

U P P E R C A N A D A.

RETURN to an Address to HIS MAJESTY, dated 6 February 1833;—for,

COPY OF THE

REPORTS of the Two Select Committees to whom were severally referred PETITIONS addressed to the House of Assembly of *Upper Canada*, in the Session of the Provincial Legislature 1828, complaining of improper Conduct on the part of Captain *George Phillpotts*, of the Royal Engineers, and other Wrongs, and of the Administration of Justice; with the Evidence attached to these Reports, as presented to the House on the 24th March 1828, by Mr. *Rolph* and Mr. *Beardsley*; with the Proceedings of the House in the Case of Colonels *Givens* and *Coffin*, Heads of Departments, who were sent to Gaol for refusing to give Testimony in the matter of Captain *Phillpotts*, they severally alleging to the House, that the Major-general then commanding would not permit them to attend; together with the Proceedings, if any, which have been had thereon by His Majesty's Government, or the local Authorities.

Colonial Department, Downing-street, }
10 July 1833.

R. W. HAY.

SCHEDULE.

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| 1.—Copy of a Despatch from Major-general Sir John Colborne to Viscount Goderich, dated Upper Canada, 11 Jan. 1833 - page 2 | 4.—Copy of a Despatch from Mr. Secretary Stanley to Lieutenant-general Sir P. Maitland, dated Downing-street, 20 June 1833 - p. 24 |
| 2.—Copy of a Despatch from Lieutenant-general Sir P. Maitland to Mr. Secretary Huskisson, dated Upper Canada, 29 March 1828 - p. 19 | 5.—Copy of a Despatch from Lieutenant-general Sir P. Maitland to Mr. Secretary Stanley, dated London, 24 June 1833 - - p. 24 |
| 3.—Copy of a Despatch from Secretary Sir G. Murray to Major-general Sir J. Colborne dated Downing-street, 20 Oct. 1828 - p. 24 | |

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
18 July 1833.

 UPPER CANADA

No. 1.

COPY of a DESPATCH from Major-general Sir *John Colborne*
to Viscount *Goderich*.

MY LORD,

Upper Canada,
York, 11th January 1833.

I HAVE the honour to forward to you the accompanying documents, with reference to your Lordship's Despatch of the 20th of August, in which was transmitted a Copy of Resolutions of the House of Commons, respecting certain Petitions addressed to the House of Assembly of Upper Canada, in the Session of the Provincial Legislature of 1828, and to acquaint your Lordship, that as the circumstances connected with Forsyth's Petition could not be understood without a Report from Chief Justice Robinson, who was Attorney-general at the time Forsyth brought his action for trespass, I have considered it necessary to call on the Chief Justice for such explanations connected with the affair as he might be able to afford, and to forward them for the information of the House of Commons.

I have, &c.

(signed) *J. Colborne*.

LETTER from Chief Justice *Robinson* to Lieutenant-colonel *Rowan*, Secretary,
&c. &c. &c.

SIR,

York, 31st December 1832.

I HAVE the honour to acknowledge the receipt of your Letter, transmitting some Resolutions of the House of Commons, in consequence of which, his Excellency the Lieutenant-governor has been desired to furnish copies of certain proceedings in the Assembly of this province, upon Petitions preferred by William Forsyth.

In reply, I beg leave to state, that the specific call for information which the House of Commons has made, would be answered, as it appears to me, by merely transcribing from the journals of the Assembly the Reports referred to, and the evidence appended to them, and transmitting those papers to England. If the object of his Excellency's reference to me is to obtain any further information on the subject of those complaints which it is in my power to give, I can have no objection to state such facts as are within my knowledge, according to the best of my recollection. The Reports alluded to have not, so far as I am aware, engaged any attention in this country, either in the Legislature or out of it, for some years. I have long ceased to think of them; and it is more than three years since I filled the situation under the Government which gave me official knowledge of the matters they refer to. It is therefore probable, that some minor circumstances may have passed from my mind, but I apprehend the following Statement will be found to be in substance correct.

The township of Stamford and the other townships on the river Niagara, as well as some other parts of this province, were surveyed and laid out into lots before the division of the province of Quebec into Upper and Lower Canada, some time between the years 1785 and 1790, and while General Haldimand administered the Government of Canada. In laying out the lands on the river Niagara, a reservation of a chain in width (66 feet) was made along the top of the bank, partly, I think, with a view to the military defence of the province, and partly for the purpose of preserving a convenient communication.

The river, which in many places is of very moderate width, constitutes a boundary between us and the United States of America; and it no doubt occurred to the Government, that in the event of war, it might be necessary to construct batteries and other works upon the bank to repel invasion, or to command the passage of the river. In the war which occurred in 1812, batteries were in fact constructed at numerous points along the river.

In more recent surveys, made under the authority of the Government of Upper Canada, it has been thought obviously proper for other reasons, and independently of these considerations, to reserve to the Crown, for the public convenience, the space of a chain along rivers and other waters of far less importance than the Niagara. Such a reservation, by preserving the land open, affords to all persons access to the water without trespassing upon the lands of private proprietors.

After General Simcoe assumed the government of Upper Canada as a separate province, (in the year 1792) the particular public reservations which had been made along the Niagara river in the original surveys were designated, and reported to him by the surveyor who

who had made those surveys under the authority of the Government. Among these (for there were others at particular points) was the general reservation I have mentioned, of one chain from the top of the bank along the river Niagara.

The Letters Patent afterwards issued by the Provincial Government to the several grantees specified this reservation or exception. It was a matter perfectly notorious and well understood, and no doubt or difficulty that I have heard of ever arose upon the subject for nearly forty years, and until Mr. Forsyth, in the year 1826 or 1827, took upon himself to inclose with a high post and rail fence the allowance or reservation of one chain along the bank of the river in front of his own lands; and the effect of making this inclosure in the place and manner in which it was made, was to exclude the public from access to the great natural curiosity, the Falls of Niagara, except such persons as he might permit to go through his house or premises to the bank of the river. Mr. Forsyth kept the principal inn at that time at the Falls, and owned the adjoining lands for a long distance along the river, including those points to which all strangers resort to view the Cataract.

The public were annoyed at this act of Mr. Forsyth's, and applied by Petition to the Lieutenant-governor for redress. This Petition I have seen, it was signed by the most respectable inhabitants of the country, and I think the Lieutenant-governor was repeatedly applied to, and the necessity urged upon him of having this unauthorized obstruction removed. I have now in my possession the statements made on oath and preferred to the Lieutenant-governor by the keeper of an hotel in the vicinity, complaining of the oppressive consequences to him of this vexatious usurpation by Mr. Forsyth.

The reservation of a chain along the river had, it seems, been commonly regarded as made for military purposes rather than for civil, and looking upon it in that light, as I suppose Sir Peregrine Maitland, who then resided in the district of Niagara, and within a few miles of the reserve in question, and who was then Major-general commanding, referred to the engineer officer in charge in that district, and instructed him to see that the space was kept open, as it had been and as it ought to be. This officer, Captain Phillpotts, after Mr. Forsyth had been requested in vain to remove his fence, thought himself bound by his instructions to see that it was removed, and taking a small party of soldiers in their fatigue dresses, he did, in the presence of Mr. Forsyth, cut or pull down the fence, and throw open the land again to the public; and he also pulled down and removed a small blacksmith's shop, made of boards, which had been placed on the reserve. No force was necessary for overcoming any personal resistance, for none was made. To prevent the possibility of encroaching upon Mr. Forsyth's property, Captain Phillpotts procured the attendance of a Mr. Jones, the very same sworn surveyor who had made the original official survey of the ground nearly forty years before, and it was of the land marked out by him as the public reservation that possession was taken. It appears also that to prevent a misstatement of his proceedings, Captain Phillpotts had requested the sheriff of the district, who lives near the premises, to be present and observe what was done. The sheriff did attend, but took no part. The soldiers, in obedience to their orders, pulled down the fence, and Mr. Forsyth, who was present, remonstrated and declared that he would prosecute for this trespass, as he called it, upon his property. The pickets and other materials not having been removed from the ground, Mr. Forsyth soon afterwards set up the fence again, and excluded the public as before; and Captain Phillpotts again took it down, with no additional circumstances of force, and no more direct resistance on the part of Mr. Forsyth.

For these two acts, Mr. Forsyth brought civil actions, one against the sheriff and Captain Phillpotts jointly, for the first removal of the fence and building, and the other against Captain Phillpotts alone for the second removal of the fence. Captain Phillpotts reported to Sir Peregrine Maitland, that he had been thus prosecuted for acts done in obedience to the orders he had received, and I, being the attorney-general at that time, was instructed to defend those suits, and to take the necessary measures for vindicating the right of the Crown.

My first knowledge of the circumstances I have detailed above, was acquired after I had been so instructed, and I relate the facts from my recollection of the evidence given afterwards upon the trial.

I pleaded specially to the actions, in such a manner as to bring in issue the right of the Crown to the space of land in question. Mr. Forsyth took issue on that right, not relying upon or asserting in his pleadings that any unwarrantable or excessive violence had been used, or any wrong committed in case the land was the property of the Crown, but simply denying that fact, and asserting the property to be his. To set that point at rest in the most formal manner, I filed an information of intrusion against him on the part of the Crown, for his act in taking possession after the removal of his fence, and to this information he pleaded not guilty. Thus in three several actions or cases, the opportunity was afforded of trying the question by juries of the country. It was fully investigated, and upon the clearest testimony decided against Mr. Forsyth's pretensions. He failed in his action against Captain Phillpotts and the sheriff, and a verdict was rendered against him on the information of intrusion. Upon this verdict, judgment was entered, and a writ of *Amoveas manus* sued out and executed. Upon the trials he maintained his pretensions to the ground inclosed, by giving a peculiar construction to the words, "top of the bank," and endeavouring to apply them to the top of a lower bank, confining the river at an inaccessible point, and to which lower bank no person could pass from what is actually the "top of the bank," and more especially after he had inclosed the space in question.

This construction, repugnant to reason, was clearly repelled by various proofs, and especially by the evidence of the very surveyor, still living, who laid out the ground in the year

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1789, who was examined as a witness at the trial, and whose explanations were confirmed by a survey recently made by another most respectable surveyor. It was proved that the lines of the lots, as originally marked out, were never produced further than within one chain of the High Bank, or commencement of the Table Land; and, moreover, the actual contents of the lots themselves furnished internal evidence of this fact. I have also in my possession the evidence on affidavit of a man still living, who was chain-bearer on the original survey, and of another highly respectable inhabitant of the province, who was residing in Stamford at the time. This additional testimony I became accidentally aware of since the trials, and they are conclusive, as it seems to me, upon the point in issue.

It was while his action against Captain Phillpotts and the sheriff was pending, and a few months before it was to be tried, that Mr. Forsyth made these statements to the Assembly, the natural effect of which would be to elicit a discussion calculated to inflame the public mind; by exciting a jealousy of military interference; and from this excitement he probably expected an advantage in his contest with the Government upon the question of right. His Petition was entertained and referred to a Select Committee, who received such evidence as they chose, and made the Report upon it, which appears on their journals. It will be seen that this Report was brought in at the very close of the session; no question, upon its reception, was ever moved in that body, nor were the opinions expressed in it made the subject of discussion or vote. It has therefore no other sanction than the opinion of the Committee upon an *ex parte* hearing; and if I am entitled to assume that truth must be regarded in a legislative body, I may venture to assert that such a Report could not have been approved if it had been made the subject of open discussion. In the face of whatever attempts were made by the petitioner to excite prejudice, the jury came to the conclusion I have stated. The notes taken of the evidence by the Judge who presided at the trial have most probably been preserved by him, and a copy might be procured, if for any purpose it should be desired.

I will add further, that no exception to the verdict of the jury was attempted to be raised by Mr. Forsyth—no new trial was moved for. In the four years that have elapsed since, I do not recollect that in the Legislature or elsewhere the subject has excited any interest. Mr. Forsyth does not now own any part of the property in question, having sold it to persons who, I am convinced, will never pretend that they have a right to inclose the public reservation to which he asserted a claim.

With respect to the reasonableness of the complaint as to military interference, I think it would be difficult to find in His Majesty's service an officer less open to the imputation of arbitrary conduct, and a disregard of civil rights, than Sir Peregrine Maitland. When he took the step complained of, he was doubtless sufficiently aware how easy it is in a certain temper of men's minds, to make a trifling matter the cause of an unjust excitement; and had he thought of nothing but his own ease, he would probably have declined giving any direction to the engineer officer to remove the nuisance complained of, and he might have told those who petitioned for his interference, that they must submit to Mr. Forsyth's encroachments upon the public right, and await the result of an information for intrusion. An individual whose property had been thus trespassed upon would have had a clear right by law to abate the nuisance, and it seemed no unreasonable expectation that the Government should protect its rights as firmly and promptly as individuals may. It was the natural impatience of the public under the vexatious act of Mr. Forsyth that led the Government, for their sake, to the measure which occasioned, for a time, no little trouble.

Whether it would have been more judicious in Sir Peregrine Maitland to have taken any other course, I need not presume to offer an opinion; having known nothing of the act complained of until after it had taken place, no responsibility rested with me as Crown officer; and so far as respects any legal question, I need assume no responsibility now; but without pretending to decide the matter in its strictly legal point of view, I must say I have not much doubt that if, in any part of England or in the United States of America, an intruder were to insist upon encumbering a barrack square with his waggon, or were to plant posts and rails in a parade ground, the nuisance would be removed under the direction of an officer on the spot.

The House of Commons has also called for information respecting "the proceedings of the Assembly of this province, in the case of Colonels Givins and Coffin, heads of departments, who were sent to gaol for refusing to give testimony in the matter of Captain Phillpotts, they severally alleging to the House, that the Major-general then commanding would not permit them to attend; together with the proceedings, if any, which have been had thereon by His Majesty's Government or by the local Authorities."

I was attorney-general at that time, and have a general recollection of the matter here referred to. In that session of the Legislature (1828), as will be seen by inspection of the journals, there were a number of Select Committees conducting inquiries into various public matters. It had been the constant usage of the Assembly, in past years, when any of their Committees desired that an officer of the Government should attend them as a witness, to send an address to the Lieutenant-governor, communicating their wish and specifying the subject on which the evidence of the witness was required. The order then proceeded, as a matter of course, from the Lieutenant-governor to the officer to attend the Committee. Whether this was the proper course, having a due respect to the privileges of the different branches of the Government, or whether it was a wholly unnecessary courtesy, I do not pretend to determine, but it had been usually, if not invariably, followed. One of the Select Committees in this session required the evidence of Colonel Coffin, the Adjutant-general of Militia, and of Colonel Givins, the Chief Superintendent of Indian Affairs,

Affairs; and instead of addressing themselves to the Lieutenant-governor, as had been usual, the Select Committee sent, it seems, a summons directly to those gentlemen. I do not mean to say, speaking as I do merely from memory, that this was the first instance of a variance from the former usage spoken of; but at all events the departure from that usage was of very recent date, and the officers in question having received the summons, reported the fact to Sir Peregrine Maitland, and prayed his instruction. The object of inquiry (unless I am much mistaken) was not stated in the summons, and the Lieutenant-governor or Commander of the Forces, in whichever capacity Sir Peregrine Maitland conceived he was acting, (and considering the nature of the duties discharged by those officers, or by one of them certainly, I should suppose he acted in the former,) being left quite uninformed on that point, desired them not to attend, meaning, I take it for granted, by that course to insist upon the right of being made acquainted with the subject of investigation upon which the testimony of these public officers was desired. Colonels Givins and Coffin, obeying the orders of the Lieutenant-governor, did not attend. The Assembly resolved that their refusal was a contempt, and committed them. They afterwards brought an action of false imprisonment against the Speaker, but they did not recover, for the legality of the imprisonment, that is, the right of the House to commit for what they had adjudged to be a contempt, was confirmed by the Court of King's Bench by a solemn judgment rendered in another cause then pending which involved the same question.

If, in making this statement from memory, I have fallen into any error, a reference to the journals may perhaps correct it; and as Sir Peregrine Maitland is now in England, if I have misapprehended or have stated imperfectly the grounds on which he acted, he can of course more correctly explain them.

I observe it is stated in the resolutions of the House of Commons, that the officers referred to were required to give evidence in the matter of Captain Phillpotts.

I am not under the impression that any connexion between the two matters was expressed in the notice given to the officers to attend, or was understood at the time of the occurrence, though of course the Select Committee and the Assembly were aware of it, and the Government must soon afterwards have known it, if they did not at first. But, however this may be, I am satisfied that no desire to keep from the Select Committee any information that Colonel Givens or Colonel Coffin could give respecting Captain Phillpotts or Mr. Forsyth could have had the slightest influence with the Lieutenant-governor. I cannot see how there could have been any room for such a motive; I do not recollect that I ever exchanged a word with either of those gentlemen on the subject of Mr. Forsyth's complaints; but from the very nature of the thing, from their duties and characters and occupations, I am persuaded in my own mind that, whatever Mr. Forsyth may have imagined, they could have had nothing more to tell respecting that transaction that could affect either the Lieutenant-governor or Captain Phillpotts than any two officers that might have been taken at random from any regiment at that time in His Majesty's service. The House of Assembly did not in any subsequent session require their evidence on any complaint of Mr. Forsyth's, and if they did in fact know any thing that Mr. Forsyth himself considered important, it was singular that they were not heard of upon the trial which afterwards took place, when their evidence must have been most material if it could have affected either his rights or the amount of damages which he claimed, and when their attendance could have been procured as a matter of course upon an ordinary subpoena.

In one of the petitions of Mr. Forsyth there are reflections cast upon the administration of justice in this province, and particularly upon the conduct of the Crown officers, upon whom the duty is imposed of conducting criminal prosecutions in the Courts of Oyer and Terminer; and in the evidence given by him before the Select Committee, Mr. Forsyth has made certain statements affecting myself individually.

For more than sixteen years before that time I had discharged, with one or two short intervals, the duty of Attorney-general, and there could scarcely be much foundation for the remarks made upon the administration of justice, without my being implicated considerably in the misconduct spoken of.

Whatever countenance may be considered to have been given to these complaints of Mr. Forsyth by the Report of the Select Committee of the Assembly, and through whatever channel, and for whatever purpose, these matters are now brought under the notice of the House of Commons, I hold myself bound to prove and ready to prove, upon any investigation conducted upon those common principles of justice which regulate the most inferior tribunals in this country, that, as applied to myself, the charges and insinuations are utterly groundless, and I undertake at this distance of time to repel satisfactorily the attempt to justify them by any one act of mine, during the whole course of my public service as Crown officer.

In respect to the assertions of Mr. Forsyth, which expressly apply to myself personally, the evidence of the Honourable William Dickson and of the Honourable Thomas Clark, printed in the Appendix to the Journals of the same session, will show to what credit they are entitled.

I will only add, what indeed I have already stated, that the Report of the Select Committee was never adopted or discussed, or in any manner acted upon in the Legislature of this province. Against the act of a Select Committee in receiving evidence, and reporting it, by which means it becomes printed in the Journals, there is no remedy; but although the Assembly, neither at that time nor in the four years that have since elapsed, brought Mr. Forsyth's statements to the test of a public discussion or of a satisfactory investigation, if the House of Commons has leisure and inclination to examine into my official conduct

or private transactions, I shall be happy indeed to undergo the scrutiny ; and, in the meantime, I content myself with affirming, that His Majesty has no officer in his service, civil or military, in any part of his dominions, who has kept himself more entirely free from any pecuniary or private transaction that could interfere with his public duty, or bring in question his character as a man, than I have done to the present hour, and I shall be surprised if an individual can be found in the province of ordinary good character, whatever may be his political bias, who will assert the contrary.

I have, &c.

(signed) *Jⁿ B. Robinson.*

Captain *Phillpotts*' STATEMENT respecting the removal of the Fences, &c. put up on the Military Reserve, near the Falls of Niagara, by Mr. *William Forsyth*.

MR. FORSYTH, who purchased the farm immediately adjoining the Falls of Niagara some years since, on which he erected a large hotel, &c. having, without any permission or authority whatever, taken upon himself to enclose the strip of land, originally reserved by the Government for the purpose of securing a convenient access to the river at all times, and having wilfully destroyed a wooden causeway made on this Reserve by a neighbouring innkeeper, Mr. J. Brown, for the accommodation of persons visiting the Falls, so that the only convenient approach to this great natural curiosity was through his (Forsyth's) own house, an affidavit was made by the said Mr. J. Brown, stating the injury he had received ; and all the most respectable inhabitants in the neighbourhood signed a petition to the Lieutenant-governor, Major-general Sir Peregrine Maitland, requesting that the said Reserve might be thrown open to the public.

In consequence of this application, his Excellency directed Captain Phillpotts, at that time commanding Royal Engineers in that district, and therefore in charge of these Reserves, to make a survey of the Government ground near the Falls, and remove any fences, &c. which had been placed thereon.

In compliance with these directions, Captain Phillpotts went to the spot, with a serjeant and four soldiers, in *fatigue jackets without arms* ; having previously visited the Falls for the purpose of calling on Mr. Forsyth, and explaining to him that he had placed his fences, &c. on the Government Reserve ; and having communicated to him the orders he had received on the subject, he informed him that he should be obliged to carry them into execution, unless Mr. Forsyth would remove the fences himself ; which he not only refused to do, but threatened to prosecute Captain Phillpotts if he touched them. In order to prevent the possibility of mistake, Captain Phillpotts had obtained Sir Peregrine Maitland's authority for availing himself of the assistance of Mr. Jones (a sworn surveyor, who originally laid out that part of the province, when the country was first settled), who on this occasion made a survey of this Reserve, and pointed out its limits by pickets, for the guidance of the persons employed to remove Mr. Forsyth's fences. This took place on about the 18th of May 1827, and about four days afterwards, Captain Phillpotts, having occasion to visit the Falls, saw that these pickets had been taken away and Forsyth's fence replaced on the Reserve, which Captain Phillpotts caused to be again removed, and the Reserve to be marked out with pickets, as before.

Major Lennard, the sheriff of the district, who resides near the Falls, having accompanied Captain Phillpotts to the ground, at his request, Mr. Forsyth brought a civil action against both of them for the alleged trespass, which was tried at Niagara, and a verdict was given for the defendants.

In consequence of his having again placed his fence on the Government Reserve, the Attorney-general was directed by the Lieutenant-governor to institute legal proceedings against Mr. Forsyth ; a writ of Intrusion was filed against him accordingly ; and on a subsequent trial, a verdict was given for the Crown ; and thus on two different occasions it has been proved by juries, composed of respectable yeomen of the country, that Mr. Forsyth had no cause of complaint whatever against Captain Phillpotts, or the military persons employed under him on this occasion.

9th January 1833.

George Phillpotts,
Captain Royal Engineers, York, Upper Canada.

REPORT of the SELECT COMMITTEE on the Petition of *William Forsyth*.

To the Commons House of Assembly.

Your Committee, to whom was referred the Petition of William Forsyth, with power to send for persons and papers, and report thereon, have taken the same into consideration, and submit the following Report :—

YOUR Committee have annexed to this Report a certified extract from the original grant to Francis Ellsworth, from which will be seen the abutments of the lot upon which the trespass was committed. The same lot with the same description appears to have passed from Francis Ellsworth, through different conveyances, to the Petitioner, and has been occupied by the successive owners for thirty years past ; the distance from the chain, of which he was dispossessed, to the river is estimated at above 100 yards.

George

George Phillpotts, captain of the royal engineers, presuming a part of the land held by the Petitioner, as lot No. 159, in the first concession of Stamford, in the Niagara district, to be a military reserve, did, on or about the 18th day of May last, in a violent, forcible and outrageous manner, with aid of soldiers, dispossess the Petitioner of one chain of the front part of the land held and claimed by him as aforesaid, and destroy the fence and blacksmith's shop upon it, by cutting them down with axes, and throwing them over the precipice. From the evidence it will appear that the damage was in some respects wanton.

From the testimony of two eye-witnesses, it appears that the statement in the Petition is not an exaggerated one. Although Richard Leonard, Esq. sheriff of the Niagara district, did not render any personal aid, yet it is fully established that he was present, countenancing the party committing the trespass; and your Committee feel it their duty to call the attention of the House to such conduct, on the part of a public civil officer, whose sworn duty it is to preserve the peace.

It does not appear to your Committee that the Court of King's Bench set the verdict aside, as mentioned in the Petition, contrary to law: but it appears that both the Crown officers are engaged in defence of the persons guilty of the outrage.

It is clear that a person long in possession of land, like the Petitioner, ought to have been ejected by the law of the land, which is ample, when impartially administered, for securing the rights of property; but the interference of the military by such acts of violence for maintaining supposed or contested rights, is justly regarded with jealousy in all free countries, and ought to be seriously regarded in a colony where the most unprecedented outrages have been perpetrated without prosecution, and even followed, by the patronage of the local government, upon the wrong doers.

Your Committee have further reported an address to his Excellency to obtain certain information upon the subject.

The strip of land in question commands a fine view of the Falls of Niagara, and is immediately in front of the pavilion which has been erected by the Petitioner upon a magnificent scale, at a great expense.

Under an apprehension that he might be overpowered by influence, and be superseded in the enjoyment of this valuable tract of land by some more favoured persons, it appears that the Petitioner appealed to the justice and liberality of Earl Dalhousie to avert a dispossession which would prove so disastrous to his interests, as proprietor of the pavilion, on which he had invested all his capital. His Lordship in his answer, dated 5th January 1826, claims the strip of land in question as a reserve expressly for public purposes, but states his belief that Sir Peregrine Maitland would not be disposed to grant to any other person the occupation of a spot so immediately convenient to the Petitioner's buildings; and it appears that his Lordship, when at Niagara, impressed with the justice of the case, interested himself to procure a grant of it to the Petitioner: nevertheless, it seems that on the 31st day of August 1827, a lease, under the great seal, was made to the Honourable Thomas Clark, and Samuel Street, Esq., according to a description that will embrace the strip of land in question, and those lessees of the Crown have given the Petitioner notice not to trespass. Under the above circumstances, it is still more to be lamented that military violence should be used, either with or without authority, to dispossess the Petitioner of land which he has so long occupied, which he claims as covered by the deed from the Crown through which he derives his title, and which is so immediately important to himself as proprietor of the hotel.

Mr. Forsyth's Counsel,

John Rolph, Chairman.

SIR,

Military Secretary's Office, Quebec, 5th Jan. 1826.

I AM directed by the Commander of the Forces and Governor-general, to acknowledge your Letter of the 16th December, relative to a small strip of land belonging to Government, in front of your property, at the Falls of Niagara; and to state to you his Lordship's belief that his Excellency Sir Peregrine Maitland will not be disposed to grant to any other person the occupation of a spot so immediately convenient to your buildings; there is not indeed any intention of granting the ground in question, it being expressly reserved for public purposes.

His Lordship desires me further to add, that when he was last at Niagara he wished a grant of it to pass in your behalf, but very good reasons were given against it.

Mr. William Forsyth,
Niagara Falls.

I have the honour to be, Sir,
Your most obedient humble servant,
H. J. Darling, Military Secretary.

SIR,

Stamford, September 14, 1827.

ON the 31st day of August now last past, a lease, under the great seal of the province, was made to us, the subscribers, our executors, administrators and assigns, for all that certain parcel or tract of land, situate, lying and being in the township of Stamford, in the district of Niagara, which is butted and bounded as follows: commencing in the limit between lots 128 and 129, at a point one chain west from the top of the bank of the Niagara river, then southerly and westerly along the top of the bank of the Niagara river up the stream,

and always at the distance of one chain from the top of the bank until it intersects the centre of lot No. 145, then east to the water's edge, then along the water's edge, down the stream, until it intersects the division line produced, east from the division between lots 128 and 129, then west to the place of beginning.

You will therefore take notice, and forbear making any entry on the land above-mentioned and contained, either by yourself or servants, as any trespass thereon, after the date of this notice, will be considered by us to be wilful and malicious on your part, and you will be liable to a prosecution from time to time, if any such trespass is committed by you, or any other persons in your employ. You will, therefore, govern yourself accordingly.

To Mr. W. Forsyth, Innkeeper,
Niagara Falls, Stamford.

(signed)
(signed)

Thomas Clark.
Samuel Street.

GRANT to *Francis Elsworth.*

(Copy.)

Two hundred acres.—Lot No. 229, with the broken front between it and the Niagara river. The north half of the broken front east, of 160—and the north-east part of 160, and the south half of the broken lot, No. 145, in the township of Stamford, in the county of Lincoln, and Home district; patent, dated 14th day of February 1798, described as follows:—Beginning at the south-east angle of lot No. 146, at a point and post where the lots No. 145, 146 and 159 are nearly in contact. Then west along the north boundary of the whole lot No. 159, 50 chains. Then south along the western boundary of the said lot, 20 chains. Then east to within 51 chains of Niagara river, 13 chains, more or less. Then southerly parallel to the shore of the river, ten chains, more or less, to the centre of lot No. 160. Then east to within one chain of the said river, 50 chains. Then northerly along the bank, always at the distance of one chain from the top of the bank, to the centre of lot No. 145. Then east up to the centre of No. 145, 23 chains. Then south, ten chains to the place of beginning.

I do hereby certify the foregoing to be a true extract of the record of a patent to Francis Elsworth, as recorded in book D. folio 87.

Secretary's Office, February 21, 1828.

Samuel P. Jarvis, Deputy Register.

ALL that certain tract or parcel of land, situate, lying and being in the township of Stamford, in the district and province aforesaid, containing, by admeasurement, 170 acres, be the same more or less, being composed of lot No. 159, with the broken front between it and the Niagara river; the north half of the broken front east of lot No. 160, and part of the north part of lot No. 160, and which said parcel or tract of land is butted and bounded, or may be otherwise known as follows: that is to say, commencing at the south-east angle of lot No. 146, at a point or post where the lots No. 145, 146 and 159 are nearly in contact. Then west along the northern boundary of the whole lot 159, 50 chains; thence south along the western boundary of the said last-mentioned lot, 20 chains; thence east to within 51 chains of Niagara river, 13 chains, more or less; then southerly, parallel the shore of the river, ten chains, more or less, to the centre of lot No. 160; thence east to within one chain of the said river, 50 chains; then northerly along the bank, always at the distance of one chain from the top of the bank, to the south-east angle of lot No. 145; thence west, following the southern boundary of lot No. 145, to the place of beginning, saving and excepting herefrom nine acres, at the south-west angle of the above-described land, be the same more or less, heretofore in the possession of Timothy Skinner the elder, deceased, and saving and excepting all roads, recognized as lawful highways, passing through the above-described tract.

COMMITTEE ROOM, HOUSE OF ASSEMBLY.

On the PETITION of *William Forsyth*, February 18, 1828.

John Rolph elected Chairman.

Committee:—John Rolph, Chairman, Robert Randal, John J. Lefferty, John Matthews.

EVIDENCE.

William Forsyth puts in the deeds, a Schedule of which is annexed, to show his title.

Doctor Lefferty.—In the year 1798, Charles Wilson was in possession of the land mentioned in the Petition, as seized by the military, and remained in possession till 1812, when he died in possession. Charles Wilson's wife remained in possession till after the war, about the year 1821, at which time William Dickson, Esq. sold to William Forsyth, who, from that time, continued possessed of the land in question, till dispossessed as in the Petition mentioned. Dr. Lefferty states that he was an eye-witness of the dispossession of William Forsyth, as complained of in the Petition; that he has carefully read the Petition; that the facts therein stated of the dispossession of the said William Forsyth are true, and not exaggerated, except that he did not see any active interference on the part of the sheriff (Leonard) during the perpetration of the outrage, and that he did not see any arms stacked on the ground;

ground; but he saw arms in Brown's bar-room, about forty yards from the scene of trespass, which arms he believes to be the arms of the trespassers.

That the distance from where the blacksmith's shop stood to the edge of the river, he estimates at above 100 yards. He has resided 29 years in that neighbourhood; he has never considered the high bank in question as the bank of the river, nor has he ever known it so considered; he has always considered the government reserve to be one chain from the water's edge, above the Falls of Niagara.

Isaac H. Culp, states, that on the 18th May last, he was called by William Forsyth to witness his forbidding George Phillpotts, Captain of Engineers, and Richard Leonard, sheriff of the Niagara district, trespassing upon the land in dispute; he heard Forsyth forbid any trespass, upon which Captain Phillpotts passed on, saying nothing, and Sheriff Leonard, in a sneering way, asked Forsyth if he would prosecute The King. He was told by Sheriff Leonard, as a friend, that he might remove the things which he (the witness had in the blacksmith's shop; and that, unless removed, the blacksmith's tools belonging to witness, would be thrown over the bank.

That he was an eye-witness of the dispossession of Forsyth; that he had read the Petition; that the dispossession of Forsyth, as therein stated, is correct (except as to the stacking of the arms, of which he has no personal knowledge,) and not exaggerated; that he did not see Sheriff Leonard render any personal assistance in the outrage; that he appeared in his conduct and manners to be present in support and countenance of Captain Phillpotts, who headed the party trespassing; that he saw no arms stacked; that he saw some arms in Brown's bar-room; that the soldiers were quartered at Brown's for some days after the outrage.

That by the depredation, the garden of Forsyth, which he thinks one of the most valuable and highly cultivated in Stamford, and some fields of grain to the extent of ten or twelve acres, and about six or eight acres of meadow, with a good sward, were thrown open to the common; that they unnecessarily destroyed the fence; that two or three times when Captain Phillpotts was a short distance off, the soldiers, at the suggestion of Doctor Lefferty and Sheriff Leonard, began to raise the posts, which was easily done, out of the ground, and leave the fence prostrate; that Captain Phillpotts at each time, upon his return to the spot, ordered the posts to be cut down, and the fence to be thrown over the bank; that the blacksmith's shop was cut down and thrown over the bank, although the shop by no means hindered the free passage along the bank. It might have been removed to Forsyth's undisputed land adjoining for twenty-five dollars or near that sum; it was twenty by twenty-six, with two forges and one brick and one stone chimney, with an addition nine by twenty feet; it was weather-boarded, and the main building shingled.

William Forsyth, states, that the contents of the Petition, and the facts as therein stated are in all substantial points just and true, and that he would be willing at any time to testify to the same on oath; that he considered the violent outrage as proper to be prosecuted by indictment; that he felt and feels much embarrassed in any such prosecution, from both Crown officers being feed by the defendants in the civil actions brought by the Petitioner against the aggressors; that he would not like to make application to either of them under such circumstances to conduct a prosecution for him; he thought the Crown officers would defend him and the public against such daring outrages; he would prosecute the perpetration of the outrage if he could employ other counsel than the Attorney and Solicitor-generals, but he had understood that they claim the sole and exclusive right of conducting such public prosecutions; that he thinks, under such circumstances, that nine persons in the province out of ten would not prosecute criminally if they found the Crown officers largely feed by the perpetrators of an outrage against the person injured; that he thinks the conduct of the Attorney-general, John Beverly Robinson, Esq., towards him, the Petitioner, particularly unfair, inasmuch as he, the said John B. Robinson, has long since received from him, the Petitioner, four acres of land, in view of the Falls of Niagara, as a fee to defend him in his rights to the property which he is now labouring to take away from him; that the Honourable W. Dickson promised the said John B. Robinson one acre of land, before the said William Dickson sold to him the Petitioner; that he was called upon to convey the one acre to the said J. B. Robinson after he, the Petitioner, had received his title for the same; that instead of the one acre, he, the Petitioner, conveyed to the said John B. Robinson four acres, in view of the Falls of Niagara, and which four acres he, the Petitioner, considered a very liberal fee to the said John B. Robinson for his professional support of the rights of your Petitioner to the property; that he feels himself deserted and abandoned by the said John B. Robinson, and having to struggle against the power, influence and wealth of the Executive in this province, and Captain Phillpotts, who headed the rioters, having left the province, he, the Petitioner, has little or no hope of realizing any thing by a civil action.

Note.—The foregoing Report was referred back to the Committee, as further evidence on the subject was expected to be obtained, and on the 24th March, having procured that evidence, they again presented to the House the Report, with the following annexed:—

Some years ago, hearing that the Honourable W. Dickson, with whom I had been very intimately acquainted, and for whom I had been professionally engaged in matters of much consequence to him, had thoughts of selling a farm of his, situate on the Niagara river, immediately opposite the Falls of Niagara, I wrote to him, stating that I should like to own an acre of it somewhere in front, and begging that he would reserve an acre for me before he sold the farm, and let me know his price.

Mr. Dickson very kindly assented at once to my request, and some time after wrote to me, that having, since he got my letter, sold his farm to Mr. Forsyth, he had reserved to me the right of selecting any acre I pleased, and he enclosed me a bond from Forsyth to him or to myself, I forget which, obliging him to convey to me an acre to be selected. I left it to Mr. Dickson, or my friend Mr. Clark, to make the selection, and never had, before or since, any communication with Mr. Forsyth respecting it.

In 1822 I went to England, and, during my absence, the late Colonel Nichol and Colonel Clark, thinking rightly that I would prefer having a larger quantity of land, situate in the wood, on a part of the lot remote from the front, and on that account less valuable, proposed to Forsyth, on my part, to accept four acres of the woodland (a more pleasant site for a cottage,) and to relinquish my right to select an acre in the front. To this Forsyth assented, and the four acres were laid off and surveyed, and a deed taken from Forsyth to me for them. I knew nothing of this till I returned from England, when I fully approved of what my friends had done; but at no time to this hour have I had any communication with Mr. Forsyth on the subject of the land, which I acquired from Mr. Dickson, solely without one word of reference by me or at my request to Mr. Forsyth upon the subject, either verbally or in writing. I do not remember that I ever, in my life, was ever applied to by Forsyth to render him any professional service whatever. I never had with him a transaction of any kind.

I have not been retained by the Defendants, against whom he has brought actions for alleged trespass, or by any of them; but as Attorney-general, I have been officially instructed to defend them on the behalf of the Crown, as they acted under public orders; and, upon the same instructions, filed an information of intrusion against him for resuming possession of the public seizure in dispute, and after a full hearing at the last assizes, (the Solicitor-general conducting the cause for the Crown in my absence,) the jury rendered a verdict for the Crown. Mr. Forsyth never, to this moment, has expressed a desire for my professional services, in any matter alluded to in his Petition; nor have I heard that he wished to institute a criminal prosecution at the last assizes. Had he done so, he would certainly have met with no impediment. I have never asserted or had occasion to assert a claim to conduct all criminal prosecutions. My opinion upon that point has been given officially to the Government, many years ago, in reference to an application of Lord Selkirk's, and whether that opinion be correct or not, it is for the Government, not me, to determine.

The whole of Mr. Forsyth's statement, so far as it regards me, is without the slightest foundation. I have thought it proper to make this statement for the purpose of repelling a most groundless and unexpected attack upon my character; but I beg I may not be considered as admitting myself accountable for my private or professional transactions, except to the proper legal tribunals.

John B. Robinson.

HAVING read the Report of the Select Committee of the House of Assembly, on the petition of William Forsyth (docketed 10th March 1828), I have to state in contradiction of a part of William Forsyth's evidence therein, that it is perfectly within my recollection, when the Honourable William Dickson, about seven or eight years ago, sold the Ellsworth or Falls Farm to William Forsyth, he reserved one acre of it, in front of the farm and in view of the Falls, for John B. Robinson, Esq., Attorney-general: that one or two years thereafter, Mr. Robinson being in England, the late Colonel Nichol and myself acting on behalf of Mr. Robinson to lay out this acre, and we having understood from Mr. Robinson, that he having got this acre of land in a present from Mr. Dickson, it was not his intention to sell or make money of it, but when he found convenient, to build a small cottage on it; knowing this, and that a cottage on a very public and frequently a very dusty road, would not be so pleasant as one situated at a little distance, Colonel Nichol and myself took upon ourselves to commute with Forsyth for four acres about a quarter of a mile in the rear, in lieu of the one acre in front. These four acres I marked off, and from which neither the Falls nor Niagara river are to be seen. A short time afterwards Forsyth executed a title in favour of Mr. Robinson for the four acres, and took up the sealed obligation binding himself to convey the one acre, which obligation Mr. Dickson took from Forsyth at the time of the sale of the farm. The money value of the one acre, if for sale, is full four times that of the four acres together.

I have to add, that the truth of what I have herein stated is as well known to William Forsyth as to myself, and that from the solemn manner in which he has stated to the contrary, he has evidently done so for some malicious and wicked purpose.

March 18, 1828.

Thomas Clark.

THE statements made by William Forsyth, of Stamford, to the Select Committee of the House of Assembly, at the close thereof, on the allegations against John B. Robinson, Esquire, insomuch as relates to the one acre, or four acres of land, as a fee to him for his professional services, or as a retainer, is within my own knowledge totally without foundation, a studied fabrication, and palpable falsehood.

I was under obligations to the Attorney-general, for many kindnesses shown me, which money could not properly repay.

He had expressed a wish many years ago for one acre of land at the Falls, when I was owner of that property, and in his absence I sold the farm to Forsyth, but first made an agreement

MR. FORSYTH'S PETITION TO HOUSE OF ASSEMBLY. 11

agreement with him for the purchase, under seal, and therein reserved one acre. In making him a deed, I took his bond for this one acre, on the south side of the main road, in front, to be chosen by Mr. Robinson; but before Mr. Robinson returned, I understood that Mr. Thomas Clark and the late Mr. Nichol, in behalf of their friend Mr. Robinson, commuted this one acre, on the south side of the main road, for four acres in the middle of the lot (not in view of the Falls).

This one acre in front is more valuable than ten acres in the rear, and I think Mr. Forsyth would not make the exchange now if it was offered him.

Mr. Robinson did not know of the transaction, until the title from Forsyth to him was either sent to him by Mr. Clark or Mr. D'Arcy Boulton.

Therefore Mr. Forsyth's conduct, in my opinion, is deserving of the high displeasure of the Committee, in endeavouring to deceive them in a matter so offensive to the reputation of the high character charged.

William Dickson.

Copy of a REPORT of the SELECT COMMITTEE, to whom was referred the Petition of *William Forsyth*; with the testimony of Evidence examined thereon.

THE Committee, to whom was referred the Petition of *William Forsyth*, beg leave to report as follows:—

It appears to your Committee that some of the most daring outrages against the peace of the community have passed unprosecuted, and that the persons guilty have, from their connexions in high life, been promoted to the most important offices of honour, trust and emolument in the local government.

It appears that the Crown officers, who exercise an exclusive right to conduct criminal prosecutions at the courts of oyer and terminer, and general gaol delivery, are in the habit, even in the first instance of being retained, and taking an active part in the defence of the civil action for the wrong; by which it is inevitable that prosecutors will be discouraged to apply to them for professional aid, and justice therefore, in many cases, fail, unless the rights of prosecutors, and of the Bar, are asserted and upheld as in England.

From the testimony given, your Committee do not hesitate to come to that conclusion, in which they are supported by the testimony of the Honourable Mr. Justice Willis, and nearly all the witnesses examined.

It also appears highly expedient that the deputy clerks of the Crown, in their respective districts, should attend to do the duties of clerks of assize; by which much would be saved in the expenditure for the administration of public justice.

The evidence also suggests the expediency of refusing the charges usually made for opinions given by the Crown officers to his Excellency, as they both receive a salary, fairly pronounced to be for that purpose, and ample in amount; while the heavy debt accumulated against the province, besides an increasing expenditure, renders every practicable reduction most important.

Your Committee have not extended their examinations as they intended, to the Crown officers and others, because they report no specific measure; but submit the expediency of considering the matter more fully at the next session of Parliament.

B. C. Beardsley, Chairman.

COMMITTEE ROOM, HOUSE OF ASSEMBLY, 28th February 1828.

Present: Mr. Beardsley, Chairman, Mr. Bidwell, Mr. Perry, Mr. Matthews, Mr. Hornor.

EVIDENCE.

The Hon. Mr. Justice Willis.

Q. ARE you aware of any Provincial or English law, by which the members of the Bar, educated in this province or in England, are excluded from conducting public prosecutions, as in England?—A. I know of no Provincial law against it. I rather draw an inference in favour of the Provincial Bar, from the Provincial statute introducing the criminal law of England as it was in the year ; for I presume the mode of conducting public prosecutions in this province must be taken to be the same as it was in England at the time up to which the criminal law was introduced.

What was the mode of conducting public prosecutions in England at that time, with reference to the rights of the English Bar?—In all matters of revenue, treason and personal rights of the Crown, and those under its immediate protection, as the affairs of lunatics and charities, the Crown officers are bound to protect the public rights, in the same way as any counsel generally retained by his client is bound to protect his rights. But in all other matters in which the Crown is not so immediately concerned, as in felonies, and in those misdemeanors which are not prosecuted in the Crown office, or by ex-officio information, I have always understood the right of being employed by prosecutors to be open to the Bar.

Do you think it desirable that the practice in this province should be assimilated as much as possible to the practice of England?—Decidedly so; in this, as in every thing else.

The Attorney and Solicitor-general being in the habit of taking fees to defend criminals in civil actions, even when they precede the public prosecutions, do you, under such circumstances, see any additional propriety in securing to the Bar in this province the rights enjoyed by the profession in England?—Decidedly; and I think it highly improper in any Crown officer to defend the persons in a civil action for the injury, when those persons are to be, or for the due ends of public justice ought to be, prosecuted criminally.

Do you think that such a state of things is calculated to deter prosecutors from applying to those Crown officers who have engaged against them in the civil defence of the wrong doers?—I never would employ to conduct the public prosecution for the injury I had received the professional person who defended against me in the civil action; I should think that the impressions he would have received would be so strong, that I could not but suspect (although my suspicions might be groundless) that he would be influenced by them.

Is the Committee to understand that you think the ends and character of public justice would be facilitated and secured by a change of this system?—Certainly; and more especially placed, as it ought to be, above every suspicion.

Do you think it would be a desirable plan to allow the prosecutor to be paid his reasonable expenses out of the district treasury, where the trial is had, upon conviction?—I do; and I think the prosecutor ought not to be paid his expenses till conviction, unless the judge certifies; this I believe is in accordance with several recent English statutes, and I conceive it to be a desirable security against malicious or groundless prosecutions.

Do you think that if the fines and forfeitures in every district were paid into the district treasury, it would be an expedient source for the payment of the expenses of the public prosecutions?—If the fines and forfeitures form a part of the general provincial revenue, or the Crown was pleased to relinquish them for those public purposes, I think it would be very desirable indeed.

If the present system of payment for public prosecutions were continued, what would be the effect, as population and crime increase, upon the public revenue?—It would be, upon an ordinary calculation, most oppressive; and in that point of view, I think the expenses of the clerks of assize, both as they are chargeable upon the public revenue and upon the suitors, might, with much advantage, be done away. The duties of clerk of assize, as at present discharged by him, might be performed by the deputy clerk of the Crown, who has the custody of the proceedings in the suits in his district, and who would be well remunerated by a sum, small when compared with the present expenditure for that purpose. It is desirable that justice should not be made unnecessarily expensive; but I think it most desirable that the judges should, in their circuits, be attended in a manner suited to the dignity of their duties and station.

Do you think that the Attorney or Solicitor-general could, at their pleasure, take out of the hands of another counsel a brief in a criminal prosecution, put into his hands by a prosecutor?—I think not: with the exception of the cases mentioned in my second answer.

The Attorney-general and Solicitor-general receive, the first, 300 *l.* and the second 100 *l.* sterling per year; do you think that retainer sufficient for the advice given to the local government, without charges for the same, against the public revenue?—I think so; the salary they receive I regard as the salary to the judges, for the duties they perform.

8th March 1828.

Mr. Justice *Sherwood*.

Q. Do you think that the Bar in this province has the same right as the Bar in England in conducting criminal prosecutions, and subject only to the same restrictions?—**A.** I think they have the same right, subject to the same restrictions.

Have these rights been hitherto generally claimed by the Bar, and exercised?—I believe they have not.

Do the Crown officers claim an exclusive right to conduct criminal prosecutions?—I have never made the inquiry.

Considering that the Crown officers are in the habit of taking fees for the defence of civil actions out of the facts of which a criminal prosecution must or ought to arise, do you think it right that the prosecutor should have the power to apply to other professional men for the conduct of his prosecution?—It is a subject to which I have not given sufficient attention to form an opinion.

Do you consider that the existence of such an exclusive right on the part of the Crown officers, under the circumstances mentioned in the preceding question, calculated to discourage prosecutors from instituting a prosecution?—I really cannot say.

Do you consider that the professional interest taken by the Crown officers in the civil suit, the facts with which they may have been thereby acquainted, and the real or supposed prejudices which they may have acquired in the conduct of the suit, calculated to impair the confidence which the prosecutor, or the public, ought to have in the administration of criminal justice?—I have not had sufficient opportunity to form an opinion upon that subject.

Do you think that the prosecutor ought to pay the expenses of his prosecution if he fails in a conviction, and the judge do not certify?—I am not prepared to answer that question without further consideration.

Do you think that if the fines and forfeitures in every district were paid into the district treasury, it would be an expedient source for the payment of the expenses of the public prosecutions of each district?—I am not prepared to give an answer to that question.

B. C. Beardsley, Esq., Barrister at Law.

Q. WHAT do you consider to be the rights of the Bar in this province, in conducting criminal prosecutions?—**A.** I consider them to be the same as they are in England.

Have these rights been hitherto exercised, and if not, why not?—They have been exclusively exercised by the Crown officers, as far as my knowledge extends, except at the quarter

quarter sessions. That monopoly I have understood to be claimed, and scarcely contested, being considered as sanctioned by the Court of King's Bench; and therefore I should consider the assertion of the right as hopeless.

Do you think the assertion of the rights by the Bar would be conducive to the interests of the Bar and of the people?—I certainly think it would. Such an exclusion must be prejudicial to the Bar; and the confinement of the whole province to two professional men, against whom prosecutors may have prejudices (whether well or ill founded), and to whom they can, in the outer districts, only have access in the period of the assizes, and who are often retained in a civil action, out of which the criminal prosecution must arise, has, in my opinion, a direct and certain tendency to prejudice public justice.

Do you think that such a state of things is calculated to deter prosecutors from applying to those Crown officers who have engaged against them in the civil defence of the wrong doers?—Most certainly I do. It would have that effect upon me; and I cannot but consider it would, in a greater or less degree, have that effect upon others.

Do you think the character of public justice likely to be impaired by such a state of things?—I certainly do, and I think it would be improved by a change.

Ought the prosecutor to be paid in the event of failing in a conviction?—By no means; it would induce persons, from vindictive feelings, to prosecute, as has been the case to my knowledge in some instances, from running no risk of personal expense; for in this province it is charged against the public revenue.

Do you think that if the fines and forfeitures, in every district, were paid into the district treasury, it would be an expedient source for the payment of the expenses of public prosecutions?—I certainly think it would; and it would further relieve the provincial treasury from heavy charges now made against it, and from an increase inevitable in time, beyond what this or any country can bear.

Do you recollect any other means of protecting the public in criminal prosecutions?—Yes, many. I think the clerks of assize, who have been, and still are, young, either under age, or not much over it, do but ill fill a situation with so many responsibilities as are attached in this province to a clerk of assize, who has the custody of all records, exhibits, indictments, the pannel of the jury, the swearing of witnesses and jurymen, and other duties, as the making up the postea, and the arraignment of prisoners. I have heard dissatisfaction expressed, and have felt it myself not without reason. I also think there should be an improvement of the jury law; and that the sheriffs should hold their offices during good behaviour, and not during pleasure. And it is my strong opinion that the same rule should be extended to the judges.

What improvement would you suggest in the clerks of assize?—I still hold the opinion I have expressed in the legislature, that the deputy clerks of the Crown, in every district, should act as clerks of assize, as they have the custody of the original papers, and the passing of the records, and are also better fitted from age and character. It would also relieve the suitors from a heavy expense, as they are, by the table of fees, allowed charges which amount to as much as is taxed to counsel, who is attorney in the cause; and the deputy clerk of the Crown, from his residence in the district, could not require such fees. It would also relieve the provincial revenue from the present charges made by the clerks of assize in criminal prosecutions. I have heard, and have good reason to believe, that these youths, during the assize, engage in gambling, and other amusements, vulgarly called rows, as fighting and frolicking.

Arch. M'Lean, Esq.

Q. How long have you been a member of the provincial Bar, and what offices do you hold?—A. I have been a member of the Bar since 1813, and am clerk of the peace of the eastern district.

Have the members of the provincial Bar engaged in the conduct of public prosecutions, as in England?—They have not, except at the quarter sessions.

Do you consider that the provincial Bar have the same rights in conducting criminal prosecutions in this province as the Bar in England, and subject only to the same restrictions?—I am of that opinion.

Do you consider the mode of conducting public prosecutions in England as part of the judicial system in that country?—I do.

Has the adoption of that system in this province generally, and the introduction of the criminal law by the provincial enactment for that purpose, in your opinion, implied the existence of the same rights of the Bar here as in England, in conducting criminal prosecutions?—In my opinion it has; and I consider that the criminal law is to be publicly administered here in the same manner as it is in England.

Have you ever known that right claimed and exercised by any other member of the Bar, other than the Crown officers?—It was once claimed by Mr. M'Donell, afterwards Attorney-general in this province, but it was not persisted in, from some objection then made to it by the Court. Mr. Firth was then Attorney-general.

Do you know why the right has not been more generally claimed and exercised by the Bar?—I do not. It has generally been considered as the duty of the Crown officers to prosecute. They have hitherto exercised an exclusive right, and except in the case I have mentioned, it has never been contested.

Do you know upon what ground such an exclusive right is claimed?—I do not.

Do you think it would be an expedient rule that a public prosecutor should himself bear the expenses of his prosecution if he fails in a conviction, unless the judge certifies?—I think it would be very desirable, unless the judge should certify.

Is it desirable that the practice in this province, as to the expenses of prosecution, should be assimilated as much as possible to the practice in England?—I do not think any public good would result from it, as prosecutors would have to pay the expenses of prosecution themselves; by which many persons would be deterred from prosecuting, and criminals would not be brought to justice.

How are public prosecutions now paid in this province, and what the amount for each conviction?—They are charged to the provincial revenue, and the amount for each conviction to the Crown officer, I believe to be, by the present table of fees, 7*l*.

What would be the effect of that system in course of time, as crime and prosecutions multiplied, as they are in Great Britain, upon the public revenue?—It would, of course, be a charge upon the revenue, and a serious one too. I do not know the number of criminal prosecutions in England, but if the same sum were charged against the revenue of Great Britain for every public prosecution and conviction as is charged in this province, it would be a serious charge against the resources even of that country.

Will the practice of the Crown officers, in taking fees to defend in a civil action persons guilty of an offence, to be the subject of a prosecution, tend to discourage the persons injured from applying to them for professional advice and aid?—I do not think it would.

Do you think such a practice in no way prejudicial to the ends and character of public justice, supposing the Crown officers to claim an exclusive right to conduct public prosecutions?—I do not think it in any way prejudicial, inasmuch as no persons are deterred from coming forward to prosecute in consequence of the Crown officers being retained in a civil action, arising from the same cause.

Robert Baldwin, Esq. Barrister at Law.

Q. ARE public prosecutions open to the members of the Bar generally?—**A.** I have always understood that the Attorney and Solicitor-general have claimed the exclusive right of conducting criminal prosecutions in this province. The following case occurred some years ago in the Court of King's Bench, which I well recollect:—My father, William Warren Baldwin, Esq. in the case of *The King v. Ellrod*, for bigamy, wished to proceed to outlawry; and for that purpose moved the Court for a writ of exigent. The Court thereupon addressed the Crown officers, inquiring whether they consented to the right of making such a motion. The Crown officer (Attorney-general) said he would look into the question, and answer another day. On a subsequent day, upon the motion being renewed, the Attorney-general, John B. Robinson, Esq. informed the Court that he had looked into the authorities, and could find no authority against the right to make the motion claimed by Mr. Baldwin. I was at that time a student at law only, but I distinctly recollect it was conceded as matter of right, and not of courtesy. The Solicitor-general certainly did, at the time, in a low tone of voice, suggest to the Attorney-general not to give up the right. From the above case I infer a doubt of that exclusive right countenanced by the Court, and conceded by the Attorney-general; but I believe the impression upon the Bar, generally, is, that the exclusive right is claimed and exercised by the Crown officers.

Do you, as a professional man, consider that the Bar in this province have the same rights as the Bar in England, in conducting criminal prosecutions?—Undoubtedly.

Does it come within your knowledge that the Crown officers defend persons in a civil action, out of which a serious criminal prosecution might or ought to follow?—I have known both of them do so.

What effect do you apprehend to follow such a practice, with respect to its discouragement of prosecutors so situated?—I think it must necessarily discourage prosecutors so situated; and I feel that the parties prosecuting would have reason for discouragement; for I think, that with the most conscientious endeavour to do justice, the professional man so situated might not be able to do it. Willingly, I would never place myself in such a situation; for I should distrust my own power over myself in such a situation; and this, I say, independent of any unfavourable impression which might be made upon the public mind with respect to the pure administration of criminal justice.

Do you think a change in the present system would conduce to the interests and character of the Bar, and the pure and unsuspected administration of criminal justice?—I think it would conduce to the pure and unsuspected administration of criminal justice; and therefore would most certainly conduce to the interests and character of the Bar.

Do you think it would be desirable that the fines and forfeitures in every district should be paid into the district treasury, and be applied to the payment of the expenses of criminal prosecutions in each district?—I think it would be a desirable mode.

Thomas Taylor, Esq. of the Middle Temple, Barrister at Law.

Q. HAVE the Bar in this province the same right to conduct criminal prosecutions as the Bar in England, subject to the same restrictions?—**A.** I think they have, subject to the same restrictions.

Do the Crown officers in this province claim an exclusive right to conduct criminal prosecutions?—They exercise an exclusive right.

Under

Under what law is that exclusive right exercised?—I know of no law to make the right otherwise here than it is in England.

The Crown officers taking fees to defend wrong doers in a civil action for the injury, do you think it desirable the prosecutors should exercise the right of electing counsel to prosecute criminally?—Yes, in those cases, I do.

Do you think that such a practice on the part of the Crown officers, including the exclusive right exercised of conducting criminal prosecutions, is calculated to discourage prosecutors from prosecuting criminally?—I think, in some cases, it might discourage.

EXTRACTS from the JOURNALS of the HOUSE OF ASSEMBLY of *Upper Canada*, dated 21st, 22d and 24th March 1828.

MR. ROLPH, seconded by Mr. Bidwell, moves that it be resolved, That Nathaniel Coffin, Esquire, and J. Givins, Esquire, having been summoned by the Committee to whom was referred the Petition of William Forsyth, with power to send for persons and papers to appear before them, and not having complied therewith, the Speaker be directed to issue his warrant to apprehend them and bring them to the Bar of this House, to answer for the contempt forthwith.

Mr. Attorney-general, in amendment to Mr. Rolph's motion, seconded by Mr. J. Jones, moves, That after the word "that," the remaining words of the resolution be expunged, and the following inserted, "That a Committee be appointed to search into precedents, and report in what cases it is proper, according to parliamentary usage, that the Executive Government should be addressed in order to procure the attendance of any public officer, and whether in any and what cases an officer serving His Majesty in any situation, civil or military, can be summoned before a Select Committee, and his attendance compelled without a previous request, addressed to the Executive Government."

On which the House divided, and the Yeas and Nays being taken, were as follows:—

YEAS—Messrs. Attorney-general, Burnham, Cameron, Clark, Coleman, J. Jones, M'Call, M'Lean, Morris, Scollick, Thompson of York, Vankoughnet and Walsh—13.

NAYS.—Messrs. Baby, Beardsley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, White, Wilkinson and Wilson—18.

The question was decided in the negative by a majority of five, and lost accordingly.

On Mr. Rolph's motion the House divided, and the Yeas and Nays being taken, were as follows:—

YEAS—Messrs. Baby, Beardsley, Bidwell, Clark, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thompson of Frontenac, Thompson of York, White, Wilkinson and Wilson—21.

NAYS—Messrs. Attorney-general, Burnham, Cameron, Coleman, J. Jones, M'Lean, Morris, Scollick, Vankoughnet and Walsh—10.

The question was carried in the affirmative by a majority of eleven, and ordered accordingly.

Mr. Rolph, seconded by Mr. Bidwell, moves that the Report of the Serjeant-at-Arms of his proceedings upon the warrants from the Speaker to apprehend Nathaniel Coffin, Esquire, and James Givins, Esquire, for a contempt of the House of Assembly, be taken down in writing and entered on the Journals of the House.

Which was carried *nem. con.*

Present: Messrs. Attorney-general, Beardsley, Beasley, Bidwell, Burnham, Cameron, Clark, Coleman, Fothergill, Hamilton, Hornor, D. Jones, J. Jones, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, M'Lean, Matthews, Morris, Perry, Peterson, Randal, Rolph, Scollick, Thompson of Frontenac, Thompson of York, Vankoughnet, Walsh, White, Wilkinson and Wilson, and is as follows:

In obedience to the warrants of the Honourable the Speaker, I proceeded to the house of Nathaniel Coffin, Esquire, for the purpose of taking him into custody. I found his doors fastened, and was told by him and James Givins, Esquire, (who was in the house with him) "that they would not be arrested unless the house was broken open, and they were forcibly taken, and that if they were so arrested, they should prosecute the Speaker and Serjeant-at-Arms."

22d March 1828.

David M'Nab,

Depy Serjeant-at-Arms.

The Serjeant-at-Arms reported, that agreeably to the Order of the House, he had taken into custody James Givins, Esquire, and Nathaniel Coffin, Esquire, and that they were then at the Bar.

Mr. Rolph, seconded by Mr. Bidwell, moves that it be resolved that James Givins, Esquire, and Nathaniel Coffin, Esquire, having been apprehended by the Serjeant-at-Arms and brought up to the Bar of this House, that the resolution of yesterday be read to them; and that they be severally called upon to state what they have respectively to say in their defence.

Which was carried, and the resolution was read, as follows:—

Resolved, That Nathaniel Coffin, Esquire, and James Givens, Esquire, having been summoned by the Committee to whom was referred the Petition of William Forsyth, with power to send for persons and papers to appear before them, and not having complied therewith, the Speaker be directed to issue his warrants to apprehend them, and bring them to the Bar of this House to answer for the contempt forthwith.

The Speaker then called upon the prisoners severally to state what they had to allege in their defence.

Mr. Rolph, seconded by Mr. Bidwell, moves that the matters stated by James Givens, Esquire, be taken in writing and entered on the Journals of the House.

Which was carried, and is as follows:—

(STATEMENT of *James Givens*, Esquire.)

That upon receiving the summons, he conceived it to be his duty to wait upon the Major-general commanding, and to state to him his having received the summons, and to ask his permission to attend the Committee. That he did not receive an answer immediately, but some time after he did, and leave was refused.

That he is an officer in the Indian department, and is now acting at the head of that department, in this province.

Mr. Rolph, seconded by Mr. Bidwell, moves that the matters stated by Nathaniel Coffin, in his defence, be taken down in writing and entered on the Journals of the House.

Which was carried, and is as follows:—

(STATEMENT of *Nathaniel Coffin*, Esquire.)

That on receiving the summons from the Chairman of the Committee, he applied to his Excellency the Lieutenant-governor for leave to attend. In a day or two after he received his Excellency's answer in writing, which was in his possession, and which he read in the following words:

SIR,

18th March 1828.

HAVING laid before the Lieutenant-governor the summons which you have received, to attend a Committee of the House of Assembly, appointed to inquire and report upon the Petition of William Forsyth: I am commanded to acquaint you, that his Excellency cannot give the permission desired by you, not knowing what are the matters of which he complains, or what are the facts in regard to which it is desired to interrogate you.

I have the honour to be, Sir,

Your most obedient,

To Colonel Coffin,
Adjutant-general of Militia, &c. &c. &c.

G. Hillier.

Mr. Rolph, seconded by Mr. Bidwell, moves that it be resolved, That James Givens, Esquire, having been guilty of a contempt of this House, and of a breach of its privileges by neglecting and refusing to obey the summons of a Select Committee appointed to inquire into and report upon the Petition of William Forsyth, with power to send for persons and papers, although duly summoned so to do,—that he be for such contempt and breach of privilege committed by warrant from the Speaker to the Gaol at York in the Home District during the residue of this Session.

In amendment, Mr. M'Lean, seconded by Mr. Coleman, moves that after the word "resolved" in the original motion, the whole be expunged, and the following inserted, "That as it appears to this House that James Givens, Esquire, now in custody of the Serjeant-at-Arms, acted, in disobeying the subpoena of a Select Committee of this House to appear as a witness before them, under an impression that he could not attend the said Committee without the permission of the Major-general commanding His Majesty's Forces in this province, and not from any feeling of disrespect towards the Committee or this House, the said James Givens, Esquire, be discharged."

On which the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Attorney-general, Burnham, Clark, Coleman, D. Jones, J. Jones, M'Lean, Scollick, Vankoughnet, and Walsh—10.

NAYS—Messrs. Baby, Beardsley, Beasley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Morris, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, Thompson of York, White, Wilkinson, and Wilson—22.

The question was decided in the negative, by a majority of twelve, and lost accordingly.

In amendment to the original question, Mr. Morris, seconded by Mr. Walsh, moves that after the word "that" in the original resolution, the remaining words be expunged, and the following words be inserted, "James Givens, Esquire, and Colonel Coffin, having satisfied this House that they had no intention to treat with contempt or disrespect the summons of the Select Committee, be discharged, after having been admonished by the Speaker, that it was their duty, without reference to any superior authority, to give immediate obedience to the summons of the Select Committee."

On which the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Burnham, Clark, Coleman, D. Jones, J. Jones, M'Lean, Morris, Scollick, Thompson of York, and Walsh—10.

NAYS—Messrs. Attorney-general, Baby, Beardsley, Beasley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry,

MR. FORSYTH'S PETITION TO HOUSE OF ASSEMBLY. 17

Perry, Peterson, Randal, Rolph, Thomson of Frontenac, Vankoughnet, White, Wilkinson, and Wilson—22.

The question was decided in the negative by a majority of twelve, and lost accordingly.

On the original question the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Baby, Beardsley, Beasley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, Thompson of York, White, Wilkinson, and Wilson—21.

NAYS—Messrs. Attorney-general, Burnham, Cameron, Clark, Coleman, J. Jones, M'Lean, Morris, Scollick, Vankoughnet, and Walsh—11.

The question was carried in the affirmative by a majority of ten, and it was resolved accordingly.

Mr. Rolph, seconded by Mr. Bidwell, moves that it be resolved, That Nathaniel Coffin, Esquire, has been guilty of a contempt, and of a breach of the privileges of this House, by neglecting and refusing to attend and give evidence before the Select Committee appointed to inquire into and report upon the petition of William Forsyth, with power to send for persons and papers, although duly summoned so to do, and that for such contempt and breach of privilege, he be committed by the warrant of the Speaker to the gaol at York, in the Home District, during the residue of the Session.

On which the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Baby, Beardsley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, White, Wilkinson, and Wilson—19.

NAYS—Messrs. Attorney-general, Burnham, Clark, Coleman, D. Jones, J. Jones, M'Lean, Morris, Scollick, Vankoughnet, and Walsh—11.

The question was carried in the affirmative by a majority of eight, and it was resolved accordingly.

The Speaker submitted to the House the form of a warrant of commitment for Nathaniel Coffin, and put the question for its adoption, and his signing of the same; on which the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Baby, Beardsley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, Wilkinson, and Wilson—18.

NAYS—Messrs. Burnham, Clark, Morris and Walsh—4.

The question was carried in the affirmative by a majority of fourteen, and the warrant was adopted and signed by the Speaker, and is as follows:

The Speaker of the House of Assembly, in session at York, in Upper Canada, this twenty-second day of March in the year of our Lord one thousand eight hundred and twenty-eight.

TO THE SHERIFF OF THE HOME DISTRICT, OR THE GAOLER THEREOF.

Whereas Nathaniel Coffin has been apprehended and brought to the bar of the said House of Assembly to answer for his contempt and breach of privilege, by neglecting and refusing to attend and give evidence before the Select Committee to whom was referred the petition of William Forsyth, with power to send for persons and papers, although duly summoned so to do; and the said House of Assembly having resolved that the said Nathaniel Coffin has been guilty of the aforesaid contempt and breach of privilege, and also that he be therefor committed to the Gaol at York, in the Home District, during the residue of this session: This is therefore to command you to take the said Nathaniel Coffin, Esquire, into your custody, and him safely keep during the residue of the session of this Parliament. Given under my hand and seal at York, in the Home District, this twenty-second day of March in the year of our Lord one thousand eight hundred and twenty-eight.

John Willson, Speaker.

The Speaker then submitted to the House the form of a warrant of commitment for James Givens, and put the question for its adoption and his signing of the same.

On which the House divided, and the Yeas and Nays being taken, were as follows:

YEAS—Messrs. Baby, Beardsley, Bidwell, Fothergill, Hamilton, Hornor, Lefferty, M'Bride, M'Call, M'Donald of Prescott and Russell, Matthews, Perry, Peterson, Randal, Rolph, Thomson of Frontenac, Wilkinson, and Wilson—18.

NAYS—Messrs. Burnham, Clark, Morris and Walsh—4.

The question was carried in the affirmative by a majority of fourteen, and the warrant was adopted and signed by the Speaker, and is as follows:

The Speaker of the House of Assembly, in session at York, in Upper Canada, this twenty-second day of March in the year of our Lord one thousand eight hundred and twenty-eight.

TO THE SHERIFF OF THE HOME DISTRICT, OR GAOLER THEREOF.

Whereas James Givens has been apprehended and brought to the bar of the said House of Assembly, to answer for his contempt and breach of privilege, by neglecting and refusing to attend and give evidence before the Select Committee to whom was referred the petition of William Forsyth, with power to send for persons and papers, although duly summoned so to do; and the said House of Assembly having resolved that the said James Givens has been guilty of the aforesaid contempt and breach of privilege, and also that he be therefor committed to the Gaol at York, in the Home District, during the residue of this session: This is therefore to command you to take the said James Givens, Esquire, into your custody, and him safely keep during the residue of the session of this Parliament. Given under my hand and seal at York, in the Home District, this twenty-second day of March in the year of our Lord one thousand eight hundred and twenty-eight.

John Willson, Speaker.

The Speaker then put the warrants into the hands of the Serjeant at Arms, with orders to see the same carried into execution.

Mr. Beardsley from the Committee, to which was referred the petition of Robert Randal, Esquire, informed the House that the Committee had agreed to a Report, which he was directed to submit whenever the House would please receive the same.

The Report was ordered to be received.

Adjourned.

Mr. Secretary Hillier brought down from his Excellency the Lieutenant-governor a message, and having presented the same to the Speaker, retired.

The Speaker then read the same, as follows:

P. MAITLAND.

The Lieutenant-governor acquaints the House of Assembly that the Adjutant-general of Militia, and Colonel Givens, superintendent of Indian affairs, acting as the head of that department in this province, have reported to him that they are in custody under a warrant of the Speaker of the House of Assembly, for a contempt in disobeying the summons of a Select Committee appointed to report upon a petition of William Forsyth.

The Lieutenant-governor will always view with extreme regret any circumstance likely to produce a misunderstanding between any of the branches of the Legislature; and notwithstanding the protection which he justly owes to all officers serving under his Government, and acting as they conceive in the due discharge of their duty, he has forborne to interrupt the proceedings of the session by hastening the intended period of prorogation, indulging a hope that some measures useful to the country might be matured before the Legislature separated.

It is of importance, however, to the several branches of the Legislature—to the people of the province—and no less to the members of the House of Assembly individually, when, by the expiration of this Parliament, they shall have returned to their stations in society, that the extent of the privilege the House has asserted, the regular mode of exercising it, and the power of enforcing it, should be distinctly understood.

The departure of the Assembly from the usage prevailing in this colony, and as far as the Lieutenant-governor can learn, in other governments, could not be acquiesced in by him without that conviction of its propriety which he does not now entertain.

For his future guidance, under similar circumstances, he will solicit the direction of His Majesty's Government: if the power claimed by the House of Assembly has been constitutionally assumed and exercised, the House has discharged its duty in asserting it; if otherwise, the Lieutenant-governor, in withholding his permission, had a duty to fulfil from which he could not properly recede; and of this the Assembly may be assured, that if the propriety of its proceedings shall be confirmed by His Majesty, no one will be more ready than himself to recognize the privilege in question on all future occasions, and to enforce its observance by all whom it is his duty to control.

Government House, 24 March 1838.

No. 2.

COPY of a DESPATCH from Lieutenant-general Sir *P. Maitland* to
the Right hon. *William Huskisson*, M. P.

SIR,

Upper Canada,
York, 29th March 1828.

DURING the Session of the Legislature of this Colony, which has just terminated, a proceeding has taken place upon which I am compelled to solicit, very earnestly, the opinion of His Majesty's Government, that I may not be at a loss hereafter how to act under similar circumstances.

On the 16th inst. Colonel Givins, Superintendent of Indian Affairs, acting as head of the department in this province, in the absence of the Deputy Superintendent-general, who resides at Quebec, and Colonel Coffin, Adjutant-general of the Militia, communicated to me officially, that they had been summoned to attend a Select Committee of the House of Assembly, and they submitted to me the Letters which they had respectively received from the Chairman of the Committee requiring their attendance, copies of which accompany this Despatch.

It has been usual hitherto for the Assembly, when they required information from any public department under the Government, or the attendance of any civil officer, to address the Lieutenant-governor on the subject, and I do not know that, in any instance, their request has not been complied with. In some cases, however, the request has been, in the first instance, made to the officer whose attendance was desired, and who has obtained the leave of the Lieutenant-governor, before he attends the Committee. The mode first mentioned has, however, generally prevailed, particularly during the last Session, in the course of which I received three or four addresses for the attendance of different officers on Committees of the House.

Colonel Coffin, as Adjutant-general of the Militia, is, in time of peace, the head of a department in the Civil Government. Colonel Givens is now, and has been for some time, acting as head of a department under the control of the Commander of the Forces. The former conceived he was following the proper and ordinary course in applying to me, as Lieutenant-governor, for permission to attend the Committee of the Assembly; the latter was led by a sense of duty to apply for the same purpose to me as Major-general commanding the Forces in the Province; and they severally sent to the Chairman of the Committee a communication, of which I enclose a copy, informing him that they had applied for leave to attend.

For reasons which I shall presently explain, I thought it right to give to the application of these officers the answers which I enclose; they consequently did not attend, but acquainted the Chairman of the Committee that they were not permitted to do so. On the 23d inst. the Chairman of the Committee reported to the House of Assembly that Colonel Givins and Colonel Coffin had not attended; and the House, avoiding any communication with me, directed warrants against them to be issued by the Speaker, that they might be brought up in custody of the Serjeant at Arms. Of the intention to issue the warrants the two officers were apprized, and, as I did not think it proper that the Government should interpose in that stage of the proceeding, they were directed entirely by the advice of the professional gentlemen whom they chose to consult. Acting under this advice, they declined voluntary submission to the warrant, declaring that force must be resorted to, and intimating that, if such force were used, they would prosecute the Speaker.

They were taken on the same day, the 22d inst., having submitted without resistance, after the house in which they were had been forcibly entered; and being brought to the bar of the Assembly, and charged with a contempt in not obeying the summons of the Chairman of the Select Committee, they stated in their vindication, that they had applied for permission to attend, and had not received it, and Colonel Coffin read the letter which I had directed to be written to him in answer to his application. The Resolution, which is transmitted, was then moved and adopted in the House, 21 voting for it, and 11 against it, after two amendments had been negatived.

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The Speaker thereupon made his warrants, of which copies are transmitted, and Colonel Givins and Colonel Coffin were received in custody by the Sheriff the same evening, and remained in prison until the 25th instant, when the Legislature was prorogued in the ordinary course, and according to an intimation which I had given to the two Houses, through their Speakers, many days before.

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The 23d March being Sunday, Colonel Givins and Colonel Coffin reported to me on Monday what had taken place, in consequence of their declining to attend the Select Committee; and I sent a message to the Assembly on the same day, of which I transmit a copy. No proceeding was had upon this message; and you will perceive that in the speech with which I closed the Session, and which I also send to you, I avoided mixing up this disagreeable occurrence with the general business of the Legislature. I chose rather to make it the subject of a separate message, and to forbear in that message to advance topics or employ language that might produce irritation, and unnecessarily implicate the feelings in a question which I look upon as exceedingly important.

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Page 23.

Since the Session, Colonel Coffin has addressed to my Secretary a Letter, of which I enclose a copy. I have referred to the Executive Council on the subject, and transmit their Report, in which I entirely concur.

I have thus laid before you the whole case, and I shall be most anxious to receive your opinion upon it; and, in order that that opinion may, as much as possible, serve me for a direction in a very delicate but important point of duty, I am desirous that it should be formed upon as general a view as can possibly be taken of the question.

I will refer to the Governors of other Colonies, to learn what usage has obtained in them, but my belief is, that in other colonies as well as in this, it has been the practice for the Assembly to apply to the Governor by Address when information is wanted from any public department, or when the attendance of a public officer is desired.

When a Select Committee of the House of Assembly here desires the attendance of a Member of the Legislative Council, or any officer or servant of that House, the course uniformly pursued is to request it by message, and not by directly summoning the individual. If courtesy leads to this practice, I see no reason why the same courtesy should not be extended to the third branch of the Legislature; and if it has prevailed rather from a sense of its necessity, in order that the business of the Legislative Council may not be unreasonably interrupted by a compulsory abstraction of their Members and Officers; it seems to me that the same reason would apply, with equal force, to the Executive Government, which is constantly in operation, and whose functions may be very inconveniently suspended, if without any reference to the head of a Government, the principal of a Department, or even subordinate officers, can be withdrawn and detained at the pleasure of a Committee of the Assembly.

There are, however, other considerations which apply peculiarly to the Executive Government, and which, although they will not fail to occur readily to your mind, I feel it my duty to lay especially before you.

Few Sessions elapse in which the Assembly does not call upon the Government for information, which is sometimes granted and sometimes refused, according to the nature of the request. For instance, they have not unfrequently called for an account of the receipt and appropriation of the casual and territorial revenue of the Crown. My instructions are not to comply with such a request until I have ascertained the purpose for which the information is desired, and have referred to the Secretary of State upon the subject; but if the Assembly can, without communicating with the Lieutenant-governor, summon the Receiver-general or the Inspector-general of Accounts, or any of their clerks, to attend a Select Committee, and compel their attendance at the peril of imprisonment, the Government here or in England has no longer any discretion to exercise. Then with respect to the Military Service, it does not seem to me possible that a Select Committee of the Assembly can, for the purpose of inquiring perhaps into some alleged irregularity in a garrison, or want of discipline in a regiment, which they have nothing to do with, or for any other purpose compel the attendance of any military officer upon pain of imprisonment, and that his superior officer should have no discretion in granting or withholding permission, whatever may be the exigency of the service.

I should

I should be most happy to learn what, in such cases, is the usage in England ; though it may by no means follow that the usage of Parliament there is, in all things, to be adopted here, or that it can be legally introduced and enforced.

The 31st Geo. 3. will show for what purposes the Legislature of this Province was constituted, and what powers are given to it. It has never been conceived that one of these powers was to prefer impeachments, because the legislative council has no power to entertain them or dispose of them. If therefore the professed object of any inquiry by a Select Committee is to ascertain the truth of a complaint against individuals, it is to be borne in mind how obviously and securely such an inquisition may be perverted to serve the purposes of faction, and may be made the instrument of the greatest oppression and abuse.

A Select Committee, composed of members named at the request of a Petitioner, receives an *ex parte* statement of a case; summons only such witnesses as it pleases, records their testimony, given without the sanction of an oath, and not under the restraint of any responsibility whatever. Upon this evidence a Report is drawn in terms which gratify the malice of an individual, or answer the temporary purpose of an unprincipled faction, by aspersing the fairest characters among their opponents. The individual injured has no redress; he cannot prosecute the conspirators in a court of law. The Committee who manage the inquiry are not sworn as courts are, to decide justly; and when they have made their report, no ulterior proceeding is within the power of the party injured for vindicating his character; no impeachment can follow, and he cannot therefore obtain relief from the unjust accusation. The use of this engine for party purposes has commenced in the present Assembly; but the length to which it has been carried in the last Session, during the unfortunate absence of eight or nine members of the Assembly, has been quite an innovation, and one which I feel it my duty to bring, without loss of time, under the notice of His Majesty's Government.

Perhaps a stronger case could not well be imagined than that which has formed the groundwork of the particular proceeding which I have described. A Mr. Forsyth, a person notoriously of indifferent character, had taken upon himself to enclose part of a public reserve of a chain in width along the bank of the river Niagara. My attention was particularly called to the circumstance by a Petition from some of the inhabitants of the country, who complained of being thus shut out from the river by the illegal act of an individual. I directed the commanding engineer to survey the reserve along the river, and to throw it open to the public. No one but Mr. Forsyth raised any objection. He was remonstrated with in vain; he was asked to remove his fences, but refused. He was told he should have men to assist him, but would not consent; and at length, without any personal violence being offered or threatened, the engineer, with a fatigue party, threw down the fences. The Sheriff of the district was present. Mr. Forsyth brought actions of trespass against the engineer, officer and the Sheriff, whom I have directed the Crown officers to defend. He replaced his fences, and the Attorney-general in consequence filed an information of intrusion against him, which he defended; and upon a full trial by a jury, a verdict was rendered for the Crown, thereby establishing the right which had been disputed. The civil actions, from an error in the plaintiff's proceedings, are yet undecided; and while they are depending in the courts of law, Mr. Forsyth petitions the Assembly, complaining of what he terms a grievous outrage, in language calculated to inflame public feeling, by describing the act as a lawless, high-handed exercise of military power. This Petition is referred to a Select Committee. His counsel, in the proceedings at law for the same alleged injury, happening to be a member of the Assembly, is named of the Committee, and upon the *ex parte* statement of his client and other witnesses, not on oath, frames a Report in direct opposition to the verdict of one jury who have tried the point, and intended, as it must be supposed, to influence those verdicts which are yet to be rendered. This Report, when made, becomes a public document, and finds its way into the public papers; and thus, upon a question of boundary and legal right which has yet to be tried, the parties have to encounter whatever weight a prejudice so excited can throw into the scale.

I am well aware that in England no such case could occur, because a sense of justice would prevent it; but when civil or military officers under my government are summoned in the mere hope that they may know something which may turn to

account at the trial, and in order, it may be, to find out evidence to be made use of in a court of law, I feel it quite necessary that I should know whether, with or without permission from the Government, their attendance can be compelled.

You will confer upon me a great favour by putting me, as soon as may be convenient, in possession of your sentiments upon the matters stated in this Despatch, as I feel that the questions they involve are of the greatest moment to the administration of justice, and to the honour and stability of the Government.

I will not further swell this Despatch by the transmission of any official report from the law officers of the colony on the subject to which it has reference, but will content myself with adding that I have not failed to ascertain their opinion, which entirely agrees with the sentiments expressed in this Letter.

I have, &c.

(signed) *T. Maitland.*

LETTER from *B. C. Beardsley*, Esq. to Colonel *Givins*, Indian Department.

Committee Room, Commons House of Assembly,
14th March 1828.

WHEREAS the House of Assembly have appointed a Committee to inquire into and report upon the Petition of William Forsyth, of Stamford, for inquiring into Crime and Outrage, with power to send for Persons and Papers, you are hereby required to attend the said Committee, in the Committee Room of the House of Assembly at noon to-morrow.

(signed) *B. C. Beardsley*, Chairman.

LETTER from Colonel *Givins* to *B. C. Beardsley*, Esq. Chairman.

SIR,

York, 15th March 1828.

I RECEIVED your Notice this morning to attend a Committee of the Honourable House of Assembly this day at noon; and, in consequence thereof, have made application to his Excellency the Major-general commanding for his permission for that purpose, but have not as yet received an answer thereto.

I have, &c.

(signed) *J. Givins*, Sup^t Indⁿ Affairs.

LETTER from *G. Hillier*, Esq. to Colonel *Givins*, Indian Department.

SIR,

Government House, York, 18 March 1828.

HAVING laid before the Lieutenant-governor and Major-general commanding, the summons which you have received to attend a Committee of the House of Assembly appointed to inquire into and report upon the Petition of William Forsyth, I have received his commands to acquaint you, that he cannot give the permission desired by you, not knowing what are the matters of which Mr. Forsyth complains, or what are the facts in regard to which it is desired to interrogate you.

I have, &c.

(signed) *G. Hillier.*

B. C. Beardsley, Esq. to *Nathaniel Coffin*, Esq. Adjutant-general of Militia.

Committee Room, Commons House of Assembly,
14th March 1828.

WHEREAS the House of Assembly has appointed a Committee to inquire into and report upon the Petition of William Forsyth of Stamford, for inquiry into Crime and Outrage, with power to send for Persons and Papers, you are hereby required to attend the said Committee in the Committee Room of the House of Assembly at noon to-morrow.

(signed) *B. C. Beardsley*, Chairman.

LETTER from *N. Coffin*, Esq. to *B. C. Beardsley*, Esq. House of Assembly.

SIR,

Adjutant-general's Office, York,
15th March 1828.

I RECEIVED your Notice this morning to attend a Committee of the Honourable House of Assembly this day at noon, and in consequence thereof, have made application to his Excellency the Lieutenant-governor for his permission for that purpose, but have not as yet received an answer thereto.

I have, &c.

(signed) *N. Coffin*,
Adj^t Gen^l of Militia, Upper Canada.

MR. FORSYTH'S PETITION TO HOUSE OF ASSEMBLY. 23

LETTER from N. Coffin, Esq. to Major Hillier, Private Secretary,
&c. &c. &c.

SIR,

York, March 22d, 1828.

I BEG leave to request that you will state to the Lieutenant-governor that, in obedience to the communication I received, through you, that his Excellency could not give me permission to attend a Committee of the House of Assembly for the reasons therein stated, that I did not attend the said Committee, and that, in consequence thereof, I have been committed this evening to the common gaol of the Home district by Order of the House of Assembly: I have, therefore, to pray that his Excellency will be pleased to direct that I may have the advice and assistance of the Crown officers, to enable me to take such steps as I may be instructed on the occasion.

I have, &c.

(signed) N. Coffin,
Adj^t-Gen^l of Militia.

In Council.

3d April 1828.

THE Council having reviewed their Report of the 26th March last, upon the subject of the within letter, respectfully beg leave to withdraw the same; and upon mature consideration, the Board cannot advise that the Government should interpose to give any directions to the Crown officers as within solicited.

HONOURABLE GENTLEMEN of the LEGISLATIVE COUNCIL, and
GENTLEMEN of the HOUSE of ASSEMBLY:

THE period of your Session having been extended to its usual length, there are some measures of great and general interest to the people of this Province, which I had hoped might have been presented to me as the result of your labours.

Having recommended to you when you met, that some effectual provision for the improvement of the roads should engage your attention, and being aware from the petitions presented to me that measures for promoting other valuable objects would be proposed to your consideration, I have not suffered the prorogation of the Legislature to be hastened by any occurrences, however unusual.

It is not in my power to do more than to persevere in urging, on future occasions, an application to those objects which are so connected with the welfare of the people, that an earnest attention to them, on the part of the Legislature, could not fail to be rewarded with the immediate attainment of great practical good.

GENTLEMEN of the HOUSE of ASSEMBLY:

I thank you, in His Majesty's name, for the supplies which you have granted for the public service.

HONOURABLE GENTLEMEN and GENTLEMEN:

Among the Bills presented to me for the Royal Assent, I am pleased to find that you have concurred in a measure providing for the convenient tenure of such parcels of ground as the various denominations of Christians may have occasion to occupy for religious purposes.

The Naturalization Bill which you have passed remains to be decided upon by His Majesty's Government; after all the unnecessary excitement which has been produced by this question, I need only remind you that no measure could be devised here, or in England, which could ever place the desired relief upon a more indulgent footing than it would long ago have been, if the wishes of this Government had been seconded when they were first publicly expressed.

I take leave of you in the confident expectation that, among a people so particularly favoured as the inhabitants of Upper Canada, no misapprehension as to their real interests, and the proper objects of all good government, can be either general or lasting, and that this season of peace and prosperity which we so happily enjoy, will hereafter be employed in a zealous and undivided application to objects of evident and acknowledged utility.

After which the Honourable the Speaker of the Legislative Council declared that it was his Excellency's pleasure that this Parliament be prorogued to Friday the second day of May next, and declared the Parliament prorogued to the said second day of May, to be then and there holden.

No. 3.

COPY of a DESPATCH from Secretary Sir *G. Murray* to Major-general Sir *J. Colborne*, &c. &c. &c.

SIR,

Downing-street, 20th October 1828.

I HAVE the honour to acknowledge the receipt of Sir Peregrine Maitland's Despatch of the 29th of March last, detailing the proceedings of the House of Assembly of Upper Canada against Colonel Coffin and Colonel Givins for contempt of the privileges of that House, in refusing to obey the summons of the Chairman of a Select Committee, and requesting instructions for his guidance under similar circumstances.

From the statement of the Lieutenant-governor, I am led to infer that there were adequate grounds for inquiry by the House of Assembly into the grievances complained of in Mr. Forsyth's Petition, of having been dispossessed of lands in his occupation by a military force, acting under the express command of the Lieutenant-governor; and the chief reason adduced by the Lieutenant-governor for not allowing Colonels Givins and Coffin to attend the Committee is stated to have been that he did not know the nature of Mr. Forsyth's complaint, nor the facts in regard to which the evidence of the officer was required.

As no direct notification had been made to the Lieutenant-governor in a certain technical sense, he did not know the nature of the complaint, yet as he must have inferred that the Committee proposed to examine these officers respecting the employment of a military force for ejecting Forsyth from the land, I cannot but consider that Sir Peregrine Maitland would have exercised a sounder discretion had he permitted the officers to appear before the Assembly; and I regret that he did not accomplish the object he had in view in preventing Forsyth's encroachments by means of the civil power, which is said to have been at hand, rather than by calling in military aid.

I have, &c.

(signed) *G. Murray.*

No. 4.

COPY of a DESPATCH from Mr. Secretary *Stanley* to Lieutenant-general Sir *P. Maitland*, &c. &c. &c.

SIR,

Downing-street, 20th June 1833.

CERTAIN Papers having been moved for in Parliament, in which some part of your conduct as Lieutenant-governor of Upper Canada is animadverted upon, I have considered it due to you to refer these Papers for your consideration, in order that you may have an opportunity of affording any explanation upon them which you may think necessary.

I am, &c.

(signed) *E. G. Stanley.*

No. 5.

COPY of a DESPATCH from Lieutenant-general Sir *P. Maitland* to Mr. Secretary *Stanley*.

SIR,

London, June 24th 1833.

I HAVE the honour to acknowledge, with thankfulness, the sense of justice which has led you to submit to me a Despatch from Sir George Murray, when Secretary of State, to Sir John Colborne, of 20th of October 1828, previously to laying it before the House of Commons.

However strange the statement may appear, I was altogether unaware that such a document existed. By it, I am now, for the first time, made acquainted with Sir George Murray's animadversions on certain acts of my government.

As my Despatch of the 29th of March 1828, on which the opinions of the then Secretary of State are grounded, was written expressly with the view of obtaining instructions

instructions on a very delicate and important question, and not for the purpose of giving a full detail of transactions, nor of justifying my measures, the propriety of which had not been called in question, circumstances were naturally omitted by me that would have been necessary for the latter objects, but not for that which I had principally in view.

I shall therefore avail myself of the opportunity you have afforded me, to supply, as well as my memory will enable me at this distant period of time, a few circumstances that seem to have been omitted, and that may tend to place those matters which have been commented on in a truer light.

Mr. Forsyth, an innkeeper, having taken upon himself to enclose with a high fence a Government reserve, consisting of a chain in width along the bank of the river Niagara, and which afforded the public free access to the principal Fall of the river, I was repeatedly solicited, by Petition and otherwise, to cause the obstruction to be removed. In consequence of those solicitations, I directed the officer of engineers who had charge of the reserved lands, to survey the Government property near the Falls, and remove any obstruction that had been placed on it. These objects were carried by him into effect, with the assistance of three or four of his men, without arms, in their working dress, and with the temper and caution he was enjoined to observe.

In the suits instituted by Mr. Forsyth against the officer of engineers, it was incumbent on the plaintiff to establish one or two points to entitle him to a verdict, namely, that the defendant had done that which, by law, he was not authorized to do; or that, in doing that which, by law, he was authorized to do, he had done unnecessary injury to the plaintiff's property or possession. Both these points were distinctly submitted to the jury, and both were determined against the plaintiff. Mr. Forsyth, therefore, no doubt regretted, as well as Sir George Murray, the manner in which this intrusion on the public property had been removed, of course, for reasons which did not lie in the same direction.

Can it be seriously believed, that had any other course been taken, Mr. Forsyth, or his counsel, would have found in it less cause for complaint, or have been less industrious in endeavouring to excite clamour about it? It is certain, however, that their efforts could not have been less successful.

After a verdict had been obtained for the Crown, and while the civil suit was pending against the officer of engineers, every attempt was made to prejudice the public mind. Mr. Forsyth petitioned the Assembly, complaining of what he termed a grievous outrage, describing the act as a lawless, high-handed exercise of military power. This Petition was referred to a Select Committee, of which his counsel in the proceedings at law was appointed member and elected chairman, and, on the *ex parte* statement of his client, and other witnesses, not on oath, framed a Report in direct opposition to the verdict that had been rendered and intended, as it must be supposed to influence that which was yet to be given.

This Report when made became a public document, and found its way into the public papers; and thus, upon a question of right, which had yet to be tried, the party had to encounter whatever weight a prejudice, so excited, could throw into the scale. The jury, however, gave their verdict for the defendant, as I have already stated.

It is rather singular that nearly at the same time an intrusion on the public property in the town of Washington, in the neighbouring Republic, had attracted attention. The obstruction in that case was removed by a party of the military, escorted by a company of soldiers, fully armed. A circumstantial narrative of the occurrence was given in the papers of that country; but in no instance, I believe, accompanied by any expression of disapproval.

To proceed to Sir George Murray's observation, that I should have exercised a sounder discretion had I permitted Colonels Givens and Coffin to attend the Select Committee, I concur entirely with Sir George Murray in thinking that it would have been advisable to do so had the Committee, as was usual, applied to me to direct their attendance. It was very well known that they could give no more information respecting the alleged outrage complained of by Mr. Forsyth, than any military officer selected at random from any part of the province. It was no wish to withhold information, therefore, that influenced me in this matter, and I did not fail to take care that the Committee should have reason to be assured that, in the event of the usual application being made to me, the officers would be desired to attend.

It was scarcely, therefore, to be anticipated that the Assembly, so near the period which had been notified for the close of the session, many members having already returned to their homes, would, without any previous communication made to me, be led to take the course which they adopted, a course so likely to be, as it actually was, attended with very general reprobation.

Sir George Murray remarks, that the chief reason adduced by me for not allowing the officers to attend the Committee is stated to have been that I did not know the nature of Forsyth's complaint, nor the facts in regard to which the evidence of those officers was required.

I stated this as a reason (not the chief reason), for it was calculated, if submitted to the Committee, to remind them that it had been usual, in similar cases, to apply to the Lieutenant-governor, and, in doing so, to furnish him with information on certain points.

Before I acquiesced in the course which had been taken by the Committee, it doubtless became incumbent on me to consider well what might be the effect of my acquiescence at any future period. In doing so, it appeared to me that the security of the colony, in the strongest sense of the term, would be affected, and that objections against the measure might be adduced as important as undeniable; but they were not, for obvious reasons, such as I could properly submit to the Assembly, or state in a Despatch which would probably be submitted to that body. I am always ready to state them, if called upon by His Majesty's Government to do so.

It has of late years grown into a practice to submit the official correspondence had with the Colonial Office to the legislature of the colonies, if called for by them, unreservedly.

The Lieutenant-governor of a colony must therefore necessarily exercise a greater degree of restraint than formerly, in addressing the Secretary of State. And, if he cannot rely upon being met by so much consideration as will ensure to him the opportunity of offering explanation before his measures are condemned, he may justly despair of being able to render justice to the office he is intrusted with.

I regret that it should have been made necessary for me to trouble you with this lengthy detail of transactions, which had long ceased to occupy my attention, and respecting which many circumstances have possibly escaped my recollection.

I have, &c.

(signed) *P. Maitland.*

P.S.—The Attorney-general of Upper Canada being in London, I requested him to give any information he could supply, respecting the lease granted to Messrs. Clarke & Street, a matter alluded to in the Report of the Select Committee. My recollection of the circumstances accord with the statement made by Mr. Boulton, and I request that his Letter may be considered as annexed to this communication.

P. M.

A Select Committee of the House of Assembly was appointed in Upper Canada, in the Session of 1821 or 1822, to revise the Militia Laws of the Province, who were desirous of obtaining information on some points from the Adjutant-general of militia. This officer was consequently requested to attend the Committee without any previous application for leave to the Lieutenant-governor. This, upon a suggestion to the chairman of the Committee (the late Colonel Nichol, of the Provincial Militia) was ascertained to be irregular, and consequently a formal request for leave to this officer to attend was transmitted to the Lieutenant-governor, and, of course, promptly complied with; and this has been the constant practice in cases of this description (except that of Colonels Givens and Coffin), so far as my parliamentary experience extends.

21 June 1833.

(signed)

Chr A. Hagerman,

M. P. P. for Kingston, U. C.

LETTER from *H. J. Boulton*, Esq. to Lieut.-general Sir *P. Maitland*, K.C.B.

SIR,

Morley's Hotel, London, 24 June 1833.

IN reply to your inquiry respecting my recollection of the circumstances under which Messrs. Clarke and Street obtained a lease of part of the Military Reserve near the Falls of Niagara in 1827, I beg to acquaint you that the instrument under which these gentlemen hold the premises in question was drawn by me as Solicitor-general of Upper Canada. Previous to their obtaining the lease, Messrs. Clarke and Street had become lessees of the King's

King's Ferry across the Niagara river, just below the Falls, and opposite to the property of a Mr. Forsyth, an innkeeper, who had himself, at one time, been desirous of obtaining a lease of the Ferry. When they became lessees, this man, Forsyth, obstructed their enjoyment of it in every possible way, setting up at the same place a Ferry in opposition to theirs; and, as was believed from a variety of circumstances, causing several of their boats to be destroyed. For these injuries, Clarke and Street brought actions at law against Forsyth, in which I was their counsel, and Mr. Rolph, chairman subsequently of a Committee of the Assembly, who reported upon a petition presented to that body by Forsyth, complaining of the Government for pretended injuries he had sustained through their interference, was counsel for Forsyth. In these actions the lessees clearly established their right, and two several juries at successive courts gave considerable damages against Forsyth for his disturbance of their right of ferry. The Crown also filed an information of intrusion against Forsyth for entering upon and assuming the property in the ground reserved for military purposes; and although he used all the means in his power to cause it to be believed that he was an oppressed man, and that the military were set in array against him, when in truth only two or three soldiers accidentally passing from one post to another, in their fatigue dresses, were employed as common labourers to remove obstructions he had caused, the jury, after remaining out several hours, returned a unanimous verdict for the Crown, thereby negating his right to the ground, and fully establishing that of the Crown to the satisfaction of every respectable man in the neighbourhood. Under these circumstances, and for the purpose of preventing any persons from erecting any ferry-house, or keeping ferry-boats on the shore where Clarke and Street had the right of ferry, for which they paid a large rent, and also to keep the ground open for the free access of the public which Forsyth had interdicted, Clarke and Street obtained an order for a license of occupation of that part of reserve near the Ferry, up and down the river. The object of granting this license was to protect the lessees in the proper enjoyment of their right of ferry, and to keep the shore open, and free of access to the public, who had been shut out by Forsyth, unless they passed through his inn, which tended to create a monopoly for his house, and was felt as a serious nuisance by the public. Mr. Clarke stated his reasons for wishing the license to me, and I prepared a lease, under the great seal, to him and his partner to hold, strictly during pleasure, at a pepper-corn rent. This instrument gave him a legal title to the possession; at the same time, from the uncertain period for which they could hold it, the Crown and public were fully protected in the enjoyment of the easement it was intended the latter should possess, that of free ingress, egress and regress to the Falls, as the Crown, from the terms of the lease, retained the power of putting an end to the tenure, should the confidence be abused which was placed in the lessees. They have, to my knowledge, acted hitherto in accordance with the expectations of the Government, and I am certain the grant to them has been productive of evil to no one, and was never intended to prejudice the rights even of Forsyth; and if he had not shown the obstinate disposition which he so frequently and violently manifested, of obstructing the free use of the King's ferry, and would he have permitted the ground in question to remain open, as it formerly had been, and unenclosed, I do not think that the grant to Clarke and Street would ever have been thought of, either by themselves, or any one else. It was purely a measure of defence against this man's repeated aggressions.

I have, &c.

(signed) *H. J. Boulton.*

UPPER CANADA.

RETURN to an Address to His MAJESTY, dated
6 February 1833;—for,

COPY OF THE

REPORTS of the Two Select Committees to whom were severally referred PETITIONS addressed to the House of Assembly of *Upper Canada*, in the Session of the Provincial Legislature 1828, complaining of improper Conduct on the part of Captain *George Phillpotts*, of the Royal Engineers, and other Wrongs, and of the Administration of Justice; with the Evidence attached to these Reports, as presented to the House on the 24th March 1828, by Mr. *Rolph* and Mr. *Beardsley*; with the Proceedings of the House in the Case of Colonels *Givens* and *Coffin*, Heads of Departments, who were sent to Gaol for refusing to give Testimony in the matter of Captain *Phillpotts*, they severally alleging to the House, that the Major-general then commanding would not permit them to attend; together with the Proceedings, if any, which have been had thereon by His Majesty's Government, or the local Authorities.

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
18 July 1833.
