent *Kelly* from going on shore, *Power* weighed anchor, and went away for the Bay of Bulls, where we arrived and remained two days, and took in wood and water, which *Power* might have done at *Trepassey* if he had chosen.--- The first day that we were in the Bay of Bulls *Kelly* thought to go on shore, but my husband would not let him; afterwards, when the vessel was under weigh standing out of the harbour, *Kelly* cut the rope of the boat, jumped into it, and went on shore, since which I have not seen him until I saw him here.--- While *Jordan* was at *St. John's*, *Kelly* told me, if he could depend on me not to tell my husband what he said, he would carry the vessel to *Halifax*;--- but my husband's return prevented him. I did not see a pistol in the hands of *Kelly*, either when *Jordan* first fired, or at any time after; he had the helm in one hand, and a glass of grog in the other. I had not any conversation with *Kelly* immediately after the firing took place. After the murder of *Heath* and *Matthews*, *Kelly* appeared very much troubled, and turned very pale, and seemed greatly in fear of *Jordan*. It was my opinion, at the time, that *Kelly's* agitation of mind was caused by his fear of *Jordan*. I do not know that *Kelly* took any part in the transactions of *Jordan* on board the schooner, but to the best of my knowledge he did not. *Kelly* informed me, while he was on board the schooner after we left *Trepassey*, that he intended to disclose what had happened, when he should consider himself in a place of safety.

The counsel for the prisoner here closed the examination of this Witness, and the counsel for the crown not wishing to cross examine her, she was permitted to withdraw.

John Curtin was then called and sworn by the Registrar, and being examined, he deposed as follows :

I know the Prisoner at the Bar, *John Kelly*, but I cannot exactly tell how long it is since I first became acquainted with him; he boarded at my house four different times when he came from sea; he was once at my house ten weeks: I thought him a very good boy, and that there could not be a better one in his situation of life. During the ten weeks he was at my house, he was never absent at night, and always went to bed early, and on Sundays he dressed himself and went to church; I always took notice, that he was uncommonly industrious and sober, and very uneasy when he could not get

work. To the best of my knowledge he never used any profane language, and when the people at my house seemed inclined to quarrel after dinner, he either withdrew or told them they were doing wrong. He never interfered in any scuffle in the Streets. I cannot recollect precisely how long I have known him, but it is more than a twelve month.

The witness then withdrew.

John Brown being called and sworn was examined and deposed as follows:—

I am a merchant and ship owner in this town; the prisoner at the Bar has been in my employ;—I have known him since the 26th or 27th of November twelvemonth;—His character was always very good:—I never had any cause of complaint against him, and never heard any thing to his disadvantage, until the present affair.---While he was in my employ I had an opportunity of knowing him, and I never saw any thing wrong in him.—He was a sailor on board the schooner *Hope*, which belonged to me.

The Witness then withdrew and the evidence on the part of the prisoner being here closed, the Court was closed at 12 o'clock.---In about half an hour afterwards, the doors were opened, and the prisoner put to the Bar, when Proclamation being made for silence, the *President* addressed him as follows:

“*JOHN KELLY*,---You have been charged as an accomplice with *Edward Jordan*, in committing a Piracy on the high seas, accompanied by circumstances of atrocity scarcely surpassed in the records of human wickedness.

“The Court has considered your case with every incident, which could possibly afford you a legal excuse for the part you acted in that dreadful scene, and it is with great sorrow I inform you, that it is the opinion of the Court, that you are GUILTY of the crimes of *Piracy, Felony, and Robbery*: in which I have been obliged to concur.”

The *Registrar* then asked the prisoner what he had to say why sentence of Death should not be passed upon him.

Upon which *Mr. Robie*, one of the Counsel for the prisoner, moved in arrest of judgment, on the ground that the allegation charged the offence to have been committed on an impossible day, to wit, on the *thirteenth day of next September*; and he stated to the Court that the charge against the prisoner is made by *James Stewart Esquire, Solicitor-General* of our Sovereign Lord the King, who comes into Court the *eighth day of December*, in the *fiftieth* year of the reign of our Sovereign Lord the King, and complaining on the behalf of the King, doth say, allege, and in law articulately propound as follows,---That *John Kelly* did, on or about the *thirteenth day of September* in the year *aforesaid*, commit the offences and in the allegation; that no other day is mentioned throughout the Charge; and in order to ascertain what year is meant by the year *aforesaid*, reference must necessarily be made to that part

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of the allegation, in which a certain year is mentioned, and it will be found to be the *fiftieth* year of the reign of His present Majesty; that the prisoner is therefore charged with having committed the offence on the *thirteenth* day of *September* in the *fiftieth* year of His present Majesty's reign; and, as the *thirteenth* day of *September* in the year of our Lord one thousand eight hundred and *ten*, it is a future and impossible day; and therefore if a judgment were to be pronounced against the prisoner it would be upon a charge in itself absurd, and which could not possibly be true.

Mr. Robie then cited the following cases and authorities to shew that, where an indictment or information charged an offence to be committed on a *future* day, it is void; and that no judgment can be legally given upon such a charge.

"It is laid down as an undoubted principle, that no Indictment whatsoever can be good, without precisely shewing a CERTAIN DAY AND YEAR of the material facts alleged in it. (2. Hawk. P. C. 325. Dyer 164.)

"It is certain, that, if an indictment lay the offence on an UNCERTAIN or IMPOSSIBLE day, as where it lays it on a FUTURE day, it is void.---Also it hath been adjudged that no defect of this kind can be helped by the verdict.---2 Hawk. P. C. 235.

"If A. be indicted that on the FIRST and SECOND day of May he made an assault on B. and a certain cloke belonging to B. then and there feloniously took, &c. this is not good, because there are several days mentioned before, and it is uncertain to which the felonious taking shall relate.---2. Hale, P. C. 173.

"Indictment against A. B. that he at N. in the County aforesaid made an assault upon C. D. of F. in the County aforesaid, and him with a certain sword, &c. then and there struck and thrust, this Indictment is not good, because there are two places named before, and if it refers to both, it is impossible, and if only to one, it must refer to the LAST, and then it is insensible.---2. Hale P. C. 180.

"If an indictment at a sessions holden the 13th of JANUARY 30th CAR. 2. find that the Defendant has been absent from Church six months from the 1st of JANUARY 30th CAR. 2, it is void for the impossibility, for there are but eleven days between the 1st of JANUARY and the holding of the sessions.---2. Hale P. C. 229.

"An information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found, but is only the allegation of the officer who exhibits it; whatsoever certainty is requisite in an indictment, the same at least is necessary also in an information, and consequently, as all the material parts of the crime must be precisely found in the one, so must they be precisely alleged in the OTHER.---2. Hawk. P. C. 260.

This objection was answered by the *Solicitor General*, in substance nearly as follows:

"Although not aware of this application of the prisoner in arrest of the judgment of the Court, I am inclined to meet it at the third hold, if it were only upon one ground, that it comes too late.---Were it a substantial objection "in

favorem vite" I would take further time to consider of its validity, and request the Court to meet again at some future day for its more solemn discussion; but, as the whole evidence, as well on the part of the prosecution as in support of the defence, has been fully disclosed, and as the prisoner, after a most deliberate and patient trial, has been pronounced *guilty* of the crimes laid to his charge, I am anxious to dismiss the melancholy subject by an immediate performance of the remaining part of my duty.

"My learned friend is now desirous of calling to the assistance of the unhappy prisoner, not the *Civil* law, which he endeavoured to introduce upon the former trial, but the principles of the *Common Law* of our Land, which he has quoted from *Hale* and *Blackstons*, and upon which he relies for the arrest of the judgment.—My memory will not furnish me with late cases in opposition to those principles; but, supposing the *Common Law* to guide us here instead of the *Civil Law*, I can with safety affirm that, by a reform gradually introduced into the Criminal Code of our Mother Country through the able decisions of the twelve judges of England, the law, upon such frivolous points of objection as the present, has been considerably varied.—It is most certainly a rule in criminal proceedings that the day is *immaterial*: the objection here taken is, that the day laid in the allegation is an impossible day, as it refers to a year the particular period of which is not yet arrived; but I contend that, by a general reference to the time expressed in the *Caption* of the allegation, it may be reasonably and legally intended that the crime was committed on the *thirteenth day of September*, in the year of our Lord one thousand eight hundred and nine.—The omission of our Lord's year, does not therefore make the day impossible for "*id certum est quod certum reddi potest.*"—At all events however, by the *forms* of the *Civil* law, the objection cannot be received at this late hour after the conviction of the prisoner; I would therefore recommend it to the unhappy man to seek the preservation of his life in the mercy of his King. In this year of Jubilee, when proclamations of pardon are issued in all directions,---when the prison gates are cast open throughout the kingdom, and universal joy is manifested in Christian charity and forgiveness,---this wretched man may find a pardon of his crimes in the clemency of his Sovereign.---Should he be fortunate enough to acquire it, let him return thanks to his God and his King, that he has been thus preserved in the days of his youth.---He is young and has time to repent and to amend. The lesson he has received in the conduct and in the fate of *Edward Jordan*, is a most awful one.---How far he has been instrumental, by passive if not active guilt, in favouring the views of that shocking man has been determined by the solemn judgment of this high and honourable Court. To the same Court belongs the power of recommending for mercy;---to their hands I again commit the cause of the Crown and of the prisoner. His application in arrest of the awful sentence of the law will no doubt have its due consideration with your Excellency and Honours. You are his judges and his jury: the duties of the latter

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office have been performed by the conviction of the prisoner; should his objection not avail him, it will only remain for the Court to pronounce the judgment of the law."

After some consultation on the bench, the *President* delivered the opinion of the Court in the following words:--

"If the objections, which have been made by your Counsel, have sufficient weight to arrest the judgment in a *Common law* proceeding, your having pleaded to the fact is, by the *Civil law*, a waiver of all technical objections to the articles of charge; but they will be represented to the King, together with the recommendation for mercy, and will undoubtedly be fully considered."

"*John Kelly*,---I have performed the office of informing you of the conclusion the Court has come to on the trial of your case, and you have not been able to offer sufficient matter to arrest that judgment the law appoints for the crimes of which you stand convicted: I have therefore now only to discharge my duty, as *President* of this Court, of pronouncing the awful sentence of the law, which is,---that you *John Kelly*, be taken from hence to the place from whence you came, and from thence to the place of Execution, there to be hanged by the neck until you are dead! and may God Almighty have mercy upon your soul."

"The Court has, however, recommended you to your King for pardon, which recommendation will be represented to His Majesty for his gracious consideration."

The prisoner was then remanded to the custody of the *Provost Marshall*, and the Court adjourned *sine die*.



APPENDIX.

No 1. THE PRECEPT FOR SUMMONING THE COMMISSIONERS.

(signed)
GEORGE PREVOST,

GEORGE the third by the grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith and so forth.—

I. S.

To JONES FAWSON Esquire, our Provost Marshall, or his Deputy—GREETING.

WHEREAS by our royal commission dated the thirtieth day of October in the year of our Lord one thousand seven hundred and eighty four, and in the twenty fifth year our reign, duly issued for this our Province of Nova-Scotia and its dependencies, under the seal of the Admiralty of England, pursuant to the statute in that case made and provided, certain officers by name and for the time being are constituted and appointed Commissioners for the purpose of hearing and finally determining all Piracies Felonies and Robberies committed in or upon the sea, or in any Haven River, Creek, or place where the Admiral or Admirals have power authority or jurisdiction; THESE are therefore to require and command you to summon (HERE THE NAMES AND ADDITIONS OF ALL THE COMMISSIONERS WERE INSERTED,) severally to be, and appear personally in our Court House, at Halifax, on Wednesday next, the thirtieth day of this present Month of November, at Eleven o'clock in the forenoon, and there to be sworn as Commissioners, pursuant to an Act of Parliament made and passed in the eleventh and twelfth years of the reign of our Royal Predecessor William the third, then King of this Realm, Entitled AN ACT FOR THE MORE EFFECTUAL SUPPRESSION OF PIRACY; which commissioners are then and there to constitute a Court, to be hold according to our said Royal Commission, for the Trial of all such person or persons, as shall be brought before the same, charged with having committed any Piracy, Felony, or Robbery, in or upon the sea, where the Admiral or Admirals have power authority or Jurisdiction; and you are then and here to have this our warrant, with your doings thereon;—GIVEN at Halifax under the Great seal of our said Province of Nova-Scotia.—WITNESS THE PRESIDENT of our said court, our trusty and well beloved, Lieutenant General SIR GEORGE PREVOST, Baronet, our Lieutenant Governor and Commander in Chief in and over this our said Province of Nova-Scotia and its dependencies, this thirtieth day of November in the year of our Lord one thousand eight hundred and nine, and in the fiftieth year of our Reign.

By his Excellency's Command
S. H. GEORGE.

THE RETURN.

In obedience to the within Warrant I have summoned all the persons therein named, to give their attendance at the time and place as I am commanded.

Dated this 14th November, 1809.

JONES FAWSON,
Provost Marshall.

No. 2. THE COMMISSIONER'S OATH.

I. A. B. do swear in the presence of Almighty God, that I will truly and impartially try and adjudge the prisoner or prisoners which shall be brought upon his or their trials before this Court, and honestly and duly, on my part, put his Majesty's commission for the trying of them in Execution, according to the best of my skill and knowledge: and that I have no interest, directly, or indirectly, in any ship or goods, for the piratically taking of which any person stands accused, and is now to be tried.

SO HELP ME GOD.

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