

L E T T E R

FROM

JAMES STUART, ESQ.

TO THE

RIGHT HON. LORD VISCOUNT GODERICH,
&c., &c., &c.,

RELATIVE TO

CERTAIN FALSE IMPUTATIONS, AND UNTRUE ALLEGATIONS OF FACT,

MADE BY

D. B. VIGER, ESQ.

IN WRITTEN AND PRINTED COMMUNICATIONS ADDRESSED TO HIS
LORDSHIP, UNDER THE TITLE OF OBSERVATIONS, &c.

LONDON:
DAVISON, SIMMONS, AND CO., WHITEFRIARS.

LETTER

FROM

JAMES STUART, ESQUIRE,

TO

THE RIGHT HON. LORD VISCOUNT GODERICH, &c. &c. &c.

London, Osborne's Hotel, Adelphi, Sept. 24, 1832.

MY LORD,

AMONG the communications * I have had the honour of addressing to your Lordship, on the subject of the proceedings of the Assembly of Lower Canada against me, it is necessary I should advert to a letter of the 16th April last †, in which I represented to your Lordship, that, in perusing the papers of Mr. Viger, the agent of the Assembly, I had remarked with surprise, that he has not only indulged in groundless personal reflections, from which he ought to have abstained; but has made allegations injurious to my character and reputation, which are foreign to the heads of alleged complaint proceeding from the Assembly, and wholly without foundation. As intimated in that letter, I have hitherto refrained from rescuing my character, from these new untrue imputations and aspersions; lest, in doing so, I might obstruct or retard the progress of the affair in question, to a conclusion; which has been, in what respects myself, most injuriously protracted. This consideration, I hope I have reason to believe, may no longer influence me; as the affair has now reached, or nearly reached, the point at which it may be expected to receive your Lordship's determination. This, therefore, I apprehend to be the fit moment, for soliciting your Lordship's attention, to the untrue and entirely unfounded allegations of Mr. Viger, of which just cause of complaint has been afforded me; and to which I must attach the greater importance, by reason of the high authority, under whose cognizance they have been brought. In referring, on this occasion, to the voluminous and multifarious mass of papers, in which matters in themselves extremely simple have been, by Mr. Viger, involved and obscured, it is my anxious desire to avoid making any inconvenient addition to them. I shall, therefore, be extremely brief in respectfully submitting, to your Lordship, the principal specific allegations, of which I complain, and my answers to them, which I shall endeavour to compress in as few words as possible; stating the allegations in succession, and my answer to each.

First—It is alleged by Mr. Viger, that I have for years transgressed the resolutions and orders of the Executive Government, by instituting criminal prosecutions, in the Court of King's Bench, which ought to have been instituted in the Court of Quarter Sessions. It is also alleged by Mr. Viger, that the Clerk of the Peace was subject to my controul, and that I am culpable for not having exercised this controul, by compelling him to do his duty ‡.

The answer to this compound charge, proceeding from Mr. Viger, is—It is absolutely and entirely untrue. No resolutions or orders were ever made, or communicated to me, by the Executive Government, to the effect stated; it is not even alleged, or pretended, in the proceedings of the Assembly, that any such were made or communicated to me; nor could they have been made, or communicated, without a violation of the law, and of the liberty of the subject. It was the imperative duty of the Courts of King's Bench, exercising the powers, and discharging the functions, of Courts of General Gaol Delivery, to try persons in custody; and the Executive Government never attempted, by any orders or directions whatever, to controul these courts, or the Attorney General, in the execution of this duty. The Report of a Committee of the Executive Council, referred to in my Memoir, had not, for its object, to interfere with the functions of these courts, or with the duties of the Attorney General; but, in conjunction with other purposes, to require and promote the prosecution of inferior offences, in the Quarter Sessions, by the Clerk of the Peace, as explained in my Report to His Excellency Sir James Kempt, being No. 1 in the Appendix to my Memoir. The object was not, to take away or alter the duties of the Attorney General; but to require the execution of a certain duty, by another officer, namely the Clerk of the Peace. The order of reference

* Vide Appendix, No. 1.

Vide Appendix, No. 1 (15).

‡ Vide Observations on my Letter, &c., p. 67.

To the Right Hon. Lord Viscount Goderich,
&c. &c. &c.

to me, by Sir James Kempt, on this subject*, is the only order or direction, that was ever conveyed to me, by the Executive Government, in relation to it; and, as is evident from the terms of the order, implied no disapprobation of my conduct; but merely required information and suggestions from me, as being most competent, from the nature of my official duties, to furnish them. The Report of the Committee, it is also to be observed, was made three years before I became Attorney General; during which period, the same practice, which obtained previously and subsequently, continued, and was observed by my immediate predecessor, in relation to criminal prosecutions; without even a whisper of disapprobation. Until Mr. Viger's relative, the Road-Surveyor, discovered, as he imagined, cause for blaming the Attorney General, on this head; the idea that any such cause had been afforded never, I believe, entered the mind of any person. For myself, so far from having resisted resolutions and orders of the Government, as untruly and gratuitously alleged by Mr. Viger, I never heard blame of the Attorney General, on the ground of an improper institution of criminal prosecutions, in the Court of King's Bench, even insinuated; either before, or after, I came into office. The latter part of this charge of Mr. Viger, by which I am held culpable, for not enforcing a controul over the Clerk of the Peace, implies a real, or feigned, ignorance of the respective duties of that officer, and of the Attorney General. The Clerk of the Peace is not, in the smallest degree, subject to the controul of the Attorney General: he is under the controul and direction of the Court of Quarter Sessions, in which he acts as Clerk; and he is also subject to the orders of the Executive Government (by which he may be removed from his office, if necessary) in what respects the legal discharge of his duties. It is by one or other of these authorities, that the Clerk of the Peace was to be controlled, and the due execution of his duty enforced. It is perfectly preposterous, to hold the Attorney General culpable on this head. At the same time, it is obviously unjust towards the Clerk of the Peace, to assume, as is done by Mr. Viger, that he had not adequate and sufficient reasons, for not having discharged the duty in question. If, instead of preferring an unfounded charge against the Attorney General, and even convicting him of it, without a hearing, the Clerk of the Peace had been simply required, by the Committee of Grievances, to explain the cause of his omission to prosecute offences in the Quarter Sessions, justice would have been done to the public; and neither the Attorney General, nor the Clerk of the Peace, would have been condemned, unheard.

Secondly—It is alleged by Mr. Viger, that complaints were made by the Grand Jury, of my conduct, in having instituted prosecutions in the King's Bench, which ought to have been instituted, in the Quarter Sessions †.

This allegation is altogether untrue and groundless. No complaint of my conduct was ever made by the Grand Jury. The representations of the Grand Jury, upon this subject, will be found in Extracts from three presentments, in the 48th and 49th pages of the Second Report of the Committee of Grievances. In these the Grand Jury merely state the fact, that prosecutions were instituted in the Court of King's Bench, which, they say, and truly say, might and ought to have been carried on, in the Quarter Sessions; and, therefore, in these supposed criminating representations, they merely concur in the opinion, which had been long before expressed, in the Report of the Committee of the Executive Council above referred to, and more recently in my own opinion, conveyed in my Report to His Excellency Sir James Kempt, likewise above-mentioned. In one of the presentments, indeed, that of the Grand Jury of the Quarter Sessions, a cause which, it would appear, had prevented, or contributed to prevent, prosecutions in that Court, is stated to be, "*that no money had been allowed for the payment of witnesses.*" It is obvious, from these presentments, as well as from the nature of the facts, that to remedy the alleged inconveniencies, it was necessary to provide for, and enforce, the prosecution of inferior offences, in the Quarter Sessions; and the Grand Jury, as well as the Committee of Grievances, appear to have halted half-way, in their investigation, in not having ascertained what were the impediments, which had prevented such prosecutions, in that court. The Clerk of the Peace, who is a gentleman of character and credit, justifies his omission to carry on these prosecutions, on grounds which he holds to have been sufficient; but into which, it is obviously unnecessary to enquire, on a charge against me. The Committee of Grievances might, indeed, with advantage, have extended their enquiry into this branch of the subject; to which their attention was plainly invited, by the nature of the statements made before them. It is true, also, that if they had done so, they would at once have revealed the true and just view of the subject; and have taken away all pretext for a charge against me, even in minds the least informed. Now, it is on these facts, of which Mr. Viger is intimately conusant, that he has ventured to make the unfounded allegation, to which your Lordship's attention is directed; and, as if orders of the Executive Government and complaints of Grand Juries, had been ineffectually made and reiterated against me, he adds, "in vain did the Executive Government communicate resolutions against this conduct—in vain did the Grand Jury of Montreal make and renew their complaints;—Mr. Stuart's proceedings, the explanations which he gave at that time, like those which he has given on this side of the Atlantic, show that the intimations of the Executive Government, like the complaints of the Grand Jury, were objects of his disdain ‡." Your Lordship will here observe, that, besides being untruly charged by Mr. Viger, with

* Vide Appendix to Memoir, No. 1.

† Vide Observations on my Letter, &c., p. 67.

‡ Vide same Observations, p. 67.

disobeying orders of the Executive Government, which were never given, and disregarding the complaints of Grand Juries against me, which were never made; I am most unwarrantably represented "to have disdained" the authority of both. Surely, my Lord, it must be alike inconsistent with what is due to an accused party, as with respect for the high authority appealed to for justice, that official and private character should be thus assailed, by false allegations and misrepresentations, which are, moreover, irrelevant to the charges in support of which they are made.

Thirdly—It is alleged by Mr. Viger, that I was guilty of partiality, in not having prosecuted certain persons for libels, which, he says, were published on certain other persons*.

This is another of Mr. Viger's charges against me. No charge to this effect has been made by the Assembly, or by any committee of that body; nor could such a charge, on any reasonable ground, or with any plausibility, have been made, by either. I am ignorant of, and it is likely never read, the libels to which Mr. Viger refers; though, according to his account, they must have been very numerous, as he says, "that citizens of all ranks and conditions were wounded by them." It is sufficient for me to observe, for my justification on this charge, that no complaint of any such libels ever reached me,—that no person ever stated to me that he was aggrieved by them,—or required from me any interposition, or act of official duty, in relation to them. If any just cause of complaint existed on this head, the laws afforded adequate protection and redress, without my ministry; and, at all events, I could not be held culpable, for not having prosecuted persons guilty of supposed offences, respecting which the injured parties were silent, and preferred no complaint. It is true, indeed, that Mr. Viger affects to state frequently and emphatically, as if it were a true proposition, to be acquiesced in, and even derived from me, that the Attorney General, in Lower Canada, is *exclusively* the prosecutor for criminal offences. This proposition was never advanced, nor maintained, nor acted upon by me; and Mr. Viger must know it to be unfounded. He cannot but be aware that, in Lower Canada, where the English criminal law prevails, as well as in England itself, it was competent, for the persons whom he represents to have been injured by libels, to seek redress in the King's Criminal Courts of Justice, without resorting to the Attorney General; and he ought also to be aware that, if they desired his ministry or assistance, complaint on their part was an indispensable preliminary to it. The Attorney General, in such cases, it must be obvious to the meanest understanding, could not have been censurable, unless he had refused his official assistance, where it ought to have been bestowed; or had prevented or obstructed the prosecution of redress, by the injured parties themselves, by taking such prosecutions out of their hands; or, by an abuse of the prerogative of the Crown, stopping them altogether.

Fourthly—It is alleged by Mr. Viger, that I instituted prosecutions for perjury, against persons who were innocent, and that these prosecutions were permitted to subsist during three years †.

This is another of Mr. Viger's charges. Neither the Assembly, nor any Committee of that body, has preferred any such charge. Whenever Mr. Viger may think proper to specify the particular prosecution, or prosecutions, for perjury, which he holds to have been improperly or unnecessarily instituted; I shall be ready to meet the charge, and show the sufficiency of the grounds on which the prosecution objected to rested. I shall also be prepared to establish, that whatever delay occurred in these prosecutions was not ascribable to me; but was occasioned, very much against my inclination, either by the defendants themselves, voluntarily and designedly, or by unavoidable circumstances.

Fifthly—I am charged by Mr. Viger with having, at the election for Sorel, maintained the right of persons to vote in my favour, under circumstances similar to those under which the persons, who were afterwards prosecuted for perjury, had voted ‡.

This, again, is a new charge proceeding from Mr. Viger; which is not only in itself entirely untrue; but, after the exposition of facts contained in my memoir, and the affidavits annexed to it, one would have supposed might have been known by Mr. Viger, to be untrue. The persons who were prosecuted for perjury were persons who, having by deeds of gift given away their real estates absolutely, and without the reservation of any interest whatever in them, had, nevertheless, sworn to a qualification, as proprietors of those very estates. They were also persons who, not being possessed of a qualification of the requisite yearly value, had, nevertheless, sworn to such a qualification; and one of them was a person who swore to a qualification as proprietor of an estate, to which he claimed a title under the will of a person still living, and in possession of the estate. Mr. Viger's charge embraces all these cases, and represents me to have maintained at the election, that men who had ceased to be owners of estates, and to have any interest whatever in them, were entitled to vote as freeholders; that others who were without a qualification, as to value, had the same right; and that intended legatees of living testators were proprietors of estates, to which they could not possibly have any claim, till after the death of the latter. It cannot be deemed credible, that any man in his senses, in my situation, could have expressed such opinions. This

* Vide Observations on Memoir, &c., p. 27.

† Vide Observations on Letter, &c., p. 68.

‡ Vide Observations on Letter, &c., p. 68.

charge has been made by Mr. Viger gratuitously; it is merely an addition to the load of calumny which has been heaped on me, and has no other foundation, than Mr. Viger's assertion. The only opinion given by me at the election, and referred to in the proceedings of the Committee of Grievances, which it has been attempted to misrepresent and distort, for an improper purpose, is that given in the case of St. Germain; who, having disposed of his property to his son, claimed the right of voting, under the reservation of a life estate, in part of it. As stated in my memoir, the first description of voters above mentioned, who, without any such reservation, claimed the same right, sought a justification for their votes, after they were prosecuted for perjury, in the case of St. Germain; which was entirely dissimilar. So far as these voters, and the case of St. Germain, may be involved in Mr. Viger's charge; I refer to the evidence annexed to my memoir, as establishing the correctness of my opinion and conduct, in relation to them. As to the two other descriptions of voters; it would be incumbent on Mr. Viger, to state, on what grounds he has applied this charge to me, in what respects them. In the absence of any such grounds, and the semblance of any cannot be offered, I am justified in stating, that by this charge my character is most wantonly and unwarrantably traduced.

Sixthly—I am charged by Mr. Viger, with having “led on Lord Dalhousie, to assume “martial power over the citizens, without the authority of Parliament. He (that is, Lord Dalhousie) replaced the laws by it, &c*.”

This is certainly a most extraordinary charge, and proceeds also from Mr. Viger, *exclusively*. The sense in which the words “martial power” are used, by Mr. Viger, might have been somewhat dubious, if it had not been most distinctly explained by Mr. Viger himself, in other parts of his Observations†; from which it is evident, that he speaks of “martial power,” as being that conferred by “martial law.” Mr. Viger then, by this charge, accuses me of having advised the enforcing of martial law; which, he alleges, was carried into execution, by Lord Dalhousie. Of all the singular charges advanced, and positions maintained, by Mr. Viger, in his Observations, this is certainly, perhaps, the most remarkable. The charge itself is of the gravest character, not only as it affects the humble individual who now addresses your lordship; but also inasmuch as, if true, it would involve, in high responsibility, the noble and distinguished person, lately at the head of the government of His Majesty's North American Provinces, whom Mr. Viger has thought fit to include in it. The singular levity, with which Mr. Viger hazards charges and assertions, I may be permitted to state, is strikingly exemplified in this particular instance; in which, such is the absurd nature of the charge, one would be inclined to suppose, Mr. Viger could hardly have been aware of the import of the words he uses. The King's Attorney General is charged with having advised, and the Governor of the Province with having carried into execution, at a period of profound peace and tranquillity, a measure having the effect of suspending the administration of justice, and superseding all law and established right, in one of the most important of His Majesty's Provinces. This charge is gravely addressed to the King's Government, by the Agent of the Assembly of Lower Canada: and is made in a tone of confidence, as if it were susceptible of no question or difficulty. That such a charge should be conveyed, through such a channel, without any the slightest foundation, or even reasonable pretext, could not have been expected. Yet such is the fact. A short explanation will suffice to establish what is now alleged. It is plain from Mr. Viger's statements, in the portion of his Observations adverted to, as well as in other parts‡ of the same production, that the execution of martial law, of which he complains, and which he makes the ground of charge against the governor of the province and myself, is supposed to have occurred, in the enforcing of certain Ordinances, regulating the militia of the province. “These Ordinances,” he expressly declares, “subjected the whole province “to martial law; which,” he says, “they placed in the hands of the governor.” Now, it is only necessary to read the Ordinances in question, to be convinced of the utter absence of all ground, for Mr. Viger's assertion. The provisions, they contain, are merely those of a militia law; which, at the time they were enacted, were deemed, by the legislature of the province, to be suited to the condition and circumstances of the country, and adapted to the habits and usages of the people. When passed, these Ordinances received the confirmation of royal authority, were acquiesced in as being constitutional and legal, were carried into execution, and regulated the militia for seven or eight years after; and until other provisions were substituted in their place, for a time, by temporary repealing statutes, afterwards enacted by the provincial legislature. Upon the expiration of the last of these temporary statutes, the Ordinances, being permanent laws of the province, which had been repealed for a time only, by their own inherent power, *proprio vigore*, and not by an order of His Excellency the Earl of Dalhousie, as erroneously alleged by Mr. Viger, became revived. They were then, in advancement of the public service, and for the public good, acted upon by the provincial government; not for the purpose, or with a view to the exercise of any illegal, oppressive, or inexpedient authority, as untruly alleged by Mr. Viger; but simply, and merely, and in so far only as was necessary, for keeping up the militia, in an organized state, and no further. No one act of authority was exercised under them, that could not, and would not, have been exercised, under the last of the temporary statutes, if it had not expired; and so far as the execution of the Ordinances extended, the country, from it alone, and without other sources of information, could not have been aware, that any change whatever had occurred, in the law

* Vide Observations on Letter, &c., p. 67. † Vide Observations on Petition and Memoir, pp. 57-8-9.
‡ Vide same Observations, *lo. cit.*

regulating the militia. On one or more occasions, the different divisions of the militia may have been required to attend, in the ordinary manner, as has always been usual, within their respective parochial or other limits, and answer to the roll-call of their names. A few individuals who, under the influence of wrong and perverse advice, refused obedience to the militia laws, and would not attend, as required, on those occasions, may have been fined a few shillings, for their non-attendance. In this only, has consisted the exercise of authority, under these Ordinances, by His Excellency the Earl of Dalhousie; which, in Mr. Viger's charge, is called "An assumption of martial power over the citizens, without the authority of Parliament." Such terms were certainly never before applied to such facts. After an accusation of this serious nature, resting on such a foundation, against a public officer so elevated and distinguished by his rank and authority, as the Governor-General of His Majesty's provinces and colonies in North America; it must be difficult to say, what extravagant proposition, what unheard-of and groundless criminal charge may not, by Mr. Viger, be confidently advanced and maintained. It may also be reasonably asserted, after such an accusation, and in the absence of evidence, that the degree of credit due to charges, proceeding from the same source, cannot be doubtful.

It only remains that I should briefly mention how far, by any act of mine, I stand implicated in this extraordinary charge. A few days, not more than three or four, before the expiration of the last of the temporary statutes regulating the militia, and without any previous communication whatever, between His Excellency the Earl of Dalhousie and myself, on this subject, an official reference was made to me, as Attorney General, requiring my opinion, "Whether, upon the expiring of the existing militia laws, on the first of May next, any other Provincial Law or Ordinance, for the regulation of the militia, will come into operation; and if not, in what manner that force may then be legally regulated and governed." I immediately applied my attention to the subject of this reference, which was of great and urgent importance; and, the following day, made my report to His Excellency, in which I submitted, as my opinion, "That from and after the first day of May then next, two Ordinances of the Governor and Council of the late Province of Quebec, for regulating the militia, would, in consequence of the expiration of provincial statutes, by which a temporary repeal of these Ordinances was operated, be revived, and become the subsisting law under which the militia of the province was to be regulated and governed*." This opinion was afterwards sanctioned, in a litigated case, by a judgment of His Majesty's Court of King's Bench at Quebec, in which the Chief Justice of the province presides; and this judgment has been acquiesced in, as legal and unimpeachable. The principle on which the judgment is grounded is, moreover, sustained and confirmed, by a judgment of His Majesty's Court of King's Bench in England, in a similar case; in which, under like circumstances, the temporary, and not the perpetual, repeal of a statute was adjudged to have been operated†. To these authorities Mr. Viger opposes his own, as being more than sufficient to countervail them; and, on his single unsustained opinion, grounds the strange charge, to which your lordship's attention is now directed. It will not be expected, that I should occupy your lordship's attention, by entering into any refutation of Mr. Viger's arguments, on a point which has been determined, by the uncontested and unimpeached judicial authority of the Province; and, under any circumstances, it could hardly be deemed necessary. I am bound, however, to correct his statement of facts, in two important particulars. As the main ground of his opinion, Mr. Viger alleges that the Ordinances imposed a tax, and established martial law; which provisions, not being within the competence of the local legislature to enact, the Ordinances, he says, were not laws, were absolutely null and void, and never had any legal or binding authority whatever. It is sufficient for me to observe, that no tax is imposed, nor is martial law established, or authorised, by these Ordinances. On perusal of them, nothing will be found to warrant Mr. Viger's assertion, which has been hazarded, without consideration: he might, indeed, with equal truth, have asserted that the Ordinances conferred, on the Governor, the power of decimating the inhabitants; and have complained of the Attorney-General and the Governor, the one for having advised, and the other for having carried into execution this inhuman enactment. The assertion of Mr. Viger is not only contradicted and disproved, by the provisions of the Ordinances; but the argument, which he grounds on it, is opposed to the authority of the present legislature itself; by which, the Ordinances have been referred to, and dealt with, as constitutional and binding laws of the province; and the very statute, under which Mr. Viger erroneously apprehends a perpetual repeal to have been operated, recognizes them as being part and parcel of the laws of the land. On such a charge, sustained by such alleged facts and reasons, I abstain from troubling your Lordship further. At the same time, I may, I hope, be permitted to remark, that when so grave a charge as this, defamatory and degrading in a high degree to the government of an important province, is made, without cause or rational pretext; the disposition and conduct, evinced in making it, I apprehend, cannot and ought not to escape observation.

Seventhly—I am charged by Mr. Viger, with having prosecuted individuals for libels, on indictments which, he states, were found by a Grand Jury, when the sitting judges did not form a competent Court, &c.‡.

This charge, I am compelled to state, conveys a palpable misrepresentation of the proceedings of the Court, to which it refers. A short explanation of the facts, which Mr. Viger

* Vide Appendix, No. 2.

† Vide 10 East's Reports, the King v. Rogers, 569.

‡ Vide Observations on Memoir, p. 28. 56.

has either misstated or suppressed, in order to give a criminal aspect, to a perfectly legal and regular procedure of the Court, will exhibit the true character of this charge. By the Judicature Act of Lower Canada, passed about thirty-eight years since, the presence of the Chief Justice of the Court of King's Bench, for the District of Montreal, which consists of a Chief Justice and three Puisne Justices, was made essential to the holding of that Court, in its Criminal Terms. This provision, being found inconvenient and inexpedient, was repealed by a temporary statute, under which two Puisne Judges of the Court of King's Bench were rendered competent to hold the Court. This temporary statute had expired, about the time the proceedings, referred to by Mr. Viger, occurred. The Chief Justice, who sat during the term with the Puisne Judges, was absent, from some accidental cause, when certain bills of indictment, including those alluded to by Mr. Viger, were returned into court; at which time, the Puisne Judges only were on the bench. The incompetence of the Court, by reason of the absence of the Chief Justice, was not noticed, till after the bills had been received; the then recent expiration of the temporary statute not having been adverted to. The next day, the Court, in which the Chief Justice presided, stated what had occurred, in relation to the delivery of these bills; and ordered them to be given back to the Grand Jury, then present in Court, as having been returned by them the preceding day, when the Court, for the want of the presence of the Chief Justice, was not legally sitting, and, therefore, incompetent to receive them. At a subsequent time, when the Court was legally competent, the Grand Jury came into Court, and returned the same bills, in the usual legal form and manner. The bills were then proceeded upon, as having been thus legally returned; and no objection was ever raised, or could be raised, on the ground stated by Mr. Viger, to their legal sufficiency. Now, it is on these facts, within his personal knowledge, that Mr. Viger, in this charge, has arraigned the conduct of the Court, and of the Attorney General, as having been criminal. I submit to your Lordship, whether such a charge, on such facts, ought to have been addressed to His Majesty's Government; and leave it to your Lordship, to affix to this charge, the character which belongs to it.

Eighthly—It is alleged by Mr. Viger, that, “under my auspices,” the administration of the Colonial Government had recourse to violence, for the purpose of stifling the claims of the people, by petition, for redress*.

This allegation, like many others made by Mr. Viger, must have been applied to me, for the purpose of exciting prejudice, and injuring me, in public estimation. It is altogether untrue, that I either sought, or exercised, any political influence whatever, over the colonial administration; and it is equally untrue, that, by influence of any kind, proceeding from me, any obstruction, to the legal right of petitioning, was occasioned. I have never heard, nor do I believe, that any the smallest obstruction, or impediment, to this right, was created or promoted, from any quarter whatever.

Ninthly—I am charged with being the “soul” of a late colonial administration; and with having, as such, obtained a Court of Oyer and Terminer, at which certain charges were preferred †.

It has suited the purposes of Mr. Viger, to invest me with the character of a political partisan, ‡ than which none is more at variance with my disposition and habits; and it is to convey this idea, and also to hold me up as a *state-delinquent*, I presume, that this singular charge, in not less singular terms, has been made. It may seem trivial to notice such an allegation; but as the object of it is to discredit me, in the minds of persons to whom I am unknown, I ought not to observe silence, respecting it. I repel it at once, by stating what is known to every person, with whose acquaintance I am honoured, that the character thus assigned to me has been most untruly applied; and that no person holding the office of Attorney General has ever had less connexion with party, or has more exclusively confined himself, to the strictly legal and official duties of the office. The spirit of a partisan is every where engendered by interested considerations, and manifests itself in officious activity.—I have had no motive, for cultivating the good opinion of the person at the head of the government, otherwise than by a strictly proper, and impartial discharge of my duty.—I have never sought, or obtained, any favour from the colonial government, for myself or connexions.—It was only during the two last years of the administration of His Excellency the Earl of Dalhousie, that I acted under it as Attorney-General; and while I so acted, I never gave an opinion, or offered advice, that was not required of me, nor otherwise than in writing, in a strictly official form, except, perhaps, in one or two instances. If the distinguished and excellent nobleman, to whose administration Mr. Viger, in this charge, refers, should ever hear, that such a charge has been preferred; he will learn, for the first time, and certainly with astonishment, that the merit or demerit of being the “soul” of his administration (in whichever of these two senses this word may be understood by Mr. Viger) has received such an application. As to the Court of Oyer and Terminer, to which Mr. Viger alludes, it was appointed, to supply a deficiency in the Term of the Court of King's Bench which preceded it, and had been found too short to enable the judges, to get through the criminal business of the district. The appointment of such a Court was not, as Mr. Viger would insinuate, unusual; but, on the contrary, was of ordinary occurrence. Similar Courts, particularly while my predecessor was in office, had been frequently appointed.

* Vide Observations on Letter, &c., p. 67.

† Vide Observations on Letter, &c., p. 68.

‡ Vide Observations on Memoir, p. 42.

The Court of Oyer and Terminer, to which Mr. Viger refers, being thus held in the usual course, certain prosecutions were incidentally instituted against the adherents of a political party, with which Mr. Viger is connected. Hence, even the holding of a Court of Justice, in conformity with established usage, becomes the subject of unreasonable complaint; and is even, preposterously, made a ground of charge, against an officer acting under the legal orders of his superior. The spirit and motive, by which this and other charges proceeding from the same source have been dictated, are thus strikingly exhibited.

Tenthly—I am charged by Mr. Viger, with having taken, and caused the executive government to take, steps calculated to compel Attornies and Notaries, to ask the renewal of their commissions*.

This, again, is a new charge, proceeding from Mr. Viger, and is not only untrue, but is made, in contradiction to plain, well-known, and established facts, within the knowledge of Mr. Viger. Neither the Report, nor the Resolutions of the Committee of Grievances, contain any such allegation, or any thing to warrant it. I have shown, in my letter to your Lordship, that I was entirely passive, in what relates to the renewal of commissions, and merely complied with the orders and directions of the Governor of the Province. To such a charge, I can only oppose an absolute denial; leaving it to Mr. Viger, to justify or palliate an allegation, so utterly destitute of foundation.

Eleventhly—I am charged by Mr. Viger with having, from interested motives, spontaneously sent to Mr. Daly, the Secretary of the Province, drafts of new commissions for Attornies and Notaries, which were not required, and although, at the demise of His Majesty George the Third, no renewal of such commissions had taken place †.

This charge, proceeding from Mr. Viger, is untrue. In consequence of applications made by Attornies and Notaries, to the Secretary of the Province, for new commissions; that officer applied to me, for drafts of them. I did not deem it necessary to furnish him, with any draft of the Commissions of Attornies; but, for the reasons mentioned in my Letter to your Lordship, transmitted to him the draft of a Commission for Notaries, to be used, if rendered necessary, by applications for such commissions. Mr. Viger is under an error, in what respects the effect of the demise of His Majesty George the Third, on the commissions of public officers. He seems to imagine that the question, as to the renewal of commissions, was the same, at the demise of George the Third, as at that of George the Fourth. He is mistaken in this particular. The necessity of the renewal of any commission whatever, either in Great Britain, Ireland, or the Colonies, at the demise of George the Third, was obviated, by a statute passed for that purpose, before His Majesty's demise. No such statute having been passed, before the demise of George the Fourth, the rule of the Common Law applied, and rendered such renewal necessary, after that event.

Twelfthly—I am represented by Mr. Viger, to have untruly stated, in my Memoir, that the appointment of Attornies in Lower Canada by Commissions during pleasure, obtains under a law of the Province ‡.

Without intending any invidious comparison with Mr. Viger on this head, I beg leave to mention, that I make no statement of fact, that, on sufficient grounds, I do not believe to be true; and should deem myself, in the highest degree, censurable, if, in a communication made by me, to His Majesty's Government, a want of truth, or even of correctness, as to facts, were found. The law, under which the Commissions of Attornies are issued, was passed in the year 1785; and, from that period down to the present time, nearly half a century, the commissions of these officers, grounded on that law, have always been granted, in precisely the same form, and during pleasure; these words, during that period, having been included in every commission of this description. Indeed, it is altogether probable, that, prior to the passing of this law, the appointment of Attornies was made, by commissions during pleasure, as they since have been; the object of the law not being, to establish a new form of commission, or to alter the old; but simply to require a previous qualification in the candidates for them, and to render such qualification, when duly ascertained, an indispensable pre-requisite. In stating, then, that commissions in this form have obtained, under the law in question, I have alleged that which is verified, by a fact of public notoriety; and have, therefore, stated what is perfectly true. But Mr. Viger, who seems to have taken this opportunity to disclose his stores of legal learning, without considering the appositeness of it to the occasion, and perhaps, also, under an undue appreciation of its value, alleges that this practice is not warranted by, and ought not to have obtained, under the law. That may or may not be: it is a point foreign to my assertion, with which I have had, and have nothing to do. I have never furnished the draft of an Attorney's commission, and have never been called upon to consider, or state, whether the words "during pleasure" ought, or ought not, to have been included in such commissions, fifty years ago. I abstain, of course, from following Mr. Viger, in his episode on this point. I cannot, however, omit to remark, that it is necessary, that persons, whose attention is called to points of law and practice in Lower Canada, which are at variance with established principles and usage in England, and other parts of the empire, where purely English Institutions

* Vide Observations on Letter, &c., p. 4.

Vide Observations on Letter, &c., p. 10.

‡ Vide Observations on Letter, &c., p. 1

prevail, should recall to their recollection, that, in Lower Canada, the body of the Civil Law is French, and that many of its institutions, customs, and usages still partake of the arbitrary character of the government, which existed previously to the English conquest of the country. Mr. Viger, seems particularly fond of rendering salient, on this side of the Atlantic, points of this kind; as if they constituted a subject of reproach to the existing government, and particularly to the present Attorney-General of the Province; whereas they are inherent in a system of ancient date, which it is peculiarly within the power of the Provincial Legislature, as now established, to improve, and render accordant with the free political constitution, which the country, by its connexion with England, has acquired, and now enjoys.

It may also be proper here, to notice a peculiarity in Mr. Viger's phraseology; which, without being explained, might lead to very incorrect conclusions. In his very frequent use, or rather abuse, of the rhetorical figure of "*amplification*," in which he evidently indulges, Mr. Viger, perhaps unconsciously, substitutes the plural for the singular number, and the whole for a very small fractional part. Thus, when conveying the opinions or feelings of himself, or, perhaps, of a few of his particular friends, he habitually speaks of them, as being the opinions and feelings of "*the whole Province*;" whereas they are in reality, and must be understood as being, those of Mr. Viger singly and alone, or of perhaps half a dozen individuals politically connected with him, and which it is likely, he thinks, do, or ought to, sway "*the whole Province*."

Thirteenthly—It is alleged by Mr. Viger, together with the insinuation of an improper motive, that the opinion given by me to His Excellency the Governor of the Province, in my Report of the 25th November, 1830, on the Petition of the Hudson's Bay Company, as to the provisions of the Ordinance 17 Geo. III. c. 7, having been repealed by those of the Ordinance 31 Geo. III. c. 1, was contrary "to the received jurisprudence of the country *."

This allegation, I must be permitted to state, is contrary to fact. Up to the time at which my opinion was given, the question to which it refers had not been agitated, in any of His Majesty's Courts of Justice; and, for this plain and obvious reason, that it had never been previously pretended, by any legal proceeding, that a licence to sell spirituous liquors to the Indians, "*in the unsettled parts of the Province*," was necessary, after the passing of the Ordinance 31 Geo. III. c. 1. The issuing of licences for this purpose had ceased, when this Ordinance was passed; and, until Mr. Lampson attempted to enforce the provision of the Ordinance 17 Geo. III. c. 1, by which such licences were required, this provision, *as to the unsettled parts of the Province*, had remained a dead letter, as being that of a repealed law; and no question to the contrary had been raised in any of the King's Courts. To justify this allegation, it would be incumbent on Mr. Viger, to specify one or more decisions of the King's Courts, as having established what he calls "the received jurisprudence of the country."

Fourteenthly—It is alleged by Mr. Viger, that, in having asserted, in my letter to your Lordship, that no *qui tam* actions, such as those of Linton, during my personal experience of nearly forty years, in legal proceedings in Lower Canada, had been heard of by me, "my experience has served me badly;" and Mr. Viger adds, "it would be easy to point out several judgments, by which defendants prosecuted in similar, or analogous cases, founded on the same principles, before the magistrates of Montreal, even up to as late a period as the middle of the year 1830:—which proved that, in this particular, the jurisprudence, in the District of Montreal, did not differ from that of Quebec †."

I must be permitted to doubt the verity of this allegation; and still to rely, with confidence, on my experience of nearly forty years, (however much undervalued by Mr. Viger), by which it is contradicted. The question involved, in my opinion, which is impugned by Mr. Viger, relates exclusively to "*the unsettled parts of the Province*." That *qui tam* actions, such as those referred to, have been instituted in all the Districts of the Province, for the sale of spirituous liquors to the Indians, in the "*settled parts of the Province*," is a matter of public notoriety. Mr. Viger must, or ought to know, that these are foreign to the point involved in my opinion, and cannot, therefore, in the smallest degree, justify his allegation. To convict me of the error he imputes to me, it would be necessary for Mr. Viger, to specify one or more *qui tam* actions, such as those of Linton, instituted and maintained, previously to the institution of the latter, and having relation "to the unsettled parts of the Province." Until such instances are cited, I must be allowed to persist in the truth of my assertion, on this head.

Fifteenthly—It is represented by Mr. Viger, that the provisions of the Ordinance 17 Geo. III. c. 1 were intended, and ought to be enforced, for the protection of the exclusive trade of the lessee of the King's Posts; and it is on this ground, it would appear, that, having given an opinion that the provisions of this Ordinance were repealed by a subsequent Ordinance 31 Geo. III. c. 1. I am charged by Mr. Viger, "with having, by this opinion, compromised as well the honour of the Crown, and of the Local Government, as the interests of the Province, and the fortunes of the lessees of the Crown ‡."

* Vide Observations on Letter, &c., p. 9.

† Vide Observations on Letter, &c., p. 11.

‡ Vide Observations on Letter, &c., Part II., pp. 1, 2, 7, 11, and 43.

The proposition, which is made the foundation of this singular charge, is most extraordinary; and it is not easy, from its excessive extravagance, to characterize it adequately. If it were asserted, that the Corn Laws of England were enacted, for the special and exclusive benefit and advantage of one particular individual, possessed of a corn-growing farm, in one of the English counties; this proposition, in sageness and correctness, would be somewhat analogous, though not equal in profundity of wisdom, to that advanced by Mr. Viger. The provisions of the Ordinance 17 Geo. III. c. 1, as is well known to persons acquainted with this subject, were intended to effectuate and enforce a system of public policy, then of great importance, embracing an intercourse with all the Indian tribes, inhabiting the vast regions comprised within the country known by the name of the Province of Quebec, and previously, by that of Canada. These tribes, at that [time, were numerous, warlike, and powerful; and it was deemed essentially expedient and necessary, to establish and maintain over them, in the hands of the Government, a controul and influence, by which they might be rendered friendly neighbours in peace, and useful auxiliaries in war; but with which, a free and unrestricted trade would not have been compatible. The lease of the King's Posts comprehended a tract of the waste lands of the Crown, for the most part barren, and then and hitherto deemed unfit for settlement and cultivation,—yielding an insignificant yearly rent, the precise amount of which I do not recollect, but of one, two, or three hundred pounds. Yet Mr. Viger gravely assures your Lordship, that it was, with a view to the special protection of the rights of the lessees, under this lease, that provisions affecting such large and complicated interests, and having no relation whatever to the King's Posts, were enacted; and, with the same view, he contends they ought now to be enforced. It is really impossible to deal seriously with such a proposition; and, to become sensible of its ludicrous character, it is only necessary to read the Ordinance, and contrast its provisions with the slender and foreign subject matter, to which Mr. Viger would apply them. But, it is fit to inform your Lordship, that the excessive anxiety, evinced by Mr. Viger, for upholding the lessee of the King's Posts, in the rights conferred by his lease, even by illegal or improper means, has been altogether uncalled for, and misapplied. The right of exclusive trade with the Indians, within the King's Posts, (whether liable to legal objections, as stated by Mr. Viger, or not) has never, from the period of the conquest downwards, been resisted, or questioned; but, on the contrary, has been acquiesced in; and it has never been attempted to justify any infringement of it, on the ground of its illegality. Mr. Lampson, therefore, as well as his predecessors, has had no cause of complaint on this head; and did not require the aid of legislative provisions, which have been repealed, which were never intended for such a purpose, and which, moreover, could not have been applied, as suggested by Mr. Viger, without a manifest perversion, and abuse of them. The disputes between the Hudson's Bay Company and Mr. Lampson have not originated, in any infringement of the monopoly claimed by the latter, under the lease of the King's Posts; but in his attempts to extend this monopoly, beyond the limits assigned to it by the Crown, and carry it into the adjoining and contiguous country. It is among the singularities of the proceedings, in relation to this matter, that a person, charged with Mr. Viger's mission, should be found a strenuous advocate, for this illegal extension of a monopoly; which, according to his construction of it, would render the woods of Lower Canada inaccessible to the King's subjects, for the purposes of trade, and could not be otherwise than injurious to many of his constituents, as well as to the general interests of the Province. In other countries, the deputies of the people have shown no inclination, to multiply or enlarge monopolies; and, although Mr. Viger may exert the influence of his mission, for the extension of the monopoly in question, as being highly beneficial, it is extremely probable, that in Lower Canada, as elsewhere in such cases, both the people and their deputies, when this matter is better understood, may not be of the same opinion.

Having shown the extravagant character of the proposition, on which the charge now adverted to has been grounded, it cannot be deemed necessary, that I should add any thing, as to the entire absence of cause for such a charge; which, in reality, resolves itself, like many other charges advanced by Mr. Viger, into a mere misapplication of injurious terms; or, in other words, into personal abuse.

Sixteenthly—It is alleged by Mr. Viger, that the opinion contained in my Report of the 25th November, 1830, of which mention is above made, if it had been acted on, “would have been the destruction of all Lampson's rights to the privileges granted to him by his lease*.”

By this allegation, I am virtually charged with subverting, by an official opinion, from improper motives, the rights of the king's lessee, as conveyed to him by the king's lease. It is painful to be under the necessity of repelling a charge so utterly groundless, and which, with the slightest knowledge of the subject, it was not to have been expected, that a person charged with Mr. Viger's mission could have made. My opinion, to which Mr. Viger refers, is entirely foreign to the lease under which Lampson claims, and to all and every the rights and privileges it confers: it has as little connexion with this lease, as with any other title to lands, in Lower Canada. By the lease, under which Mr. Lampson derives his rights, the Crown granted, for a term of years, as had been done to previous lessees, from the period of the conquest downwards, a certain tract of the waste lands of the Crown, known by the name

* Vide Observations on Letter, &c., p. 9.

of the King's Posts; with the right of exclusive trade with the Indians, on those lands, and within the grant. The rights of Mr. Lampson, whatever they may be under this lease, (and into their nature or extent it is altogether unnecessary to inquire,) are of course confined within the limits assigned to them, by the grant itself, that is, within the limits of the lands which have been leased by the crown; he could have no claim or pretence, under it, to abridge the rights of the proprietors of adjoining, contiguous, or remote lands or estates. Now, the opinion to which Mr. Viger refers, as already stated, did not relate to this lease, or any right derived from it; but to the right, in the abstract, of the proprietor of waste lands, *in the unsettled parts of the country*, or his lessees, to trade with the Indians, and sell liquors to them, on his own estate, without a licence. Surely, Mr. Viger might have understood, without any great intellectual effort, that a grant of an exclusive right of trade with the Indians, within the King's Posts, could not in the smallest degree interfere with, or affect, the right of the King's subjects to trade, elsewhere in the Province, with the Indians, or any other description of persons. Yet, so plain a point seems to have been misapprehended by Mr. Viger; and, under this apparent misapprehension, he has made the unfounded allegation, to which your Lordship's attention is now called.

Seventeenthly—It is alleged by Mr. Viger, that I supported the pretensions of the Hudson's Bay Company, or defended them, against Lampson and his servants, in actions in which the stipulations, contained in the lease held by Lampson of the Crown, necessarily became the subject of discussion *

This allegation is entirely untrue. The stipulations contained in the lease of the Crown to Lampson could not come in question, in any suit or action, in which I acted for the Hudson's Bay Company. This could not have been the case, unless some infringement of the lease had been committed by that Company, by acts done, within the limits of the King's Posts. Now, all the acts, which were the subjects of litigation, both in the Civil and Criminal Courts, between the Hudson's Bay Company and Lampson, were acts done within the limits, as determined by long possession, of an adjoining estate, namely, the Seigniorie of *Mille-Vaches*; and were entirely foreign to the lease, and any and every right conferred by it.

Eighteenthly—It is broadly insinuated, if not actually asserted, by Mr. Viger, that a copy of the opinion, contained in my Report to His Excellency the Governor of the Province, of the 25th November, 1830, on the Petition of the Hudson's Bay Company, was improperly delivered by me, to their Attorney; and he charges me with having caused this opinion to be laid before the Magistrates, before whom the actions (of *qui tam*) had been brought, with having caused it to be presented to them on the bench, and appealed to as an authority, in order to determine them, to decide in favour of the defendants, in an interest opposed at once to that of the plaintiff, of Lampson, and of the Crown †

This is another specimen of the liberty, (which I must be permitted to consider altogether unwarrantable) in which Mr. Viger has indulged, in fastening on me groundless imputations, irrelevant to the charges of the Assembly; for the purpose, I must presume, of bringing me into discredit, and exciting odium and prejudice against me. Such a liberty, to such an extent, I am not aware was ever before taken, on such an occasion.

The copy of the opinion referred to by Mr. Viger was not, as he would untruly assert or intimate, delivered by me to the attorney of the Hudson's Bay Company, for the purpose he states, or for any other purpose; but, as I have been told, and believe, was conveyed by the hands of the Secretary of the Governor in Chief, by the order of His Excellency, into those of the agent of the Hudson's Bay Company; to whom, without my privity or knowledge, it was so delivered, as explaining the reason on which His Excellency declined a compliance with the prayer of their petition. Having been thus delivered, it became the property of the person who received it, and unquestionably was entirely at his disposal. The fact, which Mr. Viger states, of its having been produced, and read to the magistrates, was not unusual, or improper. The opinions of counsel, on points litigated in courts of justice, Mr. Viger must be aware, have been frequently read before those courts, not as authority, but as deserving of attention, according to the degree of credit, in which the counsel may be held, for ability and probity. That my opinion (however slender its weight) should have been applied in this way, it is most singular, should be made a ground of complaint or charge against me. Indeed, it seems sufficiently to evince, that the most innocent acts may, in Mr. Viger's statements, be made to assume the character of criminality; and that, in what respects myself, according to his admirable notions of justice, I may be rendered criminal, for no act at all; and even for the harmless and strictly proper act of another.

Nineteenthly—It is represented by Mr. Viger, that "eight of Lampson's servants were at once dragged from their posts, conveyed to Quebec, and thrown into prison." He adds: "Mr. Stuart opposed their being admitted to bail; he would even have wished to detain them, after the Grand Jury had thrown out the bills for felony. He afterwards pretended that they could not *traverse*, &c. †"

* Vide Observations on Letter, &c., p. 69.

† Vide Observations on Letter, &c., pp. 9, 10, 70.

‡ Vide Observations on Letter, &c., p. 49.

Every fact, with which my name is coupled in this statement of Mr. Viger, is utterly and entirely untrue. I did not, as asserted by Mr. Viger, oppose the admission of Mr. Lampson's servants to bail;—I was not even present when they were admitted to bail, and in no manner participated in this proceeding: it took place, on the *ex parte* application of the persons accused, without my privity. It is equally untrue, that I manifested any desire that the individuals, the bills against whom had been *ignored*, should be detained: they were out on bail; and their recognizances continued in force till the end of the session: it was, therefore, unnecessary I should express any desire on the subject. I did not, as alleged by Mr. Viger, resist the right of the defendants, on charges of misdemeanour, to traverse to the next Term of the Court; but I did oppose the application to traverse, from that to the succeeding Term, that is,—for one whole year; and this application was granted, not on the ground of a right to traverse to the second succeeding Term of the Court, but in consideration of special affidavits. Mr. Viger has therefore, in these several particulars, on his own responsibility, hazarded, as in other instances, an untrue statement of facts, by which it is attempted to inculpate my conduct, without the slightest cause.

Twentiethly—It is represented by Mr. Viger, that I have made an untrue statement to your Lordship, of the French law of the Province, in what respects the action of "*Reintegrande*.*" In contradiction of my statement, that the right of property cannot, in the smallest degree, come in question, in this action, Mr. Viger treats this position "as being too frivolous." To convict me of error, he cites the maxim of the French law, "*La possession se prouve tant par titres que par témoins*;" and he does me the credit, to suppose, I am not unacquainted with this trite maxim. From it he infers, that the "tenor" of the title (to use his expression) to the fee simple of the estate might come in question, in this action. Mr. Viger's errors, in matters of English law and government, of which not a small number, and of no slight importance, are to be found in his "Observations," may not, perhaps, excite surprise; as being subjects, with which he may not have been particularly conversant, or to which his attention has not been successfully applied. With French law he claims, of course, the most intimate acquaintance; and therefore error, as to this, would seem less excusable. With reference, even to this strong-hold of Mr. Viger's acquirements, I must be permitted to state, that Mr. Viger has misapprehended, and misapplied, the maxim which he cites. This maxim does not militate against the law, as I have represented it to be, but is in perfect accordance with it. The "*titres*," referred to in the maxim, are not "*titres de propriété*," but "*titres de possession*;" such as leases. The maxim does not import, as represented by Mr. Viger, that possession may be proved, by referring to titles establishing the right of property (which is a different and distinct right, and, by the French law, cannot, in a possessory action, be inquired into); but that possession may be proved, not only by parole, but by written or documentary evidence, implying its existence. This explanation of the maxim is given by Pigeau, the best writer on the practice of the French Courts, in the following words:—"On ordonne que cette preuve (c'est-à-dire de la possession) sera faite tant par titres que par témoins; par titres, c'est-à-dire, par baux à loyer, et autres titres, qui peuvent prouver la possession, et non par titres de propriété; autrement ce seroit cumuler le possessoire avec le pétitoire."—*Pigeau, Proc. Civ. du Chatelet*, t. ii. p. 12.

The authority now cited will hardly be impugned by Mr. Viger; and supersedes the necessity of any further observation on a point so plain, and with which every Canadian Tyro in the profession of the law is, or ought to be, familiar. It may be proper, however, to add, that Mr. Viger seems to have been unaware, that any proceeding in an action between the proprietors of *Mille Vaches*, or their lessees, and Lampson, being *res inter alios acta*, could not be referred to, or have any the slightest influence whatever, in an action brought by the Crown. Nor does it seem also to have occurred to Mr. Viger, that the Crown must be the best, and is the proper, judge—whether its officer has, or has not, charged himself with the defence of interests, at variance or inconsistent with its own.

Twenty-firstly—I am represented by Mr. Viger, to have untruly alleged, that, in the institution of criminal prosecutions in Lower Canada, there are "private prosecutors †."

Among the singular allegations of Mr. Viger, this is certainly entitled to a conspicuous place. He might, with equal propriety, have called in question my veracity, for having stated that men, women, and children, or that trees, rivers, and lakes, exist and are found in Canada. To persons conversant with such subjects, it is sufficient to observe, that the criminal laws of England prevail in Lower Canada. That there must be "private prosecutors" *there*, is a necessary consequence. In criminal proceedings, under this system of law, private prosecutors are as well known, among the *dramatis personæ* of courts, and are as familiar to the eye, as counsel, attornies, and witnesses. Mr. Viger's vision must, therefore, have been very defective, not to have enabled him to perceive them. It is likely, however, that Mr. Viger has not applied much of his attention to the study or practice of English criminal law; and in this, as in some other particulars, from the course of his studies, may have confounded the powers and duties of the French "*Ministère Public*," with those of an English Attorney-General. Without assuming some such cause of error, it is difficult to account for so extraordinary a position, as that now referred to; upon which Mr. Viger has,

* Vide Observations on Letter, &c., p. 16.

† Vide Observations on Letter, &c., pp. 51. 69.

nevertheless, in his "Observations," grounded a variety of strictures and imputations on my conduct, conveyed in the most confident tone, and, as it were, *ex cathedra*.

Twenty-secondly—It is represented by Mr. Viger, with reference to a calumnious statement made by one Deligalle, that I have untruly stated, in my letter to your Lordship, that, according to the rule which obtains in Lower Canada, the expense incurred in the arrest of accused persons, under warrants of justices of the peace, is paid by the private prosecutors. Upon this point, the following words are used by Mr. Viger:—"It must appear astonishing, doubtless, that Mr. Stuart can quote, as received, a rule which, in fact, has no existence in Lower Canada*."

It would, doubtless, have been astonishing, if, as to such a fact, I had stated, to your Lordship, that which is untrue. This, however, I am compelled to say, is another among many instances, in which Mr. Viger hazards assertions, which, it is to be hoped, are made under an entire misapprehension of the subject to which they relate; otherwise, they would have a character, which I should be unwilling to ascribe to them, while any palliation of untruth can be suggested. Now, I beg leave respectfully to reiterate, to your Lordship, my statement, which has been thus flatly contradicted by Mr. Viger; and on the credit of a gentleman, and under the responsibility which attaches to me, officially, on such a point, I do most expressly re-assert, that the rule in question does exist, and is a rule by which I was bound to govern myself, and have governed myself, in cases such as those referred to. The common and daily practice is in conformity with this rule. The private prosecutor makes his complaint before a magistrate, and procures the arrest of the person accused, at his own expense. The depositions, establishing the charge of the private prosecutor, are afterwards transmitted, by the magistrate, to the clerk of the Crown; and, by the latter, are conveyed to the Attorney-General. If he find the depositions to be sufficient, to warrant a prosecution, he lays an indictment before the Grand Jury, compels the attendance of witnesses, by the process of the court, and conducts the trial before the Petit Jury. This is the ordinary, and every day course, which is pursued. In what respects the expenses of prosecutions,—these become chargeable on the public purse, from and after the stage at which the indictment is preferred; the previous expenses are borne by the private prosecutor. For the correctness of this statement, I hold myself responsible.

Twenty-thirdly—I am charged by Mr. Viger "with having instituted prosecutions against Lampson's servants, for imaginary felonies †."

My answer to this charge is, that I instituted no prosecution against Lampson's servants, for felonies, or any other offence, which, in the discharge of my functions, it was not my indispensable duty to institute. I proceed to explain what prosecutions were instituted, against Lampson's servants, for felonies; and under what circumstances. Two prosecutions of this nature were instituted.

The first was an indictment against Louis Hupé and Joseph Martineau, for maliciously and feloniously shooting at one Mark, an Indian. The indictment was framed on the depositions of two witnesses; by which, the defendants were expressly charged with this offence, and on which they had been committed, by a magistrate, for trial. These depositions, together with other depositions, on which criminal prosecutions were to be carried on, were put into my hands, by the clerk of the Crown, in the ordinary course, in which such matters are transacted in Lower Canada. It thus became my duty, to frame and prefer an indictment, on the charge made against Hupé and Martineau. On this head, I had no discretion to exercise, beyond that supplied by the contents of the depositions; and as these substantiated the charge, the preferring of the indictment was a mere matter of course. This indictment was ignored by the Grand Jury, on grounds of which they alone were cognisant. The responsibility for having made the charge, if made without a reasonable or probable cause, rests with the private prosecutor. My justification is found in the sufficiency of the depositions, if true, to maintain the charge; but with the truth or falsehood of the facts contained in them, of which I was, and am necessarily ignorant, I have, and can have, nothing to do.

The other prosecution was an indictment against Peter M'Leod and others, for a robbery. This indictment was preferred, on the depositions of four individuals, namely, Robert Cowie, a chief factor of the Hudson's Bay Company, Noel Marcoux, Jean Baptiste Rouillard, and William Davis, by which the persons indicted were charged; with having feloniously robbed Mr. Cowie of certain provisions and effects, within the seigniory of *Mille-Vaches*, of which the Hudson's Bay Company are lessees. On these depositions, a warrant had been issued by a magistrate, against the persons accused, the execution of which was forcibly obstructed and prevented: they were afterwards made amenable to justice: these depositions were then put into my hands, by the clerk of the Crown, in the ordinary course of official duty, to be proceeded upon; and an indictment, as my duty required, was laid before the Grand Jury, on the charge, substantiated by these four depositions. This indictment was ignored, the Grand Jury negating the felonious intent; but, at the same time, requiring that an indictment

* Vide Observations on Letter, &c., p. 61.

† Vide Observations on Letter, &c., p. 69.

should be laid before them, for a misdemeanour, against the same individuals. Such an indictment was, in consequence, preferred and found against them, on the same facts, "for a riot, assaulting, and beating one Robert Cowie and others, and forcibly taking from and out of the lawful custody and possession of the said Robert Cowie, divers goods and chattels, and converting the same to their own use." A nice discrimination is sometimes requisite, in distinguishing a criminal trespass, in taking and appropriating the property of another, from larceny, or robbery. The case which gave occasion to these two indictments, it would appear, was of this description. The Grand Jury, on a full examination of the witnesses, was of opinion, that a felonious intent did not exist, and therefore *ignored* the first bill; and afterwards found the second, in which the charge was divested of its felonious character. But, as Attorney General, I could exercise no discretion on this point:—the depositions charged the defendants expressly, with a felonious intent, and with the commission of acts which, combined with that intent, constitute the crime of robbery. It was, therefore, my bounden duty, to frame the indictment, as required by the depositions; and this duty I performed.

It has been reserved for Mr. Viger, to discover, in this plain and obvious discharge of public duty by me, as respects both the prosecutions now adverted to, ground for a criminal charge. With such a disposition to accusation, and such singular proneness to misapprehension and error, on his part, it must be evident that Mr. Viger's charges may be incurred, by conduct however innocent, and free from reproach. He appears, indeed, throughout his "Observations," not to have distinguished what is right from what is wrong, to have mistaken that which is innocent for that which is criminal; and to have applied, prodigally, to the former, a character and epithets, exclusively appropriate to the latter.

Twenty-fourthly—I am charged by Mr. Viger with partiality, in having "successfully presented to the Grand Jury, bills (of indictment) against Lampson's servants, while I neglected to support, by the production of witnesses, those which had been presented against the (Hudson's Bay) Company's servants, which were all ignored *."

This is a very serious charge, made by Mr. Viger, on his own responsibility; and, like others proceeding from the same source, is destitute of the shadow of a cause for it. Of the disposition of Mr. Lampson's counsel and attorney to advance charges against me, without reason, very sufficient evidence has been exhibited; yet, even these individuals did not venture to hazard this charge, which Mr. Viger has taken upon himself to make. The truth is, I neither produced, nor took steps for the production of witnesses, either in support of the prosecutions against Lampson's servants, or of those against the servants of the Hudson's Bay Company; nor was it, or could it be, expected by either of the parties, that I should do so. The witnesses, by whom it was intended, or expected, that these prosecutions should be supported, were servants of the Hudson's Bay Company, and of Lampson, respectively; and subject to their orders. They were at their trading posts in the wilderness, far distant from Quebec; and where it would have been difficult, if not impracticable, to have reached them, with the process of the court. It was, therefore, taken for granted, that the private prosecutors, respectively, would procure the attendance of the witnesses they might require; and, for this purpose, it was perfectly understood, that the orders of Lampson and of the Hudson's Bay Company to their servants, respectively, must be more effectual, than any public authority that could be exercised. It is, therefore, untrue, as alleged by Mr. Viger, that I exerted any diligence for the Hudson's Bay Company, that I did not exert for Lampson, in what respects the attendance of witnesses.—I did not exert, nor was I called upon to exert, any diligence for either. It is proper further to observe, that neither of the parties furnished me, with the names of the witnesses they intended to produce; and, without these, it is obvious, it was impossible to exert the diligence, for the supposed omission of which I am held culpable by Mr. Viger. In what respects the prosecutions at the instance of Lampson's servants, the only witnesses, that I could be aware of, were the individuals whose depositions were put into my hands, by the clerk of the Crown; and whose attendance was to have been expected, under their recognizances. But, even as to these, it would have been necessary, that I should have been informed of the particular trading posts, at which they were to be found, to have enabled me to take any steps for procuring their attendance; and no such information was ever given me. They were, moreover, themselves, the complainants, on the several charges which had been made; whose attendance was, therefore, to have been expected, without any compulsory process. At any rate, not being requested to procure their attendance, or furnished with such information as was necessary, to enable me to do so, no cause for blame could possibly attach to me, on this head. Such being the facts, I leave it to your Lordship, to judge of the character, which belongs to this accusation, proceeding from Mr. Viger; which is several times confidently reiterated by him, in offensive and injurious terms, in the course of his "Observations."

Twenty-fifthly—I am charged by Mr. Viger, "with pretending to interdict the Administrator (of the government) the right even of requiring the Advocate-General, to unite with me, in support of the interests of the Crown, in an action brought before a civil court of justice."

* Vide Observations on Letter, &c., pp. 11, 12, 5, 6.

This charge, in Mr. Viger's peculiar language, is made in direct contradiction to the plainest fact, and exemplifies the facility with which Mr. Viger hazards unfounded imputations. The correspondence between the Secretary of His Excellency the Administrator of the Government and myself, upon the subject referred to by Mr. Viger, shows the utter absence of all pretext for this charge; and it cannot but excite surprise, that Mr. Viger, having read this correspondence, should have ventured to make such a charge. I may also, perhaps, be permitted to remark, that I am unaware of any ground, on which Mr. Viger's interference is exercised, in this matter.

Twenty-sixthly—I am charged by Mr. Viger “with having accused Lord Aylmer, as of a crime, of not having made me formally, and without reserve, judge in my own cause, with regard to Lampson's petition*.”

From the nature of this, as well as other charges, made by Mr. Viger, it must be difficult to determine what may not be brought, within the range of his accusations. It is also plain, that they may be made, not only without any evidence, but even in direct contradiction to that, by which Mr. Viger professes to be guided. This singular charge seems to rest, on palpable misrepresentation. I have never desired, or expressed the preposterous wish, to be made a “judge in my own cause,” “formally and without reserve,” or otherwise, “with regard to Lampson's petition,” or any other matter whatsoever. I have, indeed, incidentally, in my letter to your Lordship of the 22d October last, respectfully remarked, “that it would have been desirable, and, I apprehended, it was to have been expected, that His Excellency Lord Aylmer, as well from a considerate regard for the public and private interests involved in this petition (of Mr. Lampson), as with a view to the immediate investigation of the injurious imputation it contains, on the character and honour of a public officer, of high trust in the colony, would have, unhesitatingly, referred this petition to His Majesty's law servants, including the Attorney-General, the inculpated officer, for their report on the allegations of the petitioner, &c.” In this, I merely suggested the expediency there was, in my humble apprehension, that His Excellency's decision should have been preceded, by a full knowledge of the case in question, derived from the proper official sources, and that no unfavourable conclusion should be adopted, against a public officer, on an imputation affecting his character, without first making him acquainted with it, and receiving his answer. The reasonableness of this remark, proceeding from a person in the position in which I have been placed, it might be imagined, could not be dissented from; yet, it would appear, that it is this remark, which is the foundation, on which Mr. Viger has made the singular groundless charge, which is now brought under your Lordship's notice.

Twenty-seventhly—It is represented by Mr. Viger, “that I have not thought proper to say a word, with respect to facts placed before the Committee, regarding a criminal prosecution, in which, at a preceding period, I was placed in a situation analogous to that in question, (i. e. with respect to the charge of perjury against Lampson). This feature (he says) pointed out in the Report of the Committee, and mentioned for the purpose of comparison, was surely too striking, to escape my attention. Besides, it is notorious in Lower Canada.

“Two persons, husband and wife, (Mr. Viger further states) had brought in the civil court an action against an individual, to compel the payment of a bill, and this action was defended by Mr. Stuart. The proceedings, necessary to place the judges in a situation to give judgment, were concluded; when Mr. Stuart, in his character of Attorney General, stopped the proceedings, by a charge of perjury, which he brought against the plaintiffs.

“He presented (Mr. Viger proceeds in stating) a Bill to the Grand Jury, against the accused parties, for having forged the bill, the subject of the action. This bill was thrown out. Mr. Stuart, who, as we have seen, appeals to the finding of a bill by the Grand Jury, as an undeniable proof of the guilt of the accused, did not see in the act of the Grand Jury throwing out this bill, even a presumption of evidence. He acted, with regard to this accusation, as he has done with regard to the Sorel electors, and on so many other occasions. In a subsequent term, he presented this bill to another body of Grand Jurymen, who found a true bill.—The accused parties found themselves obliged to submit to a trial. They were finally acquitted; but it was not till after two years of such suffering as these kind of struggles bring with them. This affair made a great noise; and Mr. Stuart could not be ignorant of the sensation which it produced,” &c.

I have transcribed *verbatim* the whole of this remarkable charge; lest, in abridging it, I might convey an incorrect, or inadequate idea of it. What immediately follows the words that are quoted, is a species of admonitory lecture, which Mr. Viger has based upon, and superadded to, his charge; intending it, I presume, for my personal instruction and guidance; and it is, therefore, omitted; though the value of it, as proceeding from Mr. Viger, cannot be misunderstood. Such a charge I must be permitted to state, was really never before exhibited, or imagined. Before explaining the circumstances of the case, to which Mr. Viger refers; it is fit, that I should account for my silence, on the subject matter of this charge, which he

* Vide Observations on Letter, &c. p. 70. 1.

represents "as a *feature* pointed out in the Report of the Committee, for the purpose of "*comparison*," and as being "surely too striking, to escape my attention."

The considerations that induced my silence are these:—The case referred to is of such a nature, that the parties affected by it could not desire it to be, unnecessarily, brought under public notice; the accused, whom Mr. Viger represents to have had cause of complaint, have never made any complaint whatever, to the House of Assembly, or to any other constituted authority, persons, or person; no reference whatever, in relation to this case, was made to the Committee of Grievances; the case, and every circumstance connected with it, were entirely foreign to the proceedings of the Committee; no power belonged to the Committee, to make inquiry, or receive information, respecting it; and no mention of it is made in the Report of the Committee. In the exercise, therefore, of what appeared to me a sound and proper discretion, I abstained, in my letter to your Lordship, of the 22d October last, from any notice of the partial and incorrect statement of this case which was made, and, I conceive, improperly made, by Mr. Gagy, in his evidence before the Committee. As Mr. Viger, however, on his own responsibility, has thought proper to make this case the subject of a charge against me, I am compelled, however reluctantly, to state the particulars of it, in my own justification; and in order to show that in this, as in other instances, Mr. Viger has assumed, or been made to assume, in his own person, the character of an accuser, without the semblance of a cause, to warrant, or palliate, his accusation.

The particulars of the case, thus forced by Mr. Viger, on your Lordship's attention, are, to the best of my recollection, briefly these.—Mr. Oldham, a gentleman of respectability, being a lodger at the house of a Mrs. Hoyle, in Quebec, died there; leaving a will, of which he appointed his copartners in trade, Messrs. Henry M'Kenzie and Norman Bethune, of Montreal, and another gentleman, his executors. Together with legacies to his children, his will also contained a legacy to Mrs. Hoyle. This legacy was paid; and, some time after, Mrs. Hoyle demanded, of the executors, payment of a promissory note, for, I think, the sum of £275; this note, purporting to have been granted in her favour, by Mr. Oldham, a few days before his decease. On various grounds, which it is unnecessary, and it would be unfit, to specify, the executors considered the note to be a forgery, and refused payment of it. An action was afterwards brought, in his Majesty's Court of King's Bench, at Quebec, by Mr. and Mrs. Hoyle, through their attorney, Mr. Gagy, against the executors of Mr. Oldham's will, to compel payment of this note. I was charged, professionally, with the defence of the action, and was instructed to resist it, on the ground that the note was forged. Upon looking into the plaintiff's declaration, I perceived irregularities, in point of form, which I explained to the defendants; and their defence, thereupon, consisted of exceptions to the action, on the ground of these irregularities, and of the general issue, under which the forgery of the note was to be insisted on. In the progress of the cause, the plaintiffs exhibited the note, as evidence of their demand. While the note was thus in the custody of the Court, Mr. M'Kenzie, one of the executors, made his deposition, charging the plaintiffs, with having forged it; upon which they were arrested, and held to bail. A motion, about the same time, was made, on the part of the defendants, in the civil action, that the note should be *impounded*. This motion, being one of course, under the circumstances which have been stated, was granted; but it operated no other effect, than that of causing the note to be retained in the hands of the officer of the Court, to be used as evidence in the criminal prosecution. No stop, or interruption, in the progress of the cause, was or could be produced by this step. The case proceeded, in the usual course, to judgment, which was rendered in favour of the plaintiffs. From this judgment an appeal was instituted; upon which the Provincial Court of Appeals reversed the judgment of the Court below, and dismissed the plaintiff's action, on the ground of the irregularities, which had been made the subject of an exception, or plea in abatement, in that Court. Independently, altogether, of the civil action, the criminal prosecution, grounded on the charge on oath of Mr. M'Kenzie, proceeded in like manner as other criminal prosecutions, and terminated in an acquittal of the defendants. It is, on these facts, that Mr. Viger has ventured to make the present charge; for which, it would seem, an apparent colour is sought, by charging me falsely, "with having, in my character of Attorney General, (while the action was pending in the Court of King's Bench) stopped the proceedings, by "a charge of forgery, which I brought against the plaintiffs." As Attorney General I brought, and could bring, no charge of forgery, against the plaintiffs. The allegation made by Mr. Viger, that I did so, is entirely false; and it is equally untrue that, as Attorney General, "I stopped the proceedings." The motion of the defendants, for the *impounding* of the note (the only one which was made, on the ground of the forgery), did not, and could not, stop the proceedings; which continued, as if no such motion had been made. Mr. Viger, it would appear, labours under a lamentable want of knowledge, on this subject:—if better informed, he would have known that, as Attorney General, I could take no such step as that which he has falsely ascribed to me; and that the step which was taken, namely, *the motion for the impounding of the note*, is a step which it is competent, on sufficient grounds, to any and every attorney, or advocate, conducting a cause, and having a right to move the Court, to take, for and on behalf of his client. With respect to the acquittal of the plaintiffs, I am no more responsible for that result, in this case, than in the case of any other criminal prosecution. The prosecution in question was founded on the charge on oath of the private prosecutor:—if instituted by him, without probable or sufficient cause, he was responsible for it, in an action for a malicious prosecution; and the omission, in this case, to bring such an

action, would imply, that he was justified, in making the charge. It is to be observed, also, that as the action of the plaintiffs was dismissed, by the Provincial Court of Appeals, not on the merits, but on the ground of technical irregularities in bringing it, the judgment of that Court constituted no bar, to the bringing of another action, on the same note. No second action having been brought, the inference in favour of the private prosecutor is further strengthened and confirmed; as it is hardly to be supposed, that, if the note were not justly impeachable on the ground of forgery, another action would not have been brought, to compel the payment of it. Besides these considerations, in themselves sufficiently cogent, Mr. Viger ought to be aware, that the mere fact of an acquittal does not, in itself, warrant a conclusion unfavourable to the private prosecutor; it being notorious, that criminal prosecutions frequently fail, from causes which imply no blame in him, nor any want of sufficient grounds, to justify the institution of them.

By way of aggravation, I presume, Mr. Viger has introduced, into his charge, the allegation, that a bill of indictment against the plaintiffs was, in the first instance, thrown out, and that the prosecution lasted two years. At the same time, as in other instances of gross misrepresentation, and in order to induce a belief of inconsistency and partiality, on my part, Mr. Viger falsely represents me to have maintained, on another occasion, the absurd proposition "that the finding of a bill by a Grand Jury is an undeniable proof of the guilt of the accused *;" and this assertion is made by Mr. Viger, although he is perfectly aware, that no such proposition ever was, or could have been, advanced by me!! The cause of the rejection of the first bill, in this particular case, to the best of my recollection, was this: Mr. Oldham, having been a resident at Terrebonne, in the District of Montreal, the witnesses to prove the signature to the note not to be his, were persons who resided in the same part of the country; and, owing to the bad state of the roads, in the month of March, at which time, I think, the first bill was preferred, the attendance of the most material of them, who were advanced in years, could not be obtained. These absent witnesses attended in a succeeding term of the court, at a more favourable season of the year; when the bill, on their additional testimony, was found. As to the time which may have intervened, between the institution of the prosecution and its conclusion, I do not bear it in recollection; but, of this I am certain, that the delay, whatever it may have been, was in no degree imputable to me. In order, I presume, to give more importance to this charge, Mr. Viger states that "this affair made a *great noise*, and produced a *sensation*." Mr. Viger must have been imposed on.—I really never heard that the prosecution in question produced more "noise," or excited a greater "sensation," than any similar prosecution might be expected to do; and I presume the "noise," and the "sensation," must have been confined, to the immediate circle in which the parties, concerned in it, lived and moved. These expressions, without any definite meaning, and ill applied on this occasion, I take it for granted, like others of a similar nature, have been used by Mr. Viger, merely with a view to rhetorical effect.—If to be taken in a more serious sense;—a "noise" and a "sensation," in the scales of justice, it must be confessed, are a novelty; and it would still be necessary, that Mr. Viger should exercise his great ingenuity, in determining their *weight*, judicially, on a question of guilt or innocence.

It is with great repugnance I beg leave to assure your Lordship, that I have entered into these explanations, on a subject, so unfit for your Lordship's consideration, or notice; but, it must be evident to your Lordship, that they have been rendered indispensable by Mr. Viger; who, by construing my prudent silence into an admission of culpability, has compelled me to disclose the particulars of a case, which ought not to have been recalled, from the oblivion into which it has passed, in the country in which it occurred; and of which the recollection is probably confined, to the attorney who lost his cause, for technical irregularities, which might have been avoided, and to the parties themselves.

In repelling this charge of Mr. Viger, I may, perhaps, be permitted to add, that it is the more remarkable, that he should have been betrayed into the making of it, as, upon slight inquiry, he might have learnt, not only that the proceedings, to which he refers, were perfectly regular and proper; but also that precisely similar proceedings, in all particulars, have occurred in the same court, before I became Attorney General. He may also easily learn, that he himself, in his future professional career, whether clothed with the office of Attorney General, or not, may, with perfect propriety, (and it is quite likely, when circumstances call for it, that he will) take each and every of the steps, which have been taken by me, and which by him, have been very unadvisedly made the subject of accusation.

Twenty-eighthly—I am charged by Mr. Viger with "attributing to the people of Lower Canada gross ignorance and brutality; and with having loaded them with insult."

The fictions of the imagination, misrepresentation, or false exaggeration, Mr. Viger ought to be aware, are not admissible, as the foundation of a serious charge of this nature. In repelling this incredible imputation, I need hardly assert, that I never used, and am incapable of having used, the language imputed to me; nor have I offered insult, of any kind or degree, to any class or part of His Majesty's subjects. No person entertains more respect, than myself, for the people of Lower Canada, without regard to the difference of their national origin; appreciates more highly their virtues; or, in the relations of private

* Vide Observations on Letter, &c., p. 58.

and public life, has manifested more invariably these sentiments. On their part, I may be permitted also to say, that, during a long professional life, they have always given me testimonies of their confidence, by entrusting to me, in a multitude of instances, and in preference even to persons connected with them by closer ties, the defence of their lives, character, and fortunes. There has not, therefore, been, and could not be, any motive in me, for depreciating their merits, and still less for libelling them, if I were capable of such an act, as untruly pretended by Mr. Viger. The odious quality of "brutality," till introduced by him into this charge, was never before found associated with Canada, or any portion of its inhabitants; and with Mr. Viger, therefore, must rest the responsibility for this unnatural, repugnant, and libellous association, now made to exist, in words even, for the first, and, no doubt, the last time. Without inquiring into the motives for this unfounded imputation, proceeding from Mr. Viger, I will only beg leave to observe, that an attempt to subject a public officer, or any other individual, to popular odium, by such means, cannot but be universally disapproved, and censured. That a communication to His Majesty's government should be made the vehicle, for such an imputation, must enhance its impropriety, and affords me just cause of complaint.

Twenty-ninthly—I am accused by Mr. Viger with having, in defending myself against the charges of the Assembly, "subverted principles and facts;" with having used "means of justification which are insults, and made explanations of my conduct which are worse than atrocious; and with having constantly shown myself a stranger to the first rules of constitutional law, and the practice of parliament; to the principles of jurisprudence in criminal matters, and to those of public morality."

This is, indeed an astounding, overwhelming denunciation, and of a very unusual kind. Though not unappalled by it, I hope I may be permitted, with all becoming diffidence and humility, and without any violation of proper respect for the Assembly, or their agent, to plead not guilty to this charge also; and to rebut it, by a very short explanation, not "atrocious" in matter or language.

In resisting the proceedings of the Assembly of Lower Canada against me, by which, if not convicted, I stand untruly charged with acts of official misconduct, and even with an odious criminal offence, not within the jurisdiction or cognizance of the Assembly, and by which my disgrace and ruin have been sought;—I am unaware that I have insisted on any principle of constitutional, civil, or criminal law, that is not well founded, and universally acquiesced in, except by Mr. Viger; I have alleged no fact that, on good grounds, I did not believe to be true; I have used no means of justification, and have made no explanations that were not called for and proper, in self-defence; and I am not conscious of having, in word or deed, violated any rule of morality, public or private. It does, therefore, seem to me most extraordinary, that, in a communication addressed to His Majesty's government, in which the restraints of propriety and truth might be expected to have their due influence, I should have become subject to the sweeping vituperation contained in this charge; and that the epithet "atrocious," and even something worse, should be applied by Mr. Viger, to the mere exercise of the right of legitimate self-defence on my part, which has been entered upon by the permission, and under the protection of His Majesty's government. On this unexampled charge, therefore, I respectfully submit to your Lordship's judgment, whether it be fit, just, or proper, that such language, in such a communication, should have been thus applied.

Thirtiethly—I am represented by Mr. Viger, "to have imprinted 'a blight' (*flétrissure*) "upon the office of Attorney General, which has recoiled on the administration of justice."

Upon this charge, I beg leave to make a few remarks.—The office, or ministry of Mr. Viger, according to my apprehension of it, imposed on him the duty of sustaining certain specific charges of the Assembly of Lower Canada, to be found in their Address, for my suspension and dismissal from office. His commission, or agency, by a resolution of the Assembly, in what respects me, was limited to this one object. At his desire, nevertheless, and with my entire concurrence, he has been permitted to establish any accusation, or allegation of an inculpatory nature, to be found in two Reports of a committee of the Assembly.* Allowing this increased latitude given to Mr. Viger's functions, his duty consisted, or ought to have consisted, in the substantiating, not in the fabrication, of charges. A scrupulous regard and adherence to truth, also, I need hardly mention, as well as a strict observance of the common rules of propriety, were to have been expected from him, as of course, in statements proceeding from him, in his private capacity; but still more, and under a higher obligation, in those made by him, in his public character. In utter disregard, as I conceive, of these restraints, Mr. Viger, throughout his "Observations," most unwarrantably, as it appears to me, has assumed to himself, on his own personal responsibility, the unrestricted liberty of fastening on me disgraceful, unfounded imputations; and has hazarded untrue assertions, at random, as it were, and without evidence, or cause, to warrant, or palliate them. In the instance now quoted, he has presumed, on his own responsibility, to stigmatize me, by an epithet, that could only be applied to persons the most degraded. To be represented as im-

* Vide Appendix, No. 1. (6 & 7).

printing a "*blight*," or "*flétrissure*," on an honourable office, and through it on the administration of justice, (which are the words used by Mr. Viger), is to be ranked among the vilest of mankind. What palliation, for the use of such language, can be offered? My character and reputation, out of office, and in office, during a long public life, has been free from blemish, and is irreproachable. As a private Advocate, in the King's Courts, before I was honoured, by His Majesty's commission, as Attorney General, my standing, for a long period of time, was in the first rank in the country from which I come; and nothing has since occurred, to detract from a well-earned reputation, acquired under the scrutinizing eye of the public. To the public voice,—to that of most respectable individuals in and out of the Province,—to the Governors who have ruled over it,—I may appeal for testimony, as to the estimation, in which my professional and official character has been held; and I presume to think, that neither the profession to which I belong, nor the office I bear, can sustain discredit from me, or any thing connected with me. Is it then, I submit to your Lordship, to be borne, that a person in my situation, when defending himself against groundless charges,—when his character and reputation are virtually under the protection of the high authority appealed to for justice, should be thus stigmatized?—Is it to be borne, that such a scandalous aspersion of his character should, by the author of it, be industriously published and circulated, far and wide? If the humblest of His Majesty's subjects, when under accusation, before a court of justice, were subjected to such injurious treatment, the animadversion and punishment that would, summarily, await the offender, are well known. I am aware, that the responsibilities incurred by Mr. Viger, by this calumny, and his libellous circulation of it, are only to be adequately enforced, beyond the limits of your Lordship's authority. It has, nevertheless, been due to myself, that I should, in the first instance, bring them under your Lordship's notice: for the rest, I shall avail myself of such course as may be proper.

Without trespassing longer on your Lordship's patience, I have, in what has been stated, sufficiently acquitted myself, I think, of the painful duty which has been imposed on me by Mr. Viger; and, from the fulfilment of which, I could not abstain; without a surrender of character, and the suppression of feelings; by which every honourable mind, under like circumstances, must be governed. To the extended catalogue of false imputations, and unfounded allegations, proceeding from Mr. Viger, on his own personal responsibility, which have already been noticed; I might, from the same source, still make additions; but it were a useless, irksome, and unprofitable labour, to enlarge it. I have selected, from his voluminous "*Observations*," the more important, and those which it most imported me, to bring under view, and refute. To such unfounded imputations and allegations, as may remain unnoticed, not few in number, I cannot apprehend, after the character affixed to those specified in this Letter, that any degree of credit can be assigned.

In so far as Mr. Viger's "*Observations*" are relevant to the charges of the Assembly, and the reports of a committee, which are in question in these discussions, I have purposely refrained, from soliciting your Lordship's permission, to submit any answer to them; from an apprehension, that occasion might thence be derived, or sought, for a further extension of the protracted delay, which has been so ruinously injurious to me. It has also appeared to me, I confess, that, on points so plain and simple, as those agitated by Mr. Viger, any answer might well be dispensed with. In my letter, therefore, to your Lordship, of the 8th June last, I hailed, with satisfaction, the completion of Mr. Viger's labours; and respectfully entreated that, as the previously subsisting impediment, to the determination of this affair, was thus removed, the parties might have the benefit of it, without further delay; and the same humble request, I beg leave now to renew.

The matters involved in this Letter are, your Lordship will permit me to state, personal between Mr. Viger and myself; and I hope, therefore, they may not have any influence, in delaying the determination on the case, as already concluded, and now under your Lordship's consideration. In what respects this Letter, I have only respectfully to request, that, under your Lordship's authority, Mr. Viger may be made acquainted with its contents.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

J. STUART.

* Vide Appendix, No. 1. (18.)

APPENDIX

TO A

LETTER

FROM

JAMES STUART, ESQ.

TO THE

RIGHT HON. LORD VISCOUNT GODERICH, &c. &c. &c.

CONTENTS.

	Page
No. 1. Correspondence of James Stuart, Esq., with his Majesty's Secretary of State for the Colonies, relative to certain proceedings of the Assembly of Lower Canada, against him	23
1. (1.) Letter from James Stuart, Esq., to the Right Honourable Lord Viscount Goderich, one of His Majesty's Principal Secretaries of State	23
2. (2.) Letter from James Stuart, Esq., to Viscount Goderich	24
3. (3.) Letter from James Stuart, Esq., to Viscount Goderich	24
4. (4.) Letter from Robert W. Hay, Esquire, to James Stuart, Esq.	25
5. (5.) Letter from Robert W. Hay, Esquire, to James Stuart, Esq.	25
6. (6.) Letter from James Stuart, Esq., to Robert W. Hay, Esquire	26
7. (7.) Letter from James Stuart, Esq., to Robert W. Hay, Esquire	27
8. (8.) Letter from James Stuart, Esq., to the Right Honourable Viscount Goderich	28
9. (9.) Letter from James Stuart, Esq., to Lord Viscount Howick	28
10. (10.) Letter from James Stuart, Esq., to Lord Viscount Howick	28
11. (11.) Letter from Lord Viscount Howick, to James Stuart, Esq.	29
12. (12.) Letter from Lord Viscount Howick, to James Stuart, Esq.	30
13. (13.) Letter from James Stuart, Esq., to the Right Hon. Lord Viscount Goderich	30
14. (14.) Letter from Lord Howick, to James Stuart, Esq.	31
15. (15.) Letter from James Stuart, Esq., to the Right Hon. Lord Viscount Goderich	32
16. (16.) Letter from James Stuart, Esq., to Lord Viscount Howick	33
17. (17.) Letter from James Stuart, Esq., to the Right Hon. Lord Viscount Goderich	34
18. (18.) Letter from James Stuart, Esq., to the Right Hon. Lord Viscount Goderich	35
No. 2. Report and Opinion on the Militia Laws of Lower Canada, by James Stuart, Esq., Attorney General of that Province, to His Excellency the Earl of Dalhousie,	35

APPENDIX.

No. 1.

Correspondence of JAMES STUART, Esquire, with His Majesty's Secretary of State for the Colonies, relative to Certain Proceedings of the Assembly of Lower Canada, against him.

No. 1. (1.)

Letter from JAMES STUART, Esquire, to the Right Honourable Lord Viscount GODERICH, one of His Majesty's Principal Secretaries of State.

Quebec, 16th April, 1831.

MY LORD,

HAVING been recently subjected to suspension, from the office of His Majesty's Attorney General for this Province, by an order of His Excellency, Lord Aylmer, Governor in Chief, I have had the honour of addressing, to your Lordship, through His Excellency, a Memorial on this subject; which His Excellency has assured me he will transmit to your Lordship, together with his own despatches, a few days' hence. Anxious, however, to obviate the effect of an accidental miscarriage of my Memorial, to be conveyed through His Excellency; I beg leave, herewith, to transmit to your Lordship, by private conveyance, a Copy of the same Memorial, and of the same documents annexed to it, which are now in Lord Aylmer's hands; and which His Excellency, in his letter to me, of which a copy is herewith transmitted, notices under the name of "A Bundle of Papers, described as a Memorial to Lord Viscount Goderich."

Expecting to have the honour of submitting, in person, to your Lordship, in a short time, the particulars of the case set forth in this Memorial, I abstain from troubling your Lordship, by adding anything, at this moment, to the statements contained in it. I may, however, perhaps be permitted, in the singular situation in which I am placed, to notice the aggravated hardship which, in consequence of Lord Aylmer's order of suspension, I labour under,—in being suddenly, and unexpectedly, compelled to relinquish and withdraw myself from a lucrative professional practice, which cannot be easily regained;—in being deprived of considerable official emoluments;—in being made to incur, from the two causes just mentioned, an immediate, certain, and absolute pecuniary loss of several thousand pounds;—in being subjected to temporary discredit, if not disgrace, and an entire derangement of my business, pursuits, and plan of life;—and constrained to travel three thousand miles, to answer charges, which are not in a form to be susceptible of answer and investigation; which the party, from which they proceed, there is reason to believe, never expected would be answered or investigated; and which, when they are inquired into, will be found to be utterly groundless.

In these circumstances, requiring the exercise of some fortitude, I place the most perfect reliance on the justice of His Majesty's Government; and do not, for an instant, doubt that what is right and proper, in this matter, will be done, without regard to the inequality of the parties.

I have the honour to be,

my Lord,

with the greatest respect,

your Lordship's most obedient, humble servant,

(Signed)

J. STUART,
Atty. General.

Right Hon. LORD VISCOUNT GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 2. (2.)

Letter from JAMES STUART, Esq. to the Right Honourable Viscount GODERICH, dated 6th August, 1831.

London, 46, Albemarle-street, 6th August, 1831.

MY LORD,

In conformity with the intention expressed in my Memorial, addressed to your Lordship from Quebec, the 14th April last, on the subject of my suspension from the office of Attorney General for the Province of Lower Canada, I now do myself the honour to transmit to your Lordship, to be laid at the foot of the throne, my humble petition, that His Majesty will be graciously pleased, to afford me an opportunity of defending myself against, and disproving, the charges specified in the address of the Assembly of that province, for my dismissal from office. Together with this petition, I also do myself the honour to transmit, to your Lordship, a memoir or statement, in explanation and support of it. Being solicitous that the charges of the Assembly may receive the most complete and satisfactory investigation; it has been, with much satisfaction, that I have observed, that an agent has been deputed by the Assembly, to sustain their charges and address; and I beg leave to express my humble wish, that, under your Lordship's authority, he may be made acquainted with every allegation and document proceeding from me, in relation to this matter, in order that he may be enabled to contest them, if so advised.

I have the honour to be,

with the greatest respect,

my Lord,

Your Lordship's most obedient humble servant,

J. STUART.

Right Hon. LORD VISCOUNT GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 3. (3.)

Letter from JAMES STUART, Esq., to ROBERT W. HAY, Esquire, Under Secretary of State, dated 25th August, 1831.

London, 8, Dover-street, 25th August, 1831.

SIR,

Having learnt that Mr. Viger, as agent for the Assembly of Lower Canada, has received communication of the papers I have had the honour to submit to His Majesty's government, relating to the address of the Assembly, for my dismissal from office; I beg leave to express my humble hope, that Mr. Viger may be required, to use all reasonable diligence, in furnishing whatever answer or observations, on behalf of the Assembly, he may deem it proper to make, on this subject. The necessity I have been under, of relinquishing my business and pursuits, for the purpose of defending myself, against the charges of the Assembly, has, I may be permitted to mention, subjected me to great pecuniary loss, which must be largely increased, by a prolonged absence. I should hope, therefore, that the reasonableness of this request will be readily acquiesced in. Adverting to the delay, necessarily to be incurred, in obtaining the decision of His Majesty's government, on the subject in question; I have hitherto flattered myself, that it would not, under any circumstances, be so far extended, as to prevent my return in time, to have the benefit of the Civil Term of the Court of King's Bench, to be held at Quebec on the 1st of February next, and of the Criminal Terms of that Court, to be held in that, and in the succeeding month. The professional and official emoluments, of which I should be deprived, if not enabled to resume my duties in these Terms, would augment greatly the amount of my pecuniary loss; and I should hope, that this consideration may have some influence, on His Majesty's government, in causing to be expedited,

as much as may be found convenient, the proceedings, preparatory to its determination, on the charges of the Assembly.

I have the honour to be, Sir,

With respect,

Your most obedient, humble servant,

(Signed) J. STUART.

ROBERT W. HAY, Esquire,
&c. &c. &c.

True Copy, J. STUART.

No. 4. (4.)

Letter from ROBERT W. HAY, Esquire, Under-Secretary of State, to JAMES STUART, Esq.

Downing Street, 26th August, 1831.

SIR,

I have laid before Viscount Goderich, your letter of the 25th instant, and I am directed by his Lordship, to acquaint you, that he will not fail to bear in mind the importance to you, of being released from your attendance here, before the time you have specified; and he will use the best means in his power for bringing your case to an early decision.

I am, Sir,

your obedient humble servant,

(Signed) R. W. HAY.

J. STUART, Esquire.

True Copy, J. STUART.

No. 5. (5.)

Letter from ROBERT W. HAY, Esquire, Under-Secretary of State, to JAMES STUART, Esq.

Downing Street, 26th August, 1831.

SIR,

I have received the directions of Lord Goderich, to transmit to you the inclosed copy of an Extract of a Letter, addressed by Mr. Viger to myself, and to request that you will, at your earliest convenience, enable me to reply to the question proposed by Mr. Viger.

I have the honour to be, Sir,

your most obedient humble servant,

(Signed) R. W. HAY.

To J. STUART, Esquire.

True Copy, J. STUART.

Extract, referred to in the foregoing, of a Letter from MR. VIGER, to R. W. HAY, Esquire, dated 23d August, 1831.

J'ai donné à l'examen de ces papiers autant d'attention que ce court espace de tems me l'a permis; je n'y vois d'observations que relativement au second et troisième rapports de l'Assemblée, et rien du tout quant au premier. Je vous prierais de vouloir bien m'informer, si j'en dois conclure que Mr. Stuart ne se croit pas dans la nécessité de répondre à

cet article des plaintes de l'Assemblée contre lui. Si au contraire, on avoit omis, par hazard, d'inclure les observations relativement à cet objet dans la liasse des papiers que j'ai reçus hier, je vous prierais de me les faire parvenir, à fin que je puisse traiter ces différents sujets dans l'ordre dans lequel ils ont été présentés, et doivent naturellement être discutés.

No. 6. (6.)

Letter from JAMES STUART, Esq., to ROBERT W. HAY, Esquire, Under Secretary of State.

London, 8, Dover Street. 27th August, 1831.

SIR,

I have been honoured with your Letter of the 26th instant, transmitting an Extract of a Letter from Mr. Viger, relating to the papers, which I have lately had the honour to submit to His Majesty's Government, on the subject of an Address of the Assembly, for my dismissal from office, in which a question is put by Mr. Viger, requiring an answer from me.

To obviate some misapprehension which appears to exist in Mr. Viger's mind, in relation to this matter, it seems to be proper, that I should explain to what papers Mr. Viger's attention is now exclusively called. By the Address of the Assembly, they have prayed, that His Majesty would inflict on me the punishment of dismissal from office, for certain alleged offences, of which they have adjudged me to be guilty; and Mr. Viger has been deputed by the Assembly, to sustain this Address. On my part, I have had the honour to represent, by my humble Petition to His Majesty, and the Memoir in support of it, that I have been thus convicted and condemned, by the Assembly, on *ex parte* proceedings, without defence or hearing, or an opportunity for either; and that I am wholly guiltless of the offences imputed to me by the Assembly. On these grounds, I pray that, before punishment is inflicted, I may be let in, to prove my innocence. In substance, therefore, my Petition and Memoir are to be considered as an answer, to the charges and address of the Assembly; and Mr. Viger, I presume, it is now expected, will furnish such reply as he may deem necessary, to sustain these charges and address. This, and this only, is the subject, to which Mr. Viger's attention is now called.

In the extract you have done me the honour to transmit, Mr. Viger remarks, that my "Observations," by which he means, I presume, my Petition and Memoir, apply to the second and third Reports only, and that nothing is said of the first.—The charges and address of the Assembly were founded, solely, on what is called the second Report of the Committee of Grievances; and my Petition and Memoir, therefore, have relation to this only, and do not touch at all on the other two Reports. It has been my intention, in justification of myself to His Majesty's Government, to give a satisfactory answer, in detail, to each and every statement and allegation, affecting my official conduct or character, which is to be found in the first and third Reports; and I am now employed in preparing this answer, which I purpose to submit, in the form of a letter, to be addressed to His Majesty's Secretary of State for the Colonies. But I did not conceive I could, without impropriety, notice the subject matter of either of these Reports, in my Petition and Memoir; which, from considerations of fitness and propriety, are necessarily restricted to the Address of the Assembly, and the charges therein specified. Mr. Viger seems to confound the Reports of a Committee with charges preferred by the Assembly, and adverts to both, under the denomination of "*Plaintes de l'Assemblée.*" They are, I apprehend, very different in their nature; and it is one of the singularities, in the proceedings adopted against me, that I am called upon to defend myself against "charges," and also against Reports of a Committee, of the Assembly. These Reports, in the opinion of the House of Assembly, either contained sufficient grounds, for imputing to me official misconduct, or they did not:—if they did, charges founded on them ought, I apprehend, to have been exhibited against me, to be embodied with the other charges, which have been preferred:—if they did not, the statements they contain, injurious to my character, it appears to me, ought not to have been brought under the consideration of His Majesty's government at all, or put into public circulation, to my prejudice. But, I am not come hither, I beg leave to mention, to oppose objections of form, to the investigation of any complaint, or charge, against me; in whatever manner, and by whomsoever, it may be made. I have, within the colony, for some time past, been most unjustly assailed, by unfounded imputations, and misrepresentations of my conduct; without having it in my power to refute them, there. This opportunity, I am happy, is now afforded to me, here; and I shall most gladly avail myself of it, not only to answer whatever imputations are to be found, in the two Reports referred to, by Mr. Viger; but also any and every complaint, which he may think proper, if so instructed, to add to them. In the mean time, and in order to avoid

unnecessary delay, which is personally injurious to me, I hope Mr. Viger will find it convenient, within a short time, to furnish his Reply, on the only subject to which his attention is at present called, viz.,—my answer to the charges and address of the Assembly.

I have the honour to be, Sir,

Your most obedient, humble servant,

J. STUART.

ROBERT W. HAY, Esquire,
Under Secretary of State, &c. &c. &c.

True Copy, J. STUART.

No. 7. (7.)

Letter from JAMES STUART, Esq., to ROBERT W. HAY, Esquire, Under Secretary of State.

London, 8, Dover Street, 2d September, 1831.

SIR,

Having been favoured with the perusal of a letter from Mr. Viger to you, of the 29th August, upon the subject of my last letter; it is with regret, that I find myself, under the necessity, of troubling you, with a few words, respecting its contents. Mr. Viger is evidently desirous of blending, with the charges and address of the Assembly, matters entirely foreign to both; by which confusion and delay would necessarily be produced. To prevent this inconvenient aberration from the subject in hand, it seems essential, that Mr. Viger should become impressed, not only with the precise nature of it, but with the extent of his own ministry; such as it has been confided to him, by the House of Assembly. The subject, as stated in my last letter, is, singly and alone, the charges and address of the Assembly, with the answer to them contained in my Petition and Memoir; and Mr. Viger's ministry, by the terms of the resolution of the Assembly, under which he acts, is expressly limited to the sustaining of the Petitions of the Assembly, of which the address in question is one. The *first* and *third* Reports of the Committee of Grievances, to which Mr. Viger refers, are, therefore, not only foreign to the subject in hand; but are also subjects not included in Mr. Viger's mission, on behalf of the Assembly, to this country. If this last circumstance is adverted to, it is not done, I beg leave to mention, with a view to circumscribe the sphere of usefulness of Mr. Viger, in exhibiting, or maintaining, charges of any and every kind, against me; but merely to enforce the propriety of his confining himself, at this moment, to the specific subject, to which his attention has been called. Hereafter, when I shall have submitted, to the consideration of His Majesty's Government, such answer as may be deemed proper, for my justification, in respect of imputations or statements contained in the first and third Reports of the Committee of Grievances; it will be in the discretion of His Majesty's Government, for whose satisfaction alone it will be furnished, to communicate the paper containing it, to whomsoever it may think fit. Mr. Viger, as a matter of right, could not claim such communication. I shall, nevertheless, be anxious, that he receive it; in order that the grounds of my justification may be distinctly known, in the quarter from which these imputations and statements proceed. But, I humbly entreat, that the proceedings to be had, on the charges and address of the Assembly, may not, in the meantime, on this account, be unnecessarily delayed. The correspondence to which Mr. Viger, in his letter, refers, was not intended to accompany, into his hands, my Petition and Memoir, to which it is entirely foreign, and was probably transmitted to him, with these papers, from inadvertence. He will not fail, however, hereafter to make proper application of the documents comprised in this correspondence, when his attention shall have been called to my answer to the first and third Reports above-mentioned; and he may consider them as being in his hands, only to receive his perusal, at that time.

I have the honour to be, Sir,

your most obedient humble servant,

(Signed) J. STUART.

ROBERT W. HAY, Esquire, &c. &c. &c.

True Copy, J. STUART.

H

No. 8. (8.)

Letter from JAMES STUART, Esq., to the Right Honourable Viscount GODERICH, dated 22d October, 1831.

This letter contains the answer of Mr. Stuart, to the first and third Reports of the Committee of Grievances of the Assembly of Lower Canada. Having been separately printed, it is not included in this printed Correspondence.

No. 9. (9.)

Letter from JAMES STUART, Esq., to Lord Viscount GODERICH.

London, 30 George-street, Hanover-square, 6th December, 1831.

MY LORD,

In a letter addressed to Mr. Hay, on the 25th August last, I had the honour of bringing under your Lordship's notice, the considerable pecuniary loss I should sustain, if not enabled to return to Quebec, in time for the resumption of my professional and official duties, in the Civil Term of the Court of King's Bench, to commence on the 1st February next, and in the succeeding criminal Terms of the same Court; and I have felt most grateful for your Lordship's assurance, with reference to this anticipated loss, that the best means in your Lordship's power would be used, for bringing my case to an early decision.

Having, some time since, submitted answers to all the charges and inculpations, proceeding from the Assembly of Lower Canada; I cannot but feel most anxious for the decision of His Majesty's government on them, by which a further protraction of my absence from Canada may be prevented; and I beg leave respectfully to represent, that unless speedily released from my attendance here, I cannot expect to reach Quebec, in time to avoid the loss referred to, in my letter abovementioned. The nature and extent of this loss will be appreciated, when I mention, that from the 1st February to the 1st May, in each year, there is held, without any interval between them, a succession of Courts, civil and criminal, in Lower Canada, in all of which I practise professionally and officially; and the amount of income which I have been in the habit of deriving from them, annually, has not been less than from fourteen to fifteen hundred pounds. A very large addition, therefore, to the pecuniary loss, consequent on the proceedings of the Assembly, will be entailed on me, unless I have it in my power to discharge my duties, as usual, in these several courts. From your Lordship's well-known sense of justice, and the assurance already kindly given by your Lordship; I persuade myself, that the considerations, to which I have adverted, will operate in inducing your Lordship to expedite, as much as circumstances may permit, the decision which I respectfully solicit.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

The Right Hon. LORD VISCOUNT GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 10. (10.)

Letter from JAMES STUART, Esq., to Lord Viscount HOWICK.

London, 30, George-street, Hanover-square, 14th December, 1831.

MY LORD,

Sustaining as I do great and increasing injury and loss, from the proceedings of the Assembly of Lower Canada against me, and the consequent interruption of my pursuits and business; your Lordship cannot be surprised, that I should evince great anxiety for the early

decision of His Majesty's government on this subject; and will, I am persuaded, excuse me, for endeavouring to obviate the causes of unnecessary delay, in obtaining it. In the conversation with which I was honoured by your Lordship, on Thursday last; I learnt that Mr. Viger, the agent of the Assembly, has not yet completed his reply to the statements I have had the honour to submit to His Majesty's government, in justification of myself; and that, for this reason, a determination on the subject is necessarily delayed. As the circumstances, under which Mr. Viger's omission to complete his reply is still persisted in, occurred before a recent arrangement in the Colonial Office, and may not, therefore, be distinctly known to your Lordship, I beg leave to state them.—The papers containing my answer to the charges of the Assembly were delivered, early in August last, and, I presume, must have reached Mr. Viger's hands, about the middle of that month. So that a period of about four months has elapsed, since the agent of the Assembly was required, and had it in his power, to furnish his reply to my answer to their charges. Adverting to the nature of the subject, I am justified, I think, in stating that a few days would suffice, for preparing the reply in question; and that the delay, already allowed for this purpose, greatly exceeds what could be deemed necessary. With respect to the statements, contained in my letter to Lord Viscount Goderich, of the 22d October last, to which also a reply is expected from Mr. Viger, any unnecessary delay in furnishing such reply is, I apprehend, the more unreasonable; as the communication of these statements to Mr. Viger has been an exercise of courtesy, and could not be claimed by him, as a right. Under these circumstances, therefore, I hope I shall be deemed excusable, in respectfully entreating that the decision of His Majesty's government, on the subject referred to, may not be longer delayed, from the omission of Mr. Viger to furnish any papers respecting it. My situation is altogether peculiar; and is, I presume to think, deserving of the early favourable consideration of His Majesty's government. The charges, to which I have been subjected, have originated in the meritorious and strictly regular and proper discharge of public duty; entitling me not only to justice, but to protection. On these charges, I have been suspended from office, compelled to relinquish a lucrative professional practice, and have been abruptly deprived of an annual income of from four to five thousand pounds. The difficulty of regaining the professional advantages, of which I was possessed, will be augmented, by a prolonged absence; and the injury and loss, of which I have to complain, will, from this and other causes, become more aggravated, the longer the decision of His Majesty's government may be postponed. These circumstances cannot be deemed undeserving of attention.

I have the honour to be,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

Lord Viscount HOWICK,
&c. &c. &c.

True Copy, J. STUART.

No. 11. (11.)

Letter from Lord Viscount HOWICK, Under Secretary of State, to JAMES STUART, Esq.

Downing Street, 17th December, 1831.

SIR,

I have received and laid before Viscount Goderich your letter addressed to me, of the 15th instant. His Lordship directs me to assure you of the very sincere concern, with which he regards your detention in this country, and the loss and inconvenience to which you have been subjected. I have, by his Lordship's direction, called upon Mr. Viger, to state what is the latest period, to which he desires to postpone the completion of his papers. When Lord Goderich shall be in possession of that information, he will be able to determine what course it becomes him to pursue, on this very embarrassing occasion.

I am, Sir,

your most obedient servant,

(Signed) HOWICK.

To J. STUART, Esquire.

True Copy, J. STUART.

No. 12. (12.)

*Letter from Lord Viscount HOWICK, to JAMES STUART, Esq.**Downing Street, 9th January, 1832.*

SIR,

I am directed by Viscount Goderich, to acquaint you, in reference to my letter of the 17th ultimo, that, by his Lordship's desire, I have entered into a correspondence, with Mr. Viger, with the view of urging that gentleman, to the completion, with the least possible delay, of the task which he has undertaken, and, in order to ascertain, within what time, it will probably be completed. I am now to apprise you, that Lord Goderich finds, with extreme regret, that the termination of Mr. Viger's labours cannot be expected, for some weeks to come; and that that gentleman is unable to state, with any degree of precision, when they will be brought to a conclusion.

It has not been, without considerable difficulty, that Lord Goderich has decided what course it is necessary to pursue, under these circumstances. On the one hand, the respect due to the House of Assembly of Lower Canada requires, that the most ample opportunity should be afforded to their agent, for vindicating the measures, which Lord Aylmer adopted, at their instance, and in deference to their wishes and judgment. No decision, which His Majesty might pronounce, upon the questions in debate, would bring them to a satisfactory close, if any plausible ground should remain for the complaint, that the discussion had been terminated abruptly, without a full hearing of whatever either of the parties might have to offer. On the other hand, Lord Goderich is very sensible of the extent of the inconvenience to which you are exposed, and to the severity of the pecuniary loss, in which you are involved, by a continued absence from Lower Canada. Nor can his Lordship forget that, up to this moment, no opportunity has been afforded to you, for bringing your vindication, under the notice either of His Majesty, or of the Governor of the Province, or of the House of Assembly; and that you are, therefore, entitled to the full benefit of the presumption, which the law establishes, in favour of the innocence of every man, who has not been convicted of misconduct, upon a full hearing of his defence.

It is, therefore, not without great reluctance, that Lord Goderich directs me to announce to you, that until Mr. Viger shall have completed his promised reply to the documents which you have transmitted to his office, his Lordship must suspend his own investigation of the case, and must postpone the advice, which it will ultimately be his duty to tender to His Majesty, respecting it. If, indeed, it were possible to suppose a gentleman, entrusted by the House of Assembly of Lower Canada, with such a commission as that which they have confided to Mr. Viger, capable of resorting to affected delays, in such a case as the present, it would become the duty of His Majesty's Government, to frustrate any such unworthy purpose, by the most decisive measures. But as such a supposition could not be entertained, except upon the most clear and incontestable grounds; so it is due to Mr. Viger to say, that there is no cause whatever to attribute the dilatoriness of his proceedings, to any unfair or disingenuous motives.

Lord Goderich has deemed it right, thus explicitly to communicate to you the present state of this affair, in order that you may be able the more clearly to decide what are those arrangements which, under all the circumstances of the case, it will be most desirable for you to make, with a view to your own personal convenience.

I have the honour to be, Sir,

your most obedient humble servant,

(Signed) HOWICK.

To JAMES STUART, Esquire.

True Copy, J. STUART.

No. 13. (13.)

*Letter from JAMES STUART, Esq., to the Right Hon. Lord Viscount GODERICH.**London, 30 George-street, Hanover-square, 29th March, 1832.*

MY LORD,

I beg leave to bring under your Lordship's notice, part of an answer which, it appears, was lately given by His Excellency, Lord Aylmer, Governor in Chief of Lower Canada, to an Address of the Assembly of that Province, praying for the suspension of Mr. Justice Kerr,

from the office of one of the Judges of His Majesty's Court of King's Bench, for the district of Quebec. The part of His Excellency's answer, to which your Lordship's attention is respectfully solicited, and which has occasioned, to me, both surprise and pain, is expressed in the following words:—"In the course of last session, an Address was presented to me, by the House of Assembly, praying that I would suspend, from the exercise of his functions, one of the great law officers of the Crown, until the pleasure of His Majesty should be known, regarding a Petition from the House, praying for his dismissal from office. After due deliberation, I complied with the wish of the House; and, since that time, the reflection of each succeeding day has but served to establish more firmly, in my mind, the conviction of the expediency and justice of the course adopted by me on that occasion."

It is evident that His Excellency, in adverting to the suspension of "one of the great law officers of the Crown," on an address of the Assembly, means to refer to my suspension from the office of His Majesty's Attorney General, under His Excellency's order of the 28th March last. Having had the honour of submitting to your Lordship's consideration, by my Memorial of the 18th April last, the grounds of complaint which, it appeared to me, under the circumstances of the case, had been afforded, by that exercise of power, on the part of His Excellency; I have since, in all humility, waited the signification of your Lordship's decision on the subject, and have remained under the persuasion that, when deemed fit by your Lordship, it would be communicated to me. In the mean time, and until your Lordship's decision might be given, I had reason, I think, to expect that His Excellency, Lord Aylmer, would have abstained from the mention of my suspension, in the terms used by his Excellency, in his answer above mentioned; from which, proceeding from so high an authority within the the Colony, inferences to my prejudice, may, and, there is reason to believe, will be drawn.

It is the more painful to me, that such language should have been used by His Excellency, after the lapse of nearly a year from his order of suspension,—after the facts of the case must have become more accurately known to him,—and while the subject of complaint, occasioned by that measure, is still under your Lordship's consideration; as my endeavours, at great loss and expense, to obtain a determination on the charges of the Assembly, which are now in train of investigation, have been unremitting; and I cannot but humbly entertain the hope, that the circumstance, now brought under your Lordship's notice, may have some influence, in hastening the affair to a conclusion.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

Right Hon. LORD VISCOUNT GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 14. (14.)

Letter from Lord Viscount HOWICK, to JAMES STUART, Esq.

Downing-street, 3d April, 1832.

SIR,

I HAVE received the directions of Viscount Goderich to acknowledge the receipt of your letter of the 29th ultimo, on the subject of the Address which the Governor-general of Lower Canada is reported, in the Montreal Gazette newspaper, of the 23d February last, to have made to the Assembly of that province. If reliance may be placed on the accuracy of this report, Lord Goderich does not scruple to avow his opinion, that it was ill-advised; and I am to acquaint you that his Lordship has communicated that opinion to Lord Aylmer.

I am, Sir,

your most obedient humble servant,

(Signed) HOWICK.

JAMES STUART, Esquire.

True Copy, J. STUART.

No 15. (15.)

Copy of a Letter from JAMES STUART, Esq., to the Right Honourable Lord Viscount GODERICH.

London, 30, George-street, Hanover-square, 16th April, 1832.

MY LORD,

IN consequence of the intimation contained in Lord Howick's letter, of the 9th January last, of the considerations which influenced your Lordship, in allowing further time, for the completion of Mr. Viger's papers; I willingly submitted to the unexpected protraction (however injurious to me) of the affair on which Mr. Viger's labours are employed. But I had, I confess, entertained the confident expectation, that a few weeks would have more than sufficed, for perfecting every additional written communication, which Mr. Viger might deem necessary, on the subject. It is under the feeling of painful disappointment, therefore, that I find myself constrained, to represent to your Lordship, that, after the lapse of three months, from the date of Lord Howick's letter, Mr. Viger's papers still continue unfinished, and in progress only towards completion; without any prospect being afforded of their termination, from the spontaneous act of Mr. Viger himself. In one of his last communications, he does, indeed, state, "*qu'il est déjà avancé dans son travail.*" But if, as these words seem to import, at this late period, and after the copious observations he has already furnished, he has, in his own opinion, only made some progress in his work, the period of its conclusion must indeed be deemed far distant, and cannot be easily calculated. With this indefinite continuance of delay in prospect, which to me is absolutely ruinous; I hope I shall be deemed justified, in respectfully submitting, to your Lordship, some considerations; which, it appears to me, on the score of reason and justice, would require, that it should not be further extended. The grounds of complaint, or the charges, on which my suspension and dismissal from office have been prayed for, by the Assembly, your Lordship will permit me to observe, are to be found in the Address to His Majesty, of the 21st March, 1831. No other charges whatever have been preferred by, or are to be considered as having proceeded from, the Assembly; and it is these charges, only, that Mr. Viger has been deputed to sustain. It is true, that the Governor of the Colony has transmitted, to your Lordship, certain Reports of a Committee of the Assembly, in which my conduct is inculpated. But these Reports have not the character of charges of the Assembly; and though it was incumbent on me to submit, to His Majesty's Government, satisfactory explanations, by which I might stand justified, in its opinion, in relation to the animadversions and censure conveyed in that form; these Reports, nevertheless, are not, I apprehend, to be confounded with, or treated as, charges of the Assembly. Now, your Lordship will permit me to state, that Mr. Viger's Observations, in support of the charges of the Assembly, and in answer to my Petition and Memoir, would seem to have been completed on the 29th November last, in a written communication, styled "Supplementary Observations," &c., so that, at that period, the case of the Assembly, on their charges and address to His Majesty, for my dismissal from office, would seem to have been perfected, and to have been then susceptible, in what respects the accusing party, of a decision. The copious statements and arguments, which have since proceeded from Mr. Viger, from time to time, have been foreign to the "charges" of the Assembly; and have related to the Reports of a Committee of the Assembly, and a multitude of other topics, which Mr. Viger has, I conceive, improperly mixed up with them. My suspension from office, by the Governor of the Colony, at the instance of the Assembly, occurred before the Reports were laid before him, and that measure was adopted, without reference to them; my dismissal from office, also, was prayed for, on certain specified grounds, before these documents came to the hands of His Excellency. It is not, therefore, I conceive, reasonable or just, that Mr. Viger should be permitted, to delay longer the determination of His Majesty's Government, on the Charges and Address of the Assembly; on the ground that he has further statements to make, in relation to the Reports above-mentioned. If this be permitted, the ruinous effects of a suspension from office, amounting to severe punishment, will be made to operate on me, on grounds which did not influence the adoption of that measure,—which are foreign to it,—which are merely the suggestions of a Committee of the Assembly,—and which ought to have been made the subject of specific charges by the Assembly itself, if they were deemed sufficient, to justify suspension, or dismissal from office. I shall, in effect, not only, on what are called the charges of the Assembly, be punished, before conviction, and while I am entitled to the benefit of the presumption of innocence; but I shall even be thus punished, without any charge at all against me, on the ground merely of the animadversions and censure of a Committee of the Assembly. As Mr. Viger's present labours do not, therefore, strictly fall within the limits of his mission, and are employed on subjects foreign to the causes for which my suspension and dismissal from office were prayed for; I should hope the determination of His Majesty's Government, on these points, may not be longer delayed, in consideration of the unfinished state of Mr. Viger's communications, on the Reports of a Committee of the Assembly. In what respects the latter subject, I would also beg leave to state, that nearly six months have elapsed, since Mr. Viger received communication of my letter to your Lordship, of the 22nd October last, containing my answer to these Reports; in the course of which period, ample time has been afforded, for an interchange of communications between Mr. Viger and his constituents; so that there would not appear to be any

the slightest pretext for further delay, in bringing Mr. Viger's observations, even on this latter subject, to a conclusion. In consequence of my suspension from office, I have already sustained an interruption of my business and pursuits for upwards of twelve months, and have been absent from my home, during nearly the same period : from day to day, the injury inflicted by that measure is becoming greater ; a large income, of which I was in the receipt, has not only been extinguished ; but the professional sources also, from which it was in part derived, have been, and continue to be, transferred to other hands, from which they will not be regained. The position of Mr. Viger, in what respects delay, I need not observe, is very different ; his sources of income are not diminished, but increased, by his absence from Canada. He may, therefore, in perfect complacency of temper, consume months, in composing " Observations ;" for which, it is impossible not to conceive, a few days might suffice.

On these grounds, I respectfully appeal to the justice of your Lordship, for the speedy termination of this affair, which has already occasioned me so much injury ; the amount of which will be greatly aggravated, by further delay.

I must beg leave to take this opportunity of stating to your Lordship, that, in perusing the papers of Mr. Viger, I have remarked, with surprise, that Mr. Viger has not only indulged in groundless personal reflections, from which he ought to have abstained ; but has made allegations, injurious to my character, which are foreign to the heads of alleged complaint, and wholly without foundation. I have not hitherto repelled these allegations, from an apprehension that, in doing so, I might contribute to prolong the discussions, in which they are found. But I beg your Lordship, at this moment, to receive my assurance, that the allegations referred to are wholly untrue ; and, in justice to myself, as well as to the honourable service in which I have been engaged, I shall hope to be permitted, at a fit time, to rescue my character, from the new imputations, which Mr. Viger has thus attempted to fasten on it.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

True Copy, J. STUART.

No. 16. (16.)

Letter from JAMES STUART, Esq., to Lord Viscount HOWICK.

London, 30, George-street, Hanover-square, 4th May, 1832.

MY LORD,

In the interview with which I was honoured, by your Lordship, some days since, I had the honour of representing, to your Lordship, the great additional pecuniary loss I should sustain, from longer detention in this country ; and also suggested a course which it appeared to me might be taken, to relieve me from the increasing hardship of my situation. I beg leave briefly to state, in substance, in this form, the particular considerations, which I then, verbally, submitted to your Lordship. Upon the first of these points, I had the honour of representing, that from the latter end of August, till the 20th November, there is a succession of criminal and civil courts held in Lower Canada, in all of which I practise, and from which a large portion of my income is derived. To enable me to avail myself of the benefit of these courts, it would be necessary that I should reach Canada, in the early part of August ; and, for this purpose, my departure from this country ought to take place, about the middle of June. If deprived of the official and professional emoluments supplied by these courts, I shall incur a loss similar to that which, in my letters to Mr. Hay, of the 25th August and 6th December last, I had the honour of representing, would be sustained by me, if not enabled to return to Canada, in time to avail myself of the terms of the same courts, held in February, March, and April ; that is, a loss of from fourteen to fifteen hundred pounds.

Upon the second point, I had the honour of representing to your Lordship, that Mr. Viger's " Observations," relating to the charges of the Assembly of Lower Canada, were completed on the 29th day of November last ; and, therefore, so far as my suspension and dismissal from office are in question, it has been competent to His Majesty's Government,

from that period hitherto, to decide on those charges, and thus determine the subject, which has brought me to this country, and still detains me here. With respect to the first and third Reports of the Committee of Grievances, as they are called, the matters therein contained, as stated in my letter to Lord Viscount Goderich, of the 16th April last, do not constitute charges of the Assembly, and are, moreover, foreign to the address of the 21st March, 1831, praying for my suspension and dismissal from office. On these grounds, I had the honour of submitting to your Lordship, that it appeared to me, that the further protraction of this affair, to my very great injury, if not ruin, might be obviated; by requiring Mr. Viger, to complete, forthwith, his Observations relating to the Reports above-mentioned, and by intimating to him, that, in default of his doing so, His Majesty's Government would proceed to determine on the charges of the Assembly, separately and apart from the subject matter of these Reports. If this course were adopted, I should no longer be subjected to ruinous injury, of the nature of punishment, on the mere reports of a Committee of the Assembly, and should be indifferent as to the delay, which Mr. Viger might still require, for the completion of his labours, in what respects these Reports:—he might, indeed, with my entire acquiescence, take his own time, however much extended, for the accomplishment of this purpose. The reasonableness of this suggestion appears to me so plain and evident, that I cannot but think it will be deemed deserving of favourable attention; and, under this conviction, I beg leave respectfully to renew it.

I have the honour to be,

my Lord,

your Lordship's most humble obedient servant,

(Signed) J. STUART.

LORD VISCOUNT HOWICK,
&c. &c. &c.

True Copy, J. STUART.

No. 17. (17.)

Letter from JAMES STUART, Esq., to the Right Hon. Lord Viscount GODERICH.

London, 30, George-street, Hanover-square, 18th May, 1832.

MY LORD,

In a letter addressed to your Lordship on the 16th April last, and also in a letter of the 4th instant to Lord Howick, I had the honour of submitting considerations to your Lordship, which, in my humble apprehension, entitle me, as a matter of plain and evident right, to obtain, without further delay, at the instance of Mr. Viger, the determination of His Majesty's government, on the charges of the Assembly of Lower Canada, by reason of which I still labour under suspension from office, and the ruinous injury and loss, which have been consequent on that measure. Though most anxious to avoid giving trouble, unnecessarily; I may, I hope, in the situation of peculiar hardship in which I am placed, be permitted to solicit your Lordship's early attention, to the statements contained in my letters now referred to; and to request to be informed, whether there is any subsisting impediment, which prevents a determination on the charges of the Assembly, specified in their address to His Majesty of the 21st March, 1831, and mentioned in my petition to His Majesty of the 6th August last, transmitted to, and now in the hands of, your Lordship.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

The Right Hon. Lord Viscount GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 18. (18.)

Letter from JAMES STUART, Esq., to the Right Hon. Lord Viscount GODERICH.

London, 16, Woburn-place, 8th June, 1832.

MY LORD,

It was with infinite satisfaction that I learnt, a few days since, that Mr. Viger had, on the 19th May last, completed his labours, by delivering to your Lordship, on that day, the conclusion of his written communications, on the first and third reports of a committee, called a Committee of Grievances, of the Assembly of Lower Canada. By the long-expected termination of Mr. Viger's papers on this subject, the suggestion, pressed on your Lordship's attention, in my letters of the 16th April, and 4th and 18th May last has ceased to have an object; and all the alleged matters of complaint, on which Mr. Viger's attention has been so long and so laboriously employed, I rejoice to find, may now, without any disjoinder of them, receive a determination, at one and the same time. Adverting to the assurances which your Lordship, in Mr. Hay's letter of the 26th August last, and in Lord Howick's letter of the 9th January last, has condescendingly given me, of your Lordship's desire to bring my case to an early decision; I cannot but cherish the hope, that, as the impediment which has hitherto obstructed the accomplishment of your Lordship's desire is now removed, I may have the benefit of a determination on the matters in question, without further delay. Of the pressing personal considerations, which render it urgently expedient, on the score of justice, that I should be enabled to return to Canada, as soon as may be possible, I need say nothing, as they have already been explained, and have been kindly noticed by your Lordship, as having received your attention.

I have the honour to be,

with the greatest respect,

my Lord,

your Lordship's most obedient humble servant,

(Signed) J. STUART.

To the Right Hon. Lord Viscount GODERICH,
&c. &c. &c.

True Copy, J. STUART.

No. 2.

Copy of a Report and Opinion, on the subject of the Militia Laws, by JAMES STUART, Esq., Attorney General of Lower Canada, to His Excellency the Earl of DALHOUSIE, Governor in Chief of that Province, in a Letter to his Secretary.

Quebec, 28th April, 1827.

SIR,

I have been honoured with the commands of His Excellency the Governor in Chief, signified in your letter of the 27th instant, requiring my opinion, whether, upon the expiring of the existing Militia Laws, on the 1st of May next, any other Provincial Law or Ordinance, for the regulation of the militia, will come into operation; and, if not, in what manner that force may then be legally regulated and governed.

In obedience to His Excellency's commands, I have considered the subject which His Excellency has been pleased to refer to me; and am humbly of opinion, that, from and after the first day of May next, two Ordinances of the Governor and Council of the late province of Quebec, for regulating the militia, will, in consequence of the expiration of provincial statutes, by which a temporary repeal of those Ordinances was operated, be revived, and become the subsisting law, under which the militia in this province is to be regulated and governed.

The first of these Ordinances was passed in the 27th year of the reign of his late Majesty, and is entitled "An Ordinance for the better regulating the Militia of this Province, and rendering it of more General Utility towards the Preservation and Security thereof." The second of these Ordinances was passed in the twenty-ninth year of the reign of his late Ma-

jesty, and is entitled, "An Ordinance to Explain and Amend an Act or Ordinance, for the better regulating the Militia of this Province, and rendering it of more General Utility towards the Preservation and Security thereof." Both these Ordinances were passed, without limitation of time for their duration; and were, in their nature, permanent laws.

By the Provincial Statute, 34 Geo. III., c. 4, s. 31, it is enacted, that, from and after the passing of that Act, the Ordinances above referred to shall be repealed. And by the 35th section of the same Act it is enacted, "That *this Act* shall be and continue in force from the passing thereof, until the first day of July, which will be in the year of Our Lord one thousand seven hundred and ninety-six, and no longer." This Statute was continued by the Provincial Statute, 36 Geo. III., c. 11, till the end of the session of the Provincial Parliament, in 1803. By the Provincial Statute, 43 Geo. III., c. 1, other temporary provisions for regulating the militia were made; which were continued, with amendments, by successive Statutes, and expired on the first of May, 1816. By the Provincial Statute, 57 Geo. III., c. 32, the Act of the 43 Geo. III., c. 1, was revived for a limited time; and both these Statutes were subsequently continued, till the first day of May next; when they will expire.

In consequence of the expiration of these temporary Laws, it becomes necessary to consider, whether, by the first of them, that is, the Provincial Statute, 34 Geo. III., c. 4, the then permanent Laws regulating the militia, viz.—the two Ordinances above mentioned, were repealed for ever, or for a time only. From the language of the two clauses of that Statute, above cited, it appears plain to me, that a temporary repeal, only, of the Ordinances in question, was operated by it. Although the terms of repeal, used in the thirty-first section, be general; yet they must, I apprehend, be construed in conjunction with the language of the thirty-fifth and last section of the Act; by which it is declared, "That *this Act* shall be and continue in force from the passing thereof until the first day of July, which will be in the year of Our Lord one thousand seven hundred and ninety-six." The words *this Act*, in the last section here cited, necessarily embrace all the previous provisions of the Statute in question, including the repeal contained in the thirty-first section; to which, under these words, a longer duration cannot be assigned, than to the other clauses of the Act. On this ground, I am humbly of opinion, that the repeal of the Ordinances in question, operated by the last mentioned Statute, was only temporary; and that this Statute, as well as the succeeding temporary Statutes, on the same subject, intended as substitutes for it, being expired; the old permanent provisions of these Ordinances, from and after the first day of May next, will be revived, and possess their former force and efficacy.

I have the honour to be, Sir,

Your most obedient humble servant,

(Signed) J. STUART,
Atty. General.

ANDREW W. COCHRANE, Esq., Secretary,
&c. &c. &c.

True Copy, J. STUART.

LONDON:

DAVISON, SIMMONS, AND CO., WHITEFRIARS.