Passage on board His Majesty's Ship Porpoise—that you will be expected to prepare yourself immediately to Embark on board the Dart.

NICHOLAS BAYLY,
Secretary.

[FF] Governor Bligh to Major Johnston.

Sir, Government House, Sydney, 22nd March, 1808.

As by your Letter of Yesterday You have positively refused me the Command of His Majesty's Ship Porpoise, I have nothing further to observe than as I refuse to go in the Dart I must proceed in the Fox, a Brig belonging to Mr. Campbell.

I am, &c.,
WM. BLIGH.

[GG] Mr. Nicholas Bayly to Governor Bligh.

Sir, Headquarters, Sydney, 22nd March, 1808.

I am Commanded by His Honor the Lieutenant-Governor to inform you, he remarks with the greatest concern that his endeavours to do everything in his power to secure a Comfortable accommodation for you and Your Family on your Passage to England seems to have produced no effect upon your mind.

I am further Commanded to acquaint you that, although you say You "must proceed in the Fox, a Brig belonging to Mr. Campbell," it will not be permitted for reasons that will be explained to His Majesty's Ministers; and that, unless you think proper to take your Passage on board His Majesty's Ship Porpoise on the Conditions that have been explained, You will be required to embark on board the Dart on the 1st April.

N. BAYLY,
Secretary.


Sir, Government House, Sydney, 23rd March, 1808.

I have received your Secretary's Letter of Yesterday's date in which I am informed that, although I said in my Letter to you of the same date I must proceed in the Fox, a Brig belonging to Mr. Campbell, it will not be permitted for reasons that will be explained to His Majesty's Ministers, and that unless I think proper to take my Passage on board His Majesty's Ship Porpoise on the Conditions that have been explained, I shall be required to embark on board the Dart on the 1st of April.

In reply to which I am under the necessity of requesting to be informed if by the word "required" it is meant that I shall be
forced to embark on board the Dart. As you expressed great regret in your Letter of the 19th Instant that none of the Vessels had arrived which I alluded to in mine of the 11th Ultimo, I was induced to propose the Fox, that had just arrived.

I am, &c,
WM. BLIGH.

[II] Mr. Nicholas Bayly to Governor Bligh.

Sir,

I am Commanded by His Honor the Lieutenant-Governor to inform you, in Answer to your Letter of Yesterday's date, that it has been his unceasing Study, ever since you were put in Arrest, to avoid saying or doing anything towards you at which the most scrupulous delicacy could take offence; and that when he caused it to be signified that you would be required to embark on board the Dart, he naturally concluded you must have understood that, if the requisition was not complied with, it would be most certainly enforced.

I am further Commanded to acquaint you that enquiries have been made respecting the Fox, and the result has not removed His Honor's objections to your embarking in that Vessel.

In Answer to your Observations that His Honor had expressed great regret that none of the Vessels had arrived which were alluded to in your Letter of the 11th Ult., I am directed to refer you to that Letter as an Evidence that the Fox cannot be considered as one of the Vessels which you signified was to be expected in the Month. But that you may not be led into an unavailing controversy on Words, I am Commanded distinctly to State again, that you will be expected to embark on board the Dart on the 1st of April, unless you shall prefer taking your Passage in His Majesty's ship Porpoise on the Conditions already proposed.

As the time fixed for the Sailing of the Dart is so short, your immediate answer is expected.

I have, &c,
N. BAYLY,
Secretary.


Sir,

I have to acknowledge the receipt of your Secretary's Letter of this day's date, stating that he is commanded by you to inform me, in Answer to my Letter of Yesterday's date, that it has been Your increasing study, ever since I was put in Arrest, to avoid saying or doing anything towards me at which the most
JOHNSTON TO CASTLEREAGH.

1808.

Recapitulation of Bayly's letter.

11 April.

scrupulous delicacy could take offence; and that when you
caused it to be signified that I should be required to embark on
board the Dart, You Naturally concluded I must have under-
stood that if the requisition was not complied with it would most
certainly be enforced; Also, that he is further Commanded to
acquaint me that enquiries have been made respecting the Fox,
and that the result has not removed Your objections to my em-
arking in that vessel; That in answer to my observation that you
had expressed great regret that none of the Vessels had arrived
which were alluded to in my Letter of the 11th Ultimo, he is
directed to refer me to that Letter as an Evidence that the Fox
cannot be considered as one of the Vessels which I signified was
to be expected in this Month; but that I may not be led into
an unavailing Controversy on Words, he is commanded distinctly
to State again that I shall be expected to embark on board the
Dart on the 1st of April, unless I shall prefer taking my Passage
in His Majesty's Ship Porpoise on the Conditions already pro-
posed, and that as the time fixed for the sailing of the Dart is so
short my immediate answer is expected.

In reply thereto, I therefore acquaint you that the Dart being
the only Vessel offered besides His Majesty's Ship Porpoise, and
having very sufficient and Satisfactory reasons for objecting to
proceed in that vessel, as I shall make appear to His Majesty's
Ministers and my Lords Commissioners of the Admiralty, I do on
that account only agree to take my Passage in His Majesty's Ship
Porpoise, on the Conditions prescribed in your Secretary's Letter
of the 19th Inst.

I am, &c.,

WM. BLIGH.

[KK] Mr. Nicholas Bayly to Governor Bligh.

Sydney, 24th March, 1808.

I AM directed by His Honor the Lieut.-Governor to request infor-

mation of the Names of the Persons you propose to embark with

you on board His Majesty's Ship Porpoise.

I have, &c.,

NICHOLAS BAYLY,

Secretary.


In Answer to Mr. Bayly, your Secretary's, letter to me
this Evening, stating that he was directed by you to request
information of the Names of the persons I propose to embark
with me on board the Porpoise, I have to inform you they are as
follows:—Mr. Atkins, Judge-Advocate; Mr. Campbell, Mr. Palmer, Mr. Arndell, Mr. Williamson, Magistrates; Rever'd Mr. Fulton, Chaplain; Mr. Gore, Provost-Marshal; Mr. Fras. Oakes, Mr. R'd Rouse, Mr. Nichs. Divine, Mr. Andrew Thompson, Mr. Jas. Wiltshire, Mr. Geo. Crossley, George Dowling, and Mr. Edward Griffin, my Secretary.

With respect to Servants, who I acknowledge you offered me in your Message of the 11th Ulto., as well as any Medical Assistance—which is now supplied by my Surgeon of the Porpoise—subject to the Secretary of State's directions, in case it should be necessary, I have to request to be allowed for Mrs. Putland, one Woman Servant—not yet determined on; George Jubb, my Steward—a deserving Person, who has had and continues in the Charge of all my Property; Henry Trotman, Cook and Baker, and John Webb, Convicts.

I am, &c,
WM. BLIGH.

P.S.—Had I gone Home in a private Ship, Mr. O'Connor was the person I should have applied for as Medical Assistant.

[MM] Mr. Nicholas Bayly to Governor Bligh.

Sir,

Sydney, 25th March, 1808.

I am ordered by His Honor the Lieutenant Governor, in reply to your Letter of this date, containing the return of persons you wish to take to England, to refer you to my Letter of the 19th February, and further to acquaint you, as George Crossley, a Convict, is added to the Number named in your letter of the 17th of Feb'y, he shall be allowed to attend you, but as a prisoner, Subject to return to this Colony to serve out what period may remain unexpired of the Sentence he is now suffering under.

The Prisoner Servants You have selected will also have Conditional Emancipations made out, Subject to the approval or disapproval of the Secretary of State.*

I am, &c.,
N. BAYLY,
Secretary.


Sir,

Government House, Sydney, 27th March, 1808.

I have to request you will inform me what Ration of Provision will be allowed to each person who may embark with me on board His Majesty's Ship Porpoise.

I am, &c,
WM. BLIGH.

* Note 73.
Governor Bligh to Major Johnston.

Sir, Government House, Sydney, 28th March, 1808.

In order that proper arrangement may be made for my accommodation in His Majesty's Ship Porpoise, both in my Cabin, State Room and Store Room, in order to receive my Stores and Necessaries; I have to request, you will allow me communication with her, or the Carpenter to come to me to receive directions what to do.

I am, &c.,
WM. BLIGH.

In Consequence of the foregoing Letter the Carpenter was sent to Governor Bligh.

Governor Bligh to Major Johnston.

Sir, Government House, Sydney, 28th March, 1808.

I have to request to be informed when I may expect all the Books and papers, public and private, which were taken from me by a Committee appointed by you for that purpose, on the 28th January, and of which an Account was taken, will be returned to me (excepting the Public Registers and Indents of Prisoners); also my Commission as Governor of His Majesty's Territory of New South Wales and its dependencies, and that of Vice-Admiral of the same.

I am, &c.,
WM. BLIGH.

Mr. Nicholas Bayly to Governor Bligh.

Sydney, 29th March, 1808.

I am directed by His Honor the Lieut. Governor to inform you, Sir, that the delay of an Answer to your Letter of the 27th and your two Letters of the 28th has been occasioned by some difficulties that have arisen respecting your Accommodation on board His Majesty's Ship Porpoise, and which his Honor laments he has not been able to settle as he could have wished. A Copy of this Correspondence is now preparing and will be sent to you as soon as possible with Specific Answers to the Several points on which you have required information in your three Letters.

I am, &c.,
N. BAYLY, Secy.

Mr. Nicholas Bayly to Governor Bligh.

Sir, 29th March, 1808.

I am Ordered by His Honor the Lieutenant-Governor to inform you, in reply to your three Letters of the 27th and 28th Inst., that he proposes to victual the persons who may attend you
1808.
11 April.

The carpenter to wait on Bligh for orders.

W. Moore, the Master Carpenter, has had orders to attend you to receive your instructions for fitting up your accommodations on board His Majesty's Ship Porpoise in any manner you may like, and the accompanying correspondence will explain how much the Lieutenant-Governor has endeavoured to obtain the whole Cabin for your Use.

Such Books and papers as the Lieut.-Governor does not consider it needful to retain will be sent to you on Friday Morning.

I have, &c.,

NICHOLAS BAYLY,
Secretary.


Sir, 25th March, 1808.

You will herewith receive the Copies of a Correspondence which has been held with the late Governor, William Bligh, Esq., relative to his return to England. From that Correspondence you will learn that he has voluntarily Chosen to take his Passage on board His Majesty's Ship Porpoise, now under your Command, in preference to taking his Passage in the Ship Dart. This has been acceded to by me, on the express conditions that he shall enter into a Solemn Engagement, on his Word of Honor as an Officer, that he will not attempt to assume any Command, and that he will consider himself in Arrest until His Majesty's pleasure shall be signified respecting his late supercession.

The necessity of making this arrangement for the return of the late Governor to England will also be explained by the accompanying Letters; it is, therefore, only requisite for me now to represent to you that the good of His Majesty's Service requires he should immediately leave this Colony, and to request that you will, on that Consideration, be pleased to receive him and his Family on board the Porpoise.

A return of the persons the late Governor may intend to take with him shall be immediately procured, and be transmitted to you, that you may make arrangements for his and their comfortable Accommodation.

Whatever assistance you may require for the Speedy equipment of His Majesty's Ship shall be directly supplied; and my
own knowledge of your zeal and past Active exertions in forwarding
the Public Service, leaves me without doubt that you will be
ready for Sea in a Week.

I am, &c,

GEO. JOHNSTON.

[TT] Lieutenant Symons to Major Johnston.

His Majesty's ship Porpoise,
Sydney Cove, 26th March, 1808.

In answer to your Letter of Yesterday's date, requesting
me to receive Capt'n Bligh on board His Majesty's Ship Porpoise,
I have to inform you that I am at any time ready to receive
him; and I must again repeat that on Capt'n Bligh's coming on
board His Majesty's Ship Porpoise I must receive his Orders,
and will give up half the Accommodation appropriated for the
Commander, any other comfortable accommodations for Passen-
gers will be impossible, as the Nature of the Service will not
allow any alteration of her Cabins.

I further beg leave to inform you, If the Weather is favour-
able, and with every exertion, the Ship may be got ready for a
voyage to England in fourteen days. I have, &c,

J. SYMONS.


Sir, Headquarters, Sydney, 26th March, 1808.

I have the honor to acknowledge the receipt of your letter
of this day's date in Answer to my Application to you to receive
W'm Bligh, Esq., and his Family on board His M. Ship Porpoise.

If you refer to the Conditions on which he is permitted to take
his Passage in His Majesty's Ship, I think no doubt can be enter-
tained of so Solemn an engagement being rigidly observed by any
Officer who holds the Ship's Commission, should it, however,
prove otherwise, I conceive you can be Subject to no responsi-
bility if you conform in every respect to the rules and regulations
of your own Service, of which, as I have no competent knowledge,
I do not presume to offer an Opinion.

You will receive with this a return of the persons named by
the late Governor to accompany him to England, and I earnestly
recommend that you will make every arrangement in your Power
for their accommodation. I have also to request you will have the
goodness to allot a Cabin for Lieut. Minchin, who goes Home
with my despatches. I beg leave to repeat that whatever assist-
ance you may require in getting ready for Sea shall be instantly
supplied, and I sincerely hope you will be ready within the time
you have Specified.

GEO. JOHNSTON.
Lieutenant Symons to Major Johnston.

His Majesty’s ship Porpoise,
Sydney Cove, 26th March, 1808.

Sir,

I have to acknowledge the receipt of your Letter of this date, inclosing a list of Passengers required by Captain Bligh to be accommodated on board His Majesty’s Ship Porpoise. I have already intimated my readiness to divide the Apartments allotted for the Commander of that Ship with Capt’n Bligh, and I shall be enabled to furnish Three Cabins, one of which I will appropriate for Lieut. Minchin; but any other accommodations for Officers, Gentlemen, or Families will be totally out of my Power.

I must request to be furnished with Carpenter and the Materials to fit up Captain Bligh’s Cabin in the way he may wish.

I have, &c.,

J. SYMONS.

Major Johnston to Lieutenant Symons.

Sir, 27th March, 1808.

Request for explanation of Symons’ letter.

I beg to be informed whether I am to understand by your Letter of Yesterday’s date that you cannot receive any persons on board His Majesty’s Ship Porpoise except such as can be accommodated in the Apartments You propose to allot for the use of the late Governor, and in the Cabins (three) which you say you will be enabled to furnish.

If you will have the goodness to make a regular demand for the Mechanics and the different Materials you may want it shall be immediately complied with.

GEO. JOHNSTON.

Lieutenant Symons to Major Johnston.

His Majesty’s Ship Porpoise,
Sydney Cove, 27th March, 1808.

Sir,

In Answer to your Letter of this day’s date, I meant to inform you in my Letter of Yesterday’s date that there cannot Possibly be any accommodations but the half of the Commander’s Cabin, and three Cabins before the Gun-Room that are Comfortable for Gentlemen; but I can receive about twenty or thirty other persons to hang their hammocks amongst the Ship Company.

I have to request the Master Carpenter may be sent on board H.M.S. Porpoise, and I will point out the Spaces that can be Spared to erect the three Cabins, and every Assistance shall be given on my part to forward your wishes. A Circumstance
occurred yesterday of the Master being taken out of the Ship for debt, should he be unable, from that circumstance, not to proceed on the voyage, there will be another Spare Cabin; and I will endeavour to manage Matters that the Midshipman may mess with the Warrant Officers, which, if I should be able to accomplish, will enable me to make accommod’ for another Gentleman. I have, &c.,

J. SYMONS.


Sir, Headquarters, Sydney, 27th March, 1808.

I have ordered Mr. Moore, the Master Carpenter, to attend you to-morrow morning at daylight, or at any other hour you may think proper to appoint, for the purpose of making the Space that you propose to allot for the late Governor and his Family, and for Lieut’t Minchin, on board His Majesty’s Ship Porpoise. But before you come to a final determination upon the Subject, permit me to express my regret that no more than one-half the Commander’s Cabin can be given up; and to recommend that you will have the goodness to consider whether it may not be practicable to make some arrangement which may enable you to give the late Gov’r more than one-half the Cabin for himself and his Daughter.

I am, &c.,

GEO. JOHNSTON.


Sir, Headquarters, Sydney, 29th March, 1808.

I have to request you will have the goodness to send me an Official Answer to my last Letter respecting the Accommodation of the late Governor. Permit me, at the same time, to recommend to your Consideration whether it might not be a pleasing circumstance to His Majesty’s Government in England if you were to offer the whole Cabin.

I am, &c.,

GEO. JOHNSTON.

[AAA] Lieutenant Symons to Major Johnston.

His Majesty’s Ship Porpoise, Sydney Cove, 29th March, 1808.

I should have answered your official Letter of 27th had I conceived it required one, but I had previously determined to allot two-thirds instead of half the Cabin of the Porpoise for Capt’n Bligh’s accommodations, and I have given such directions to the Master-Carpenter; and it is not consistent with the nature
of the Service for me to dispossess any of the other Officers of their Appartments, which must be the Case if I give up my own altogether.

J. SYMONS.

Bligh's claim to entire use of commander's cabin.


Sir,

Government House, Sydney, 29th March, 1808.

I have received your Letter of this day's date with a Copy of the Correspondence You have had with Acting Lieutenant James Symons for the Accommodation to be made commodious according to my Rank and Station the Cabin to be for my entire use—I observe how much you are anxious that this should be done, and Agreeable to your Orders Mr. Moore the Master Carpenter will call on me to Morrow by which means every thing will be easily regulated; but Lieutenant Symons can have no part of my Cabin.

I will be answerable for the quantity of Provisions at whole Allowance for the Passengers who may accompany me.

I am, &c.,

WM. BLIGH.

In Consequence of the foregoing Letter Mr. Moore the Master Carpenter waited on Governor Bligh.


Sir,

Government House, Sydney, 29th March, 1808.

I am under an Arrest by your Orders, with further injunctions that if I communicate with the Officers of His Majesty's Ship Porpoise, it will be considered as a Breach of the said Arrest. The Lady Nelson is now arrived with Lieutenant Kent. I therefore, under the Authority of the Naval Commissions I hold, Inclose to you a Letter to Lieutenant Kent, who is the legal First Lieutenant of the Porpoise, which Letter I request, in the name of My Lords Commissioners of the Admiralty, may be delivered, it containing my Warrant to him to command His Majesty's Ship Porpoise.

I am, &c.,

WM. BLIGH.

[DDD] Mr. Nicholas Bayly to Governor Bligh.

Sydney, 30th March, 1808.

I am directed by His Honor the Lieutenant-Governor to wait upon you, Sir, and acquaint you that after considering your Letter of this day's date (inclosing an Order to Lieutenant Wm Kent to take upon himself the command of His Majesty's Ship
JOHNSTON TO CASTLEREAGH.

1808.

11 April.

Conditions imposed on the transmission of Bligh's orders to Kent.

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Porpoise) that His Honor will cause that Order to be forwarded to Lieutenant Kent provided you think it proper to subscribe the following Conditions:—

First: that you will not hereafter attempt to plead your hav’g been permitted to give Lieut’t Kent an Order to assume the Command of His Majesty’s Ship Porpoise as a Precedent which can justify you in giving any future Orders respecting His Majesty’s Ship until His Majesty’s Pleasure shall be known.

Secondly: That you will write to Lieutenant Kent a Letter (to be transmitted to him by His Honor the Lieutenant-Governor) wherein you shall pledge your Word of Honor as an Officer that you will not, after your embarkation on board His Majesty’s Ship Porpoise, assume any Command or consider yourself in the said Ship otherwise than as a Passenger, Subject to the restraint of the Military Arrest in which you have been placed by His Honor the Lieutenant-Governor.

Nicholas Bayly,
Secretary.


Sir, Government House, Sydney, 30th March, 1808.

I have received your written Message by Your Secretary, Mr. Bayly, of this day’s date. My Zeal for the Public Service, and a point of Honor to you, Sir, induced me to send Lieut. Kent’s Commission as Commander of His Majesty’s Ship the Porpoise to your Care, to be transmitted to him. I also inform you I cannot enter into any further Conditions than I have already agreed to.

I am, &c.,
WM. BLIGH.

[FFF] Mr. Nicholas Bayly to Governor Bligh.

Sydney, 30th March, 1808.

His Honor the Lieutenant-Governor desires that you may be apprised of His Intentions as early as possible, has directed me to wait upon you for the purpose of communicating that he has determined on your taking your Passage to England in the Dart, the reasons for which will be fully explained to you to-Morrow Morning.

N. BAYLY,
Secretary.

[GGG] Mr. Nicholas Bayly to Governor Bligh.

Sir, Sydney, 31st March, 1808.

I am directed by His Honor the Lieutenant Governor to acquaint you, in explanation to the reasons that have made him
1808.
11 April.

Reasons for compelling Bligh to sail in the Dart.

determined to send you to England in the Ship Dart, that he conceives your refusal to sign the Conditions communicated to you in my Message of Yesterday as a Clear indication that you must have it in contemplation to evade or disregard the obligation imposed on you in my Letter of the 19th Inst. as follows:—

"You will be convinced that there are insuperable objections to your going on board the Porpoise unless at your own particular request, and under a Solemn engagement, on your Word of Honor as an Officer, that you will not attempt to assume any Command, and that you will consider yourself in Arrest until His Majesty’s Pleasure shall be signified on your Supersession. On those Conditions being acquiesced in, the Lieutenant-Governor has commanded me to inform you that a requisition shall be made to Capt. Symons to receive you and your Family on board, and to proceed to England,”—which Obligation you have absolutely pledged yourself to conform to in your Letter of the 24th, wherein you State that “the Dart being the only Vessel offered besides His Majesty’s Ship Porpoise, and having very Sufficient and Satisfactory reasons for objecting to proceed in that Vessel, as I shall make appear to His Majesty's Ministers and My Lords Commissioners of the Admiralty, I do, on that Account only, agree to take my Passage in His Majesty's Ship Porpoise on the Conditions prescribed by you in your Secretary’s letter of the 19th Inst.”

His Honor is further confirmed in his Opinion of your intentions from my relation of the Conversation I had the honor to hold with you last night, wherein, no doubt, you will recollect you declared in the most pointed manner that you would take the Command of the Porpoise as soon as you went on board. In communicating this Conversation to the Lieutenant-Governor I did not omit to repeat the Arguments you urged in defence of the resolution you had formed; but the Lieutenant-Governor, so far from being convinced by those Arguments, is decidedly of Opinion that no obligation can be so binding on an Officer as his Parole of Honor, and that any attempt to evade such a Pledge is disgraceful to the Party and degrading to His Majesty’s Service.

I am further directed to express the Lieutenant-Governor’s deep concern at being obliged to make such remarks upon any part of the Conduct of an Officer so circumstanced as Yourself, and that nothing but a desire to prevent his own intentions from being misrepresented could have induced him to enter into this Explanation.

I have, &c.,

NICH. BAYLY,
Secretary.
Governor Bligh to Major Johnston.

Sir,

Government House, Sydney, 31st March, 1808.

I have this day rece'd a letter from your Secretary, Mr. Bayly, stating it to be written by your directions as an explanation of the reasons that have made you determine to send me to England in the Ship Dart, which shall be duly presented to His Majesty's Ministers. The language he has been pleased to use is not that which will be Justified, and it is peculiarly to be noticed under my present Situation, while it is necessary to say your reasoning is wrong and not founded on the whole of the Case.

My letter of last night informed you that I could not enter into any further Conditions than I had before agreed to, those I still pledge myself to abide by, and the Letters respecting which will speak for themselves; but last night Mr. Bayly seemed to have such doubt that I declared it could not possibly be supposed that the Arrest I was under by you should deprive me of fighting His Majesty's Ship Porpoise with any Enemy's Ships I might meet, and which has no connection with that Arrest. My right is to be allowed to go home in His Majesty's Ship Porpoise. I have appointed a Commander, whose duty will rest with himself, and he is bound to account for me, living or dead, to My Lords Commissioners of the Admiralty, stating the Arrest to which I was to Answer.

I imagine it is from your not being acquainted with the Naval Service that you required me to write the Letter you did to Lieut. Kent; but to add to the information I had before given you, I sent by your Secretary the Naval Article of War, which I suppose you can have no power to counteract. As Captain, therefore, of His Majesty's Ship Porpoise, and Commodore commanding His Majesty's Ships and Vessels in these Seas, I do again request to go on board the Porpoise, where proper accommodations can be fitted up for the Officer who attends me officially from you, and with whom I engage to present myself to the first General Officer he finds it his duty to attend on when we arrive in England.

I am, &c.,

W.M. Bligh.

Mr. Nicholas Bayly to Governor Bligh.

Sir,

Headquarters, Sydney, 1st April, 1808.

I am directed by His Honor the Lieut.-Governor, in reply to your Letter of Yesterday, delivered this Morning, to say that he neither can nor will be led into a Controversial correspondence on Matters of Opinion. You must be sensible, Sir, that the Lieut.-Governor's anxiety to send you home in His Majesty's
1808.
11 April.

Explanation of Johnston's motives.

Bligh to be forced to sail in the Dart unless he agrees to Johnston's terms.

Ship Porpoise originated in a sincere desire to secure You suitable Accommodations, and not to Separate you from your Family. This, however, His Honor was aware could not be allowed without either permitting you to take the Command of the Porpoise or obtaining from you a Solemn Pledge that you would not attempt to assume any Command on board her, but consider yourself as a Prisoner under the restraint of the Arrest in which it has been found expedient to place you.

To this Condition, Sir, You did conform in the most unqualified manner in your Letter of the 24th of March; and when you were called upon to confirm this compliance by writing such a Letter as might Justify the Officer who should receive you as a Prisoner on board His Majesty's Ship, you absolutely refused so to do, and demonstrated by such refusal that it was your intention to take the Command. Surely, Sir, it will not be denied that such a design, if carried into effect, would be a breach of your engagement. I am, therefore, directed by His Honor the Lieutenant-Governor once more explicitly to inform you that unless you sign the Conditions prescribed you will be required (and if needful obliged) to embark on board the Ship Dart on Sunday Morning, where the best accommodation will be provided that vessel can afford for you and any Gentlemen you may think proper to take with you.

N. Bayly,
Secretary.

[JJJ] Mr. Nicholas Bayly to Governor Bligh.

Headquarters, Sydney, 1st April, 1808.

I AM directed by His Honor the Lieut.-Governor to announce to you, Sir, that the Government Papers were searched this Morning, in consequence of a rumour that a Communication had been made in the Year 1801 from His Majesty’s Secretary of State of the Appointment of Lieut.-Colonel Paterson to the Office of Lieut.-Gov'r of this Territory, and that the Document so spoken of has been found.

This Circumstance has impressed on the Lieut.-Gov'r the necessity of referring to the Consideration of His Honor Lieut.-Gov'r Paterson all the cir's''ees connected with, or relating to, the restraint that has been imposed upon you, and has induced him to determine upon immediately despatching His Majesty's Ship Porpoise to Port Dalrymple for the purpose of bringing Lieut.-Gov'r Paterson to this Settlement, that he may decide on the measures proper to be adopted towards you in the present Crisis.

Actuated by the same Motives which have uniformly influenced his conduct, His Honor has embraced the earliest Moment to
acquaint you of His Intentions, and to inform you that your departure from hence will be delayed until the arrival of Lieut.-Gov’r Paterson.

NICHOLAS BAYLY.

[KKK] Mr. Nicholas Bayly to Governor Bligh.

Sir, 13th April, 1808.

I am directed by His Honor the Lieutenant-Governor to acquaint You that the Dart will sail early to-morrow Morning, and that any Despatches You may wish to send shall be taken Charge of this Evening by Mr. Grimes, or any other person on Board the Dart you may chuse.

I am, &c.,

N. BAYLY,
Secretary.

[To the above a verbal answer was given that there were no letters to send.]

[Enclosure No. 8.]

COPY OF GENERAL ORDERS.

[A.] 26th January, 1808.

The present alarming state of the Colony having induced the Principal Inhabitants to call upon me to interpose the Military Power for their relief, and to place His Excellency Governor Bligh in Arrest, I have, with the advice of my Officers, considered it necessary, for the good of His Majesty’s Service, to comply with their request. I do, therefore, hereby Proclaim Martial Law in this Colony, to which all Persons are commanded to Submit, until measures can be adopted for the restoration of the Civil Law on a permanent Foundation.

By Command of His Honor the Lieu’t-Governor.

NICHOLAS BAYLY, Secretary.

[B.]* Head-quarters, 27th January, 1808.

RICHARD ATKINS, Esquire, Judge-Advocate, is suspended from that Office.

Edward Abbott, Esquire, is appointed Judge-Advocate during his suspension.

Anthony Fenn Kemp, Esq., John Harris, Esq., Thos. Jamison, Esq., Charles Grimes, Esq., William Minchin, Esq., Garnham Blaxcell, Esq., John Blaxland, Esq., and Archibald Bell, Esq., are appointed Magistrates, and those persons who heretofore performed the duties of that Office are to consider themselves dismissed.

Lieutenant Lawson is appointed Aid-de-Camp to His Honor the Lieutenant-Governor.

Nicholas Bayly, Esqre., is appointed Secretary to His Honor the Lieu’t-Governor, and to be Provost-Martial during the suspension of William Gore, Esqre., who is hereby Suspended from his office.

John Palmer, Commissary, is suspended from that Office; and James Williamson, Esqre., is directed to take upon himself the charge of His Majesty’s Stores, and act as Commissary during his suspension.

* Note 74.
Robert Campbell, Esqre., is dismissed from the Offices of Treasurer to the Public Funds, Naval Officer, and Collector of the Taxes, and he is hereby directed to balance his accounts and to deliver them to His Honor the Lieutenant-Governor.

Thomas Jamison, Esq., is appointed Naval Officer.

By Command of His Honor the Lieutenant-Governor.

NICOLAS BAYLY, Secretary.

[25th January, 1808.

MR. DANIEL MCKAY is appointed Gaoler of the County Gaol in this Town, in the place of Mr. Barnaby Riley, who has resigned.

Mr. Francis Oakes, Chief Constable at Parramatta, is dismissed from that Office, and Mr. Barnaby Riley is appointed Chief Constable of that Town and the Districts connected with it.

[D.] Sydney, 30th January, 1808.

CAPTAIN ABBOTT, having requested to decline the appointment of Acting Judge-Advocate, his Nomination to that Office is revoked, and Charles Grimes, Esqre', is appointed to act as Judge-Advocate during the Suspension of Richard Atkins, Esqre'.

The Reverend Henry Fulton is suspended from discharging, in future, the Office of Chaplain in this Colony.

The Officers, Civil and Military, are ordered to attend Divine Worship on Sunday next at the New Church; and any well-disposed Inhabitant is requested to be present to join in thanks to Almighty God for his merciful interposition in their favor, by relieving them, without bloodshed, from the awful situation in which they stood before the memorable 26th Instant.

A Criminal Court of Jurisdiction will assemble at Sydney on Tuesday next, the 2nd of February, for the Trial of such offenders as may be brought before it; The Court to consist of the Acting Judge-Advocate and Six Officers of the New South Wales Corps.


THE following Gentlemen are ordered to an immediate Survey of all the Stores and Provisions in His Majesty's Stores:—Garnham Blaxcell, Esquire; John Blaxland, Esquire; Mr. Thomas Laycock; Mr. Thomas Moore, Builder; Captain Ebor Bunker; and Mr. James Williamson, Acting Commissary.

Mr. Commissary Palmer is directed to attend the Survey, and, when it is completed, to sign the report.

[F.] 2nd February, 1808.

MR. ANDREW THOMPSON is dismissed from his Situation as Constable at the Hawkesbury, and Mr. Richard Fitzgerald is appointed to that Office.

[G.] 3rd February, 1808.

By the Appointment of Edward Abbott, Esqre', on the 27th January to act as Judge-Advocate, he was created a Magistrate; but, as He has declined accepting that Office, it may be necessary to explain that he is still a Magistrate, and to be respected accordingly.

The Deputy Commissary, Mr. Fitz, is hereby ordered to collect the Debts owing to Government, for which Service he will be allowed a remuneration of 2½ per Cent.; all Persons who stand indebted to the Government are requested to pay their Debts immediately.

[J.] 7th February, 1808.

JAMES SYMONS, Esq're, Commander of His Majesty's Ship Por-
polze, is appointed a Magistrate, and is to be respected as such.

Officers and all other Persons who may have occasion to make applications to the Lieutenant-Governor relative to their private Concerns are directed to communicate their business by a written memorandum, and the Lieut.-Governor forbids any verbal request being made to him except on Public affairs.

If the Officers and respectable Inhabitants are desirous to pur-
chase a moderate Supply of Spirits for their Domestic uses, the Lieutenant-Governor will readily grant them permission; But It is at the same time to be understood that the former orders respecting the Importation and Landing of Spirits are still in full force, and that a rigid observance of them is required.

The Lieutenant-Governor feels confident that no Officer will so far forget himself as to abuse the indulgence allowed him as to attempt to obtain Spirits clandestinely; but that his intentions on this subject may be known, the Lieutenant-Governor hereby promises that if any person in trust shall be detected by a Soldier in illicit practices, the Soldier shall be rewarded for the discovery with a discharge, a Farm, and other indulgencies; If by a Prisoner, he shall receive an unconditional emancipation, and be provided with a Passage to England.

[K.] 10th February, 1808.

A Court of Civil Jurisdiction will assemble on Monday, the 15th Instant, composed of the Acting Judge-Advocate, Charles Grimes, Esq're; Mr. Thomas Laycock, and Mr. Thomas Moore.

A General Court-Martial will assemble on Wednesday, the 17th Instant. Officers for that duty:—Captain Anthony Fenn Kemp, President; Lieutenant William Moore, Lieut. Thomas Laycock, Lieut. William Lawson, Lieut. C. Draffin.
1808.

11 April.

Johnston’s orders re Appointment of Blaxcell as auctioneer.

It having been represented to the Lieut.-Governor how Satisfactory it would be to the Inhabitants if a Gentleman of respectability were to be appointed to do the duty of Auctioneer, Garnham Blaxcell, Esquire, is hereby appointed Vendue Master, as Auctioneer to the Colony, and all other Persons are forbidden from acting in that capacity.

[LL.]

11th February, 1808.

DAVID LANGLEY, Superintendent of the Government Blacksmiths, is dismissed.

Thomas Hodges is appointed Superintendent of the Government Blacksmiths, in the Room of David Langley.

[M.]

12th February, 1808.

JOHN McARTHUR, Esq’r is appointed a Magistrate and Secretary to the Colony. It is to be understood that no Salary or Emolument can be attached to either of these Appointments. All Public Letters relative to the Civil Department, are in future to be addressed to the Colonial Secretary.

A Muster will be taken on Wednesday at the Hawkesbury of all Persons victualled at that Settlement by Government.

[N.]

17th February, 1808.

IT having been represented to the Lieut.-Governor that Mr. Moore, Master Builder, cannot discharge the duty of a Member of a Civil Court without neglecting his other duties, the Acting Judge-Advocate has been directed to draw for another Member, and that lot having fallen upon John Blaxland, Esq’r, he is hereby ordered to Sitt as a Member.

[O.]

18th February, 1808.

ALTHOUGH the Lieutenant-Governor perfectly approves of the Sentiments expressed by the Court-Martial respecting the charge against Mr. D’Arcy Wentworth, His Honor declines, under the existing circumstances, to insert more of it in the General Orders than that part which expresses that the Prisoner is not Guilty on the first charge or second charge, and do therefore Honorably acquit him.

The Court-Martial is dissolved, and Mr. D’Arcy Wentworth is to return to his duty.

[P.]

19th February, 1808.

A Vice Admiralty Court will assemble on Saturday the 20th Inst. composed of the following persons:—Edward Abbott, Esq’r, Judge-Advocate; Charles Grimes, Esq’r, Registrar; Members: James Williamson, Esq’r, acting Commissary; Mr. Richard Smith, Mariner and Master of the Dart, Sealer; Mr. Simon Pattison, Mariner and Master of the City of Edinburgh; Mr. Oliver Russel, Mariner and Master of the Brothers, Sealer; Mr. Eber Bunker, Planter, late Master of the Elizabeth, Whaler; John Blaxland, Esq’r, Planter; Gregory Blaxland, Esq’r, Planter; Nicholas Bayly, Esq’r, Marshal of the Court. Mr. William Sherwin is appointed to do duty, as Store Keeper at Parramatta.

Samuel Cooley, under Sentence of death, is pardoned on condition of his serving as a Convict for Life.
JOHNSTON TO CASTLEREAGH.

275

[Q.] 22nd February, 1808.

CHARLES GRIMES, Esq're, is appointed Notary Public to the Colony.

The following Persons John Williams, Daniel McAlones, David Gibson, Thomas Bray, Thomas Haywood, John Cole, James Taylor, John Moorley, Richard Wright, having been found guilty* of Piracy and Sentenced to die by a Court of Vice Admiralty, His Honor the Lieut. Governor has pardoned them, on Condition of their Serving as Convicts for Life.


A muster will be taken of all the Men, Women, and Children—except the Military—victualled from His Majesty's Stores at Sydney, on Thursday, the 25th Inst., and those victualled at Parramatta on Saturday, the 27th Inst. The Muster will commence at ten O'Clock on Thursday Morning, at the House of G. Blaxcell, Esq're, and at Government House, Parramatta, on Saturday Morning, at ten O'Clock.

Charles Throsby, Esq're, is appointed Magistrate for Newcastle and the parts adjacent; and he is to be obeyed and respected accordingly.


The Lieutenant-Governor having purchased Six hundred Gallons of Spirits for the Supply of the Non-Commissioned Officers and Privates of the Corps, the same will be issued to them in the Quantity of one Gill to each Man per day, for which they will be charged at the rate of Six Shillings and ninepence per Gallon. The first serving to commence on Monday, the 29th Instant.

The present distressed state of the Corps for necessaries, which cannot be purchased from any private Individuals in the Colony, has induced the Lieut.-Governor to order 450 Duck Frocks may be supplied from His Majesty's Stores to make each Non-Commissioned Officer and Private a pair of Pantaloons.

The Acting-Commissary will therefore immediately issue 450 Frocks, for which the Officers Paying Companies will pay the acting Commissary the Established price.


WILLIAM LAWSON, Esquire, is appointed a Magistrate for the County of Cumberland. He is to be obeyed and respected as such.


Free service of the Sydney Association.

The Lieutenant-Governor cannot too strongly express his approbation of the disinterested offer made by the Loyal Sydney Association to serve without claiming any Rations from Government; and he assures them that he will never loose an opportunity to do anything in his power to promote their welfare, or to give them a compensation for the Patriotic Sacrifice which they have made in a manner so honorable to themselves.

Lieutenant Thomas Moore is promoted to the Rank of Captain and Commandant, vice Rich'd Atkins, Esq.

The Acting Commissary will cease in future to serve Rations to the Loyal Sydney Association.

* Note 75.
All Complaints are to be made before the Magistrate for the Week every Morning at Ten o’Clock, except on Tuesdays and Saturdays, on which days a full Brevet will assemble.

[V.] 5th March, 1808.

A Court of Criminal Judicature will assemble on Tuesday the 8th Instant of the following Officers:—Captain James Symons, Royal Navy; Captain Edward Abbott, New S. W. Corps; Lieut. William Ellison, R.N.; Lieut. Joseph Short, R.N.; Lieut. Cadwallader Draffin, N.S.W. Corps; Ensign Archibald Bell, N.S.W. Corps.


The Court of Criminal Judicature ordered to assemble on Tuesday, the 8th Instant, will not assemble until further Orders, in consequence of the indisposition of Captain Abbott, one of the Members.

The Acting-Commissary will issue from His Majesty’s Stores to the Quarter Master Serjeant of the New South Wales Corps the two hundred Shirts remaining in the Store, and two hundred and fifty Duck Frocks for the use of the Non-Commissioned Officers and Privates. The acting-Commissary will charge the usual Price for the Shirts and Frocks, which are to be paid for by the Officers paying Companies.

His Honor, the Lieutenant-Governor, taking into consideration the high price of Fuel and the distress of the Poor Inhabitants for that Indispensable necessary of Life, hereby directs that all duties upon Coals shall cease from this day, and that no other charge shall be made upon Coals at Newcastle than ten shillings per Ton, which is to be considered as a price paid to defray the expense of receiving them from the mines.

[X.] 16th March, 1808.

Persons wanting to obtain Supplies from His Majesty’s Stores on their Private account are to apply to the Lieu’t-Governor on Mondays before ten o’Clock in the Morning; any applications made at any other times will not be attended to.

[Y.] [A copy of a general order, marked thus, is not available.]


John Blaxland, Esquire, having requested to resign his Situation as a Magistrate, in consequence of his intending to leave this Colony, his resignation has been accepted.

The same cause having induced Mr. Blaxland to apply to be relieved from Sitting as a Member of the Court of Civil Jurisdiction and Mr. Thomas Laycock being, from a Severe illness, incapable of Sitting.

Mr. Blaxland and Mr. Laycock are to be relieved from that duty. Mr. R. W. Wrathe and Mr. William Emmett are appointed to be Members of the Court of Civil Jurisdiction, which is to assemble to-morrow, the 24th Instant.
JOHNSTON TO CASTLEREAGH.

[AA.]  
[A copy of a general order, marked thus, is not available.]

[BB.]  
3rd April, 1808.  
WHEREAS Oliver Russel, Master of the Ship Brothers, and Robert Daniels, acting Chief Mate of the Said Ship, were on Wednesday the 30th day of March last past convicted of the crime of Perjury by the Court of Criminal Jurisdiction,* then Sitting and Sentenced (Under the Authority of an act of 2d Geo. 2d) to be transported for Seven Years; and whereas it appears the said Oliver Russell and Robert Daniels were never indicted in due form of Law before the said Court for the said Crime of Perjury, nor allowed the means of Justification to which they were by Law entitled—His Honor the Lieutenant Governor, actuated by an anxious desire to preserve the Rights and Liberties of Englishmen inviolate, and to convince Strangers resorting to this Colony, that they have nothing to apprehend from the oppression of power, from whencesoever proceeding, Hereby annuls and declares Invalid the Sentence of Transportation pronounced against the said Oliver Russell and Robert Daniels, and restores them to all the Rights and privilidges they were possessed of before the aforesaid Sentence was pronounced.

[CC.]  
5th April, 1808.  
His Honor the Lieu’t-Governor has been pleased to approve and accept of the resignation of Charles Grimes, Esq’re, as Acting Judge-Advocate.

His Honor has further to signify that he has no further occasion for the Services of Charles Grimes, John Harris, and James Symons, Esquires, as Magistrates.

The additional charges on the Importation of Cedar from Newcastle having totally destroyed the Trade in that Article, it is hereby directed that in future no further charge shall be made on Cedar upon account of Government than three half-pence per superficial Foot.

[Enclosure No. 9.]  
27th January, 1808. Examination of Richard Atkins, Esquire, taken before us this day, Cap’n Ant’ly Penn Kemp, Lieut. Lawson, Chas. Grimes and G. Blaxcell, Esqrs.

Q. Were you present at a Bench of Magistrates—and there sitting as a magistrate—when Capt’n McArthur brought forward a charge against Mr. Rob’t Campbell, jun., for having illegally taken from the dwelling-house at Sydney, then and at present occupied by Mr. Blaxcell, two copper boilers, or bodies of stills?—A. I was.

Q. From the circumstances that appeared in the course of this investig’n, and for reasons which appeared to the Bench during the examination, did you not, as one of the magistrates, give it as your opinion that the seizure of the boilers—or stills—was irregular and illegal on the part of Mr. Rob’t Campbell, junr.?—A. I did.

Q. Upon waiting upon Gov. Bligh (as we understand is usual) with the proceedings of the Bench of Magistrates, did not the Governor express his disapprobation as to your decision; and if he

* Note 76.
1808.

11 April.

Examination of Richard Atkins.

Q. Did not Mr. Crossley prepare a memorial accusing the officers composing the Criminal Court of treasonable practices?—A. He did; and for the truth I refer to the papers now in the possession of Lieutenent Lawson.

Q. Has not Gov'r Bligh, to your own knowledge and in your presence, consulted Geo. Crossley what steps were to be taken against the officers composing the Court of Criminal Judicature after you had quitted your seat as Judge-Advocate; and if so, what was Crossley's opinion?—A. Upon my quitting the Court I proceeded to Government House, accompanied, to the best of my recollection, by Mr. Campbell, Mr. Palmer, and Mr. Griffin. We went up to the Governor's office, and there I either found Mr. Crossley or Crossley entered a few minutes afterwards. That it then became very naturally the topic of conversation what was necessary to be done upon the occasion alluded to. Various opinions were given upon so momentous a subject and Crossley's opinion was often resorted to. It is impossible for me to express the exact words Crossley said upon that occasion, but the tendency of them was thus: "That it was his opinion that as six members of the Criminal Court had taken upon themselves to adjudicate without the Judge-Advocate, that it was a treasonable offence." In corroboration of what I have now asserted, I beg leave to refer again to the papers in the possession of Lieutenent Lawson, where that opinion will be confirmed in Crossley's own handwriting.

Q. What was the opinion of the gentlemen assembled at Government House, provided the officers attended the summons and had been found guilty of the treasonable practices they were accused of?—A. I find some difficulty in answering this question. It plainly appears that by a letter* written by Gov. Bligh to Major Johnston, the Commanding Officer of the New South Wales Corps, intimating to him that he had ordered six officers in his Corps to appear before him and the Bench of Magistrates, the result of those gentlemen's appearance and the investigation that would naturally have taken place would have been their guide as to the complexion of the crime they might or might not have been guilty of; but it was upon talking the matter over, I gave my opinion that the most that could have been done was to make it a bailable offence. I do further declare upon the oath that I have taken that in my opinion it ought not to have been a subject of investigation at that time.

Q. Do you as a law officer conceive a Bench of Magistrates competent to judge of an offence of that nature—meaning treasonable

* Note 77.
practices?—A. I think that a Bench of Magistrates can take cognizance of any crime whatever so far as to justify them to commit for any offences whatever, but not to decide on the guilt or acquittal of those persons, which must be left to the decision of a superior Court.

Mr. Atkins's candid offer to disclose every improper measure that he has been forced to sanction, from being completely under the influence of the Governor, and that he has been obliged to do things officially altogether repugnant to his better sense, and entirely to keep his situation, being a dependant man, made him act as he did or has. Mr. Atkins states that when he received a letter from Messrs. Blaxcell and Bayly, offering to give bail to any amount for the person of Mr. McArthur, in the presence of the Governor, Campbell, Fulton, Gore, Palmer, and Crossley, that Mr. Atkins felt inclined to give an answer, but Geo. Crossley said, "Let no answer be given."

Mr. Atkins states that he never saw the letter to the Governor from the Court accusing Mr. Gore of direct perjury.

Q. Does it not come to your knowledge that Mr. Gore has said, "That there is a conspiracy against the Gov'r of which Mr. McArthur is at the head"?—A. I answer that Mr. Gore has frequently intimated to the Governor that there was a party forming against him; but that I never heard him say that Mr. McA. was at the head, as far as my recollection serves me.

Mr. Atkins declares that Geo. Crossley informed him that there had been an indictment drawn out by him against Mr. McA. respecting two stills imported by him (Mr. McA.) in the Dart, and that he (Crossley) had persuaded the Governor not to act upon it at that time; but that upon the last business taking place, the Governor had insisted that, contrary to his (Crossley's) opinion, and likewise contrary to mine, when Crossley informed me a few days back that the Governor insisted that that charge should make the first comp't in the intended information.

Mr. Atkins declares that the whole of the questions to be asked the seven witnesses against Mr. McArthur were written and framed by Geo. Crossley, and that among the papers now in Lieut. Lawson's possession, the several questions to be put to the different witnesses are in the handwriting of Mr. Griffin, the Gov'r's Sec'y; and I further declare that not a single question was framed by me, but that the whole was the composition of Crossley; and I further declare that prior to Crossley reading me those questions he informed me that he had read them to the Governor, and they were approved by him.

Mr. Atkins says that Mr. Palmer applied to him in the presence of Crossley, and said that he wished to have a copy of the questions to be asked him that he might be enabled to answer them; and, addressing himself to Crossley, said, "You promised me a copy." Crossley answered, "You shall have them immediately," or to that effect, which conversation took place in Mr. Atkins' house.

RICH'D ATKINS.

28th Jany., 1808. Mr. Atkins' examination cont'd. Q. Has not the Governor at different times endeavoured to influence your opinion in civil causes before you prior to the Court giving their decision?—A. He has frequently, and has frequently told me that he was the law-giver in this colony, and woe be unto any man who dared disobey him, for his order was equal, or of the same effect, as the laws of England.
Q. You have performed the duty of Judge-Advocate for many
years in this colony;—was it not always the custom previous
to Governor Bligh's taking the command that the members chosen
upon the Civil Court were elected by ballot?—A. It was my usual
practice to put down upon papers the names of such gentlemen who
were eligible to sit as members of the Civil Court, which list was
submitted to Gov'r King. The names were then placed in a hat,
and the two first drawn were the members ordered on that duty.

Q. What method, in choosing members for Civil Courts, has been
adopted by Gov. Bligh?—A. He chose them himself. I generally
gave a list, and the Governor pointed out two.

RICH'D ATKINS.

A true Copy compared with the Original by us.

A. F. KEMP, J.P.
CHAS. THROSBY, J.P.

[Enclosure No. 10.]

THE EXAMINATION of John Palmer, Esq.:—

Q. How long have you been appointed by Gov'r Bligh to act as a
magistrate?—A. About five or six months.

Q. During that period, have you not frequently met at Govern-
ment House with other magistrates to take into consideration
different matters relative to the colony?—A. Yes.

Q. In deliberations of the above nature, has not George Crossley
been frequently present and consulted?—A. Yes, he has in points of
law, as he was supposed to be better acquainted with them than any
other person.

Q. Shortly after the decision of a Bench of Magistrates respecting
two stills, did you ever hear that an information or indictment
was to be preferred against Mr. McArthur?—A. I did not hear any-
things about it till very lately.

Q. Do you recollect going to Hawkesbury to take the last muster?
—A. Yes.

Q. Did you not at that time assemble the magistrates together in
consequence of an information given by George Crossley respecting
Cap'n McArthur, which you had forwarded to the Governor, and
which had been returned to you for that purpose?—A. Yes.

Q. Have the goodness to state what was the nature of the infor-
mation, to the best of your recollection?—A. I cannot now charge
my memory with it.

Q. Do you positively say, upon your oath, that you have not the
smallest recollection of any proceed'g that took place on that
occasion?—A. I recollect that Mr. Badgery, Mr. Pitt, and Mr. Hobby
were called.

Q. By whom were they called?—A. By me and Mr. Arndell respect-
ing Cap'n McArthur.

Q. Was George Crossley present?—A. He was present when Mr.
Pitt was called.

Q. Was George Crossley sworn at the time he appeared before
you?—A. Yes; he was the first person sworn.

Q. What was he sworn to?—A. To the best of my recollection to
some conversation which had passed between him and Mr. Pitt.

Q. Did you not, previous to the examination of the above persons,
think or believe the charges you understood Crossley was going to
exhibit respecting Cap'n McArthur were of a serious nature?—A.
No; I did not.
Q. Who first made the communication which caused you and Mr. Arndell to assemble concerning Capt'n McArthur?—A. Mr. Crossley, to the best of my recollection.

Q. Was it verbal or in writing?—A. I think it was in writing.

Q. Previous to you and Mr. Arndell's assembling, had you any communication with the Governor concerning it?—A. Yes.

Q. How came that communication to be made to you?—A. By my enclosing Crossley's letter to the Governor to know if I should take any notice of it.

Q. You state in part of your evidence that Crossley was sworn to some conversation between him and Mr. Pitt;—was that conversation of the same nature as the information contained in George Crossley's letter to you?—A. I suppose it must have been, but I cannot recollect.

Q. Was the evidence of all those that were examined tending to the same purport?—A. I suppose so.

Q. Did the information given on oath by George Crossley, and the evidence given by Mr. Pitt, Hobby, and Badgery agree?—A. I do not think they did, to the best of my recollection.

Q. As the evidence of George Crossley and the witnesses you think did not agree, as a magistrate sworn to do justice between all parties, why did you not commit Crossley?—A. I did not know I had the power to do it, nor did I think it necessary. I sent the documents to the Governor for his inspection.

Q. By whom were the depositions of Crossley, Badgery, Pitt, and Hobby, taken?—A. I do not recollect; I might have taken them myself.

Q. Did you, at the time of taking the above depositions, think Capt'n McArthur obnoxious to the Government of the colony?—A. No; I did not.

Q. Was you not a member of a Bench of Magistrates when Capt'n McArthur was committed to take his trial at a Criminal Court?—A. Yes.

Q. In consequence thereof, does it come to your knowledge that any information or indictment has been prepared against Mr. McArthur?—A. I do not know.

Q. Did you ever hear or know of such a thing being in agitation; and, if so, from whom?—A. I have, but cannot speak positively from whom.

Q. Do you say upon your oath that you cannot bring to your recollection any one individual from whom you have heard it?—A. I cannot at this moment.

Q. Did you never hear Mr. Campbell mention it?—A. I might, but cannot speak positively.

Q. Did you never hear Gov'r Bligh, Mr. Gore, or Mr. Griffin mention the circumstance?—A. I might, but cannot speak positively.

Q. Have you not been subpoenaed to attend a Criminal Court on Mr. McArthur's trial on behalf of the prosecution?—A. Yes.

Q. Have you ever seen certain questions, or heard them read from a written paper, that you understood were to be asked you in the course of your examination?—A. Yes, I think I have, but did not pay any attention to them.

Q. Who were they shown to you by?—A. I think by George Crossley.
Q. Where did Crossley show you those questions, and who was present?—A. At my own house, and no person present that I remember.

Q. Did Mr. Atkins never speak to you concerning them?—A. He might; but I cannot charge my memory.

Q. Was you sent for yesterday to Government House as a magistrate?—A. Yes, I suppose so.

Q. What time was you sent for?—A. Overnight; the Governor had directed me to be there by 8 o'clock in the morning.

Q. Was there, in the course of the morning, a meeting or consultation with the magistrates besides yourself on any particular business?—A. Yes, there was.

Q. During the different periods you was present as a magistrate at the consultations, mention the names of every person who was likewise present?—A. Mr. Campbell, the Governor, Mr. Griffin, Mr. Fulton, Mr. Gore, Mr. Atkins, George Crossley, occasionally in and out of the room.

Q. Was you present when any letter or letters was sent by the Criminal Court to the Governor?—A. I do not know; if I was it was not above one.

Q. When that one letter came did you read it or hear it read, and what remarks were made upon it?—A. I do not remember.

Q. For what purpose did Mr. Campbell leave the meeting or consultation at Government House to go to George Crossley?—I understood he went to see if Mr. Atkins's memorial was done.

Q. Did you hear Mr. Atkins's memorial read, and who was in the room at the time?—A. The Governor, all the magistrates, Mr. Fulton, Mr. Gore, and, I believe, George Crossley.

Q. After the memorial was read, what measures were recommended by the magistrates and George Crossley to be adopted respecting the members composing the Criminal Court?—A. To summon them to appear before the Governor the next morning at 9 o'clock.

Q. Did not George Crossley say that those officers were guilty of treasonable practices?—A. I cannot positively say; but I think he did, or words to that effect.

Q. Did not the Judge-Advocate, Mr. Campbell, Mr. Arndell, and yourself concur in opinion that the officers were guilty of treasonable practices?—A. They concurred in the opinion of the propriety of sending notices to the officers.

Q. Were not those officers to have been committed to prison for detaining the papers brought into Court the day before by the Judge-Advocate?—A. Not that I recollect.

Q. If those officers had appeared before the magistrates and not have given what they, the magistrates, might have considered a satisfactory reason for detaining those papers, from the conversation which took place on that subject between the magistrates, what was to have been done with the officers?—A. I cannot say.

Q. Was you not one of the magistrates before whom Mr. Gore, the Provost-Marshal, made oath that Capt'n McArthur had escaped from his custody, and in consequence signed his committal to the county gaol?—A. Yes, I was.

Q. At what place did you sign the warrant—at the Judge-Advocate's office or at Government House?—A. At Government House.
Q. Was Governor Bligh present at the time, or in any way made acquainted with the oath Mr. Gore had taken, and the purport of the warrant?—A. The Governor was backwards and forwards in the room, and therefore cannot say.

JNO. PALMER.

A true Copy compared with the Original by us.

A. F. KEMP, J.P.
CHAS. THROSBY, J.P.

[Enclosure No. 11.]

EXAMINATION of Mr. Griffin, the Governor’s Secretary, taken before Capt. Anthony Fenn Kemp, Lieutenant Lawson, and Mr. Grimes, 26th January, 1808:—

Q. Were you ever present whenever any consultations respecting Mr. McArthur’s stills were agitated, and who were present; and do you know of any indictment being prepared by George Crossley previous to the one exhibited to the Criminal Court respecting the stills?—A. Yes; and the indictment was drawn out, by the Governor’s desire, by George Crossley, and I have frequently sent messages to Divine’s by the order of the Governor to see if Crossley was there.

Q. Who were present when the Governor consulted George Crossley besides yourself?—A. I cannot recollect.

Q. Did you ever send to George Crossley to meet you at Wooloomooloo by the Governor’s order?—A. Yes, I did.

Q. For what purpose was George Crossley sent for by you?—A. To make his remarks on the speech made the day before by Mr. McArthur at the Bench of Magistrates and the proceedings in general, for the information of the Governor.

Q. Did he make any remarks, and what became of them?—A. He did; they were taken by me to the Governor, and shewn him, and some time after taken to the Hawkesbury by me and given to George Crossley by order of the Governor, with the proceedings of the Bench of Magistrates, for the purpose of framing an indictment against Mr. McArthur.

Q. Was that indictment framed?—A. It was, and sent to me some time after, with a letter accompanying it.

Q. What was the reason the indictment was not acted upon?—A. I cannot tell, not being present, that I recollect, at any consultations respecting it, but the Governor directed it to be laid bye.

Q. Do you know why Geo. Crossley was consulted by the Governor on Mr. McArthur’s business, in preference to Mr. Atkins, the Judge-Advocate?—A. Because he was thought to understand the forms of law best.

Q. Do you know if the Governor was acquainted with any animosity subsisting between Mr. McArthur and George Crossley at the time, or with Mr. Atkins, the Judge-Advocate?—A. I do recollect Mr. Atkins shewing the Governor a letter from himself to Mr. McArthur in 1796,* accusing Mr. McArthur of improper transactions, of which letter I took a copy; also another letter from Mr. Atkins to Governor King, some years back, stating Mr. McArthur being the cause of many unpleasant things in this colony.*

Q. Was any person present with the Governor when Geo. Crossley was consulted by him how far Mr. McArthur could be punished for

* Note 78.
1808.
11 April.

Examination of Edmund Griffin.

**Q.** Do you recollect what punishment George Crossley gave his opinion could be inflicted?—*A.* If proved, fine and imprisonment.

**Q.** Have you been present at any time within these few days when Geo. Crossley was consulted by the Governor respecting the Criminal Court, or the officers then sitting, and who were present?—*A.* I was. Messrs. Fulton, Atkins, Campbell, Palmer, and Gore were present, and, I believe, Mr. Arndell.

**Q.** What was their determination?—*A.* The Governor determined patiently to let the members proceed, and see what steps they would take.

**Q.** Was that Crossley's advice?—*A.* I think it was.

**Q.** Do you know why Mr. Gore, the Provost-Marshal, quit the Criminal Court and ordered all the constables away?—*A.* Because the Judge-Advocate quit the Court.

**Q.** Were all the persons abovementioned at the Government House when the first letter came to the Governor from the Court?—*I* believe they were.

**Q.** Was the letter read to the above persons?—*A.* It was read in their presence.

**Q.** Who gave any opinion on that letter, and what were their opinions?—*I* gave an opinion that the extract of the patent should be sent, and a reference to the General Orders; but before I gave that opinion I saw the Governor's written one, which was corrected by Geo. Crossley, and, after the alteration, was sent to the Court, approved by the whole.

**Q.** On the answer to the above letter from the Court (the gentlemen abovementioned still being in consultation at the Government House), what steps were proposed to the second letter from the Court?—*A.* The Governor, not conceiving the Court to be complete without the Judge-Advocate, directed Mr. Campbell to write to that effect, which the Governor signed; all the persons present approved of the answer after being written. There was much conversation, and George Crossley was present and approved of it, and particularly myself. It will more particularly appear by reference to the letters.

**Q.** Were any steps proposed, should the Court still persist to sit as a Court after receiving the above letter?—*A.* Mr. Campbell and Geo. Crossley, with the Governor and myself, proposed sending to demand the papers left by the Judge-Advocate from the Court, and the Governor particularly concurred, as I did myself. I do not recollect any other steps being proposed; but after the Judge-Advocate gave a memorial to the Gov'r (which he understood had been framed by Geo. Crossley and Mr. Atkins), accusing the members of the Court of being guilty of treasonable practices, it was then the Governor's determination to order the officers before himself without delay, and Geo. Crossley recommended a summons to be sent, in the first place, to the whole as a body, but afterwards individually. I myself strongly objected to the opinion of Geo. Crossley to the Governor, wishing the Governor to give an order from himself to require the attendance of the six officers. The Governor agreed in my opinion, on which I immediately began the preamble by putting the Governor's titles on a sheet of paper when

his speech before the Bench of Magistrates respecting the seizure of his stills?—*A.* At several times Messrs. Palmer, Campbell, and Atkins were present.
Geo. Crossley, standing by me, wrote in pencil the substance of an order which I altered, and the Governor approved of the alterations, and the orders so altered were sent requiring their attendance at 9 o'clock the following morning instead of immediately.

Q. What steps were proposed should the officers attend the above orders?—A. The Governor proposed having all the magistrates present, when the Judge-Advocate's memorial should be read to those officers by me. The Governor asked Geo. Crossley's opinion what steps could be taken against them. Geo. Crossley's opinion was that no steps could be taken if the officers persisted in their being a constituted Court; but it was difficult for him in so novel a case to give an opinion what should be done; but the Governor, with the advice of the magistrates, would be able to come to some determination, and should it be proved that they were an unlawful assembly they might be committed, but be liable to bail, by Act of Parliament, on which Mr. Gore proposed, in concurrence with Geo. Crossley, that a summons should be directed to him by the magistrates as Provost-Marshal to bring the bodies of the six officers composing the Criminal Court then sitting before the Governor and the magistrates immediately, and was not objected to by any person but myself; but after much conversation I carried my point by having the order sent by the Governor, which Mr. Gore afterwards thought better than the summons. Geo. Crossley particularly told the Governor that when the officers appeared before him he would be able to judge, with the advice of the magistrates, what steps could be taken.

Q. What observations were made by the assembly (Crossley and the gentlemen at Gov't House) to the last letter written by the Criminal Court, accusing Mr. Gore of direct perjury, on account of which Mr. McArthur's person was taken from their protection and put into goal?—A. The Gov'r determined not to give an answer to that or the former letter sent by the six officers to him that day in consequence, as I understood, of their last letter the preceding day, stating that they had adjourned until the Governor's pleasure might be known; and I particularly pointed out to the Governor that if the six officers were considered a Court the preceding day in consequence of their statement, that the letters should not be answered, not having signified his pleasure, agreeable to their statement. Mr. Gore laughed at the idea of his being accused of perjury, and said to me, "Mr. Griffin, you was present the two last times I was in Court; did you hear any such conservation?" I replied, "I did not"; but that the last time, as he was going away with the letter from the officers, Capt. Kemp called him and said, "Mr. Gore, you will officially say to the Governor that the Court is adjourned until his pleasure is known," but that I did not hear that Mr. McArthur was ordered to his original bail, and in opposition to which I said, "How could it be the case when the officers had the preceding day enclosed an attested copy of an affidavit, taken before them, by Jno. McArthur, Esq're, in which, amongst other things, was sworn that he declined going on the bail which he had been brought before the Court by?" Mr. Gore agreed with me, and on Geo. Crossley giving his opinion that Mr. Gore could bring a civil action against the officers so accusing him, he determined to take that step. The Governor appeared to me to think that he could not, even after bringing the officers before himself and the magis-
Q. Has it not come within the Governor's knowledge that Crossley has been convicted of corrupt and wilful perjury, for which crime he was sent to this country?—A. I suppose it has, by common report.

Q. Has it not come within the Governor's knowledge that Crossley's conduct has been notorious during his residence in this country?—A. I do not know if the Governor is acquainted with it, but I have heard it spoken of.

Q. Do you know of any correspondence to the Governor direct or through you with Geo. Crossley?—A. I have mentioned one letter to myself, and he has two or three times written to me saying that he was at Sydney, and I once saw a short letter to the Gov'r from Crossley on the subject of an Act of Parliament, to the best of my recollection.

Q. Do you know that the Governor has frequently sent express for Crossley to consult him on public business?—A. He has been sent for.

Q. Were you ever present whenever any consultations respecting Mr. McArthur's stills were agitated, and who were present; and do you know of any indictment being prepared by George Crossley previous to the one exhibited to the Criminal Court respecting the stills*?—A. I was sent for, as Naval Officer, by note from the Governor, to bring certain documents respecting those stills, and the Parramatta schooner, which, I believe, was for the purpose of framing an indictment against Mr. McArthur. I was present when the indictment was brought to Mr. Griffin, and read by Mr. Griffin to the Governor. No comments were made by either party, and I don't know why the indictment was not acted upon, nor do I recollect if ever the subject was agitated in the presence of the Governor by George Crossley; but I know the indictment was framed by George Crossley.

Q. Do you know if the Governor was acquainted with any animosity subsisting between Mr. McArthur and George Crossley at the time, or with Mr. Atkins, the Judge-Advocate?—A. When the Governor received a letter from Mr. McArthur, and Mr. Atkins was sent for, he related the whole of their quarrel to the Governor respecting a bill of Mr. Bond's.

Q. Have you been present at any time within these few days when George Crossley was consulted by the Governor respecting the Criminal Court, or the officers then sitting, and who were present?—A. Yes, I was; in company with Messrs. Palmer, Atkins, Gore, and Griffin, and Mr. Fulton.

Q. What was your determination respecting the members?—A. Mr. Atkins related what had passed to the Governor, which the Governor minuted down himself, and George Crossley, in his presence, impressed on the mind of the Governor that there could

* Note 79.
be no Court if the Judge-Advocate was not present, in which Mr. Atkins strongly concurred, and that the Judge-Advocate could not be displaced.

Q. What was the Governor's determination respecting the Court?—A. Patiently to let the members proceed, and see how they would act, agreeable to the advice of George Crossley.

Q. Do you not conceive that George Crossley was the principal adviser to the Governor respecting the Criminal Court?—A. Yes; I do.

Q. Were any steps proposed to the Governor should the Court still persist to sit as a Court, after receiving a letter from the Governor?—A. It was proposed to send to demand the papers left by the Judge-Advocate in the Court.

Q. Did you ever see any memorial against the officers of the Criminal Court from the Judge-Advocate?—A. Yes, I did; it was read and presented to the Governor, and the Judge-Advocate was sworn to the contents of it by all the magistrates present. The Governor quitted the room with George Crossley, and returned with a written paper; and, on its being read, George Crossley recommended to the Governor to summon, through the Provost-Marshal, all the officers composing the Court before him and the magistrates immediately. Mr. Campbell proposed milder measures, by sending for the officers to attend himself.

Q. Who dictated the order to be sent for the attendance of the officers?—A. George Crossley wrote it in pencil, and it was altered by Mr. Griffin, at the wish of several persons present, to the shape it was sent in.

Q. What was to be the mode of proceedings if the officers attended the order?—A. The memorial from the Judge-Advocate was to be read to them, and certain questions put to them, but what they were he does not know; but he understood, if they did not comply with the Governor's requisition, that the Commanding Officer was to be directed to put them under a military arrest. That the magistrates, with the Governor, were to be assembled for the purpose of investigating the accusation made against the officers of the Court by the Judge-Advocate; and, if proved that they had acted treasonably, they were to be committed to jail; or, should they be committed on suspicion of treason only, that the offence was bailable.

Q. What observations were made by Crossley and the gentlemen assembled at Government House to the last letter written by the Criminal Court, accusing Mr. Gore of direct perjury, on which account Mr. McArthur's person was taken from their protection and put into jail?—A. It was a general opinion that no answer should be given to the letter, Mr. Atkins being then preparing an accusation against the Court, and George Crossley was absent with Mr. Atkins at Divine's house drawing out the Judge-Advocate's memorial.

Q. Does it come within your knowledge that the Governor is acquainted with the crime for which George Crossley was sent to this country, and that the Governor must be acquainted with Crossley's improper conduct during his residence in this country?—A. I conceive the Governor must have heard of it from report, but cannot positively say so.

A true Copy compared with the Original by us.

A. F. KEMP, J.P.
CHAS. THIBOSBY, J.P.

* Note 80.
THE EXAMINATION of Thos. Arndell, Esq., Magistrate at Hawkesbury, taken this 26th January, 1808:—

Q. Did you, about the time of the last muster, receive a letter from Governor Bligh to examine certain witnesses on oath respecting some treasonable and seditious words said to be spoken by Mr. MacArthur?—A. I did, in conjunction with Mr. Palmer.

Q. And who did you examine in consequence of such letter?—A. Geo. Crossley, Mr. Hobby, Mr. Pitt, and James Badgery.

Q. What was their testimony on this occasion?—A. The testimony of George Crossley went to prove that he had heard Mr. Pitt say that Badgery had told him Mr. MacArthur had expressed in his presence certain defamatory words relative to the Government of this colony; but upon the examination of the other witnesses, it clearly appeared the whole of Crossley's evidence was false and ill-founded, and that no words had ever been made use of by Mr. MacArthur in any way applicable to what had been asserted by Crossley.

Q. Did you and Mr. Palmer, after finishing the depositions, forward them to the Governor for his examination?—A. Yes; they were taken by Mr. Palmer for that purpose.

Q. To-day, when you were sent for to Government House as a magistrate, was George Crossley in the room with the Governor when you entered?—A. Yes; he was.

Q. Who was in the room at that time besides the Governor and George Crossley?—A. The Judge-Advocate, Mr. Campbell, and Mr. Palmer.

Q. During the time you sat there as a magistrate, was George Crossley consulted by the Governor as to the measures to be taken with the officers composing the Criminal Court?—A. Yes; he was.

Q. What steps or measures did Crossley advise to be taken in this business, and did he not say the officers were guilty of treasonable practices?—A. Crossley said they were guilty of treasonable practices, and advised steps to be taken against the officers.

Q. Did the Judge-Advocate, Mr. Campbell, Mr. Palmer, and yourself concur in the opinion of Crossley?—A. Yes.

Q. It was then generally understood that the officers guilty of the above charges were to have been ordered before a Bench of Magistrates to-morrow, and there to have been committed to prison for detaining the papers brought into Court the day before by the Judge-Advocate?—A. Yes.

A true Copy compared with the Original by us.

A. F. Kemp, J.P.

Chas. Throsby, J.P.

[Enclosure No. 14.]

EXAMINATION of Reverend Mr. Fulton:—

Q. Has not Geo. Crossley, within these few days, been in the habit of being consulted by the Governor concerning the Criminal Court?—A. Yes.

Q. Did you not see all the letters addressed from the Court to the Governor, and relate your opinions concerning them?—A. It was thought by the Governor and Crossley and himself that another Judge-Advocate could not be appointed, unless he was temporarily suspended or legally deprived of his commission.
Q. Do you think it consistent with justice, or the honor of His Majesty's Government, that any man should be screen'd from the payment of his debts?—A. No; certainly not.

Q. Do you think, if any man claimed a debt of the Judge-Advocate, that he should be deprived of his commission to enable the person to commence a prosecution for the recovery of it?—A. I have heard in those cases the Judge-Advocate would be suspended.

Q. If the Judge-Advocate would be suspended because a debt was claimed from him, on what ground did you give your opinion that he could not be suspended for a criminal act charged against him by the Court?—A. Because I did not think the Court was complete.

Q. Have you not, within the space of a few weeks, told Mr. Jamieson, at Parramatta, that Mr. McArthur would receive a sentence of fine and imprisonment?—A. I believe I said it was probable he would, if convicted.

Q. Did not Mr. Jamieson reply, "For shame, Mr. Fulton! Would you imprison a man with a wife and family"?—A. I do not recollect.

Q. You were of opinion that the officers of the Criminal Court should be committed to gaol?—A. I candidly acknowledge I was.

Q. After the memorial of the Judge-Advocate's, composed by Geo. Crossley, was read, what was the determination of the Governor and magistrates, and others, assembled at Government House?—A. If it appeared from ignorance they had proceeded in the way they had, they could not be committed; but if it appeared from their answers that they clearly comprehended the nature of their crime, they were to be committed. That was Crossley's opinion.

Q. Was it Crossley's opinion that, if the officers persisted in being a constituted Court, on coming before the Governor and magistrates, according to the orders, "that no steps could be taken against them"?—A. I do not recollect.

Q. Was any place determined on for conducting the Courts of Justice, should the six officers be committed?—A. I did not hear any.

Q. In consequence of Mr. McArthur being committed to gaol, was it not the determination of the magistrates, with the Governor at their head, to bring the prisoner before them—meaning Mr. McArthur—and try him for the charges exhibited against him, and pass sentence upon him?—A. I understood that Mr. McArthur was to remain in gaol till there was sufficient officers to try him.

HENRY FULTON.

A true Copy compared with the Original by us.

A. F. KEMP, J.P.
CHAS. THROSBY, J.P.

[Enclosure No. 15.]

GEORGE CROSSLEY'S EXAMINATION.

26th January, 1808.

George Crossley being duly sworn, deposeth that he has been these three or four years employed by Mr. Atkins, the Judge-Advocate, to give his private law opinion on many occasions; that he was applied to either by the Governor or the Judge-Advocate to draw

SER. I. VOL. VI—T
up an information against Mr. McArthur, respecting a charge made against Mr. Robert Campbell, jun'r, by Mr. McArthur, wherein Mr. McArthur had made use of inflammatory language, according to the Governor's opinion; the deponent gave his opinion that the language, being spoken before magistrates, could not operate against Mr. McArthur, and he believes the information was not acted on from that opinion; the deponent further declares that he was sent for by the Judge-Advocate, on the subject of a written message sent by Mr. McArthur to the Judge-Advocate, on the subject of a warrant sent to bring his person, on the complaint of some seamen belonging to the Parramatta schooner, to draw up an indictment against John McArthur, Esq're; he drew it up and delivered it to the Judge-Advocate; that the deponent drew up this day a memorial for the Judge-Advocate, stating that the six officers sitting on a Criminal Court were conducting themselves irregularly so as to create rebellion in the colony, to be delivered by the Judge-Advocate to the Governor, and that the Governor furnished the deponent with the copies of letters, which passed between the officers of the Criminal Court and himself, for the purpose of correcting the memorial of the Judge-Advocate; that he was employed by Mr. Gore in a late trial; that Mr. Gore took him to the Governor's to obtain his permission to plead for him; that he was employed in private by the Judge-Advocate against Mr. Gore, in an action against him by James Underwood, to draw up the indictment; the deponent has received from the Government within these four months, one cow and two bullocks, to be paid for in wheat, at the rate of twenty-eight pounds for the cow, and the same for the bullocks, as he believes; that he got between eighty and ninety pigs at 5d. per lb. alive, and the sucking pigs at 4s. each, to be paid for in wheat, lately.

Q. Have you had any private conversation with the Governor to-day?—A. I have been at the Government House to-day with the Governor, and been advising with him respecting the Criminal Court, then sitting, who would not dissolve by his direction.

Q. Did the Governor consult you how the officers composing the Criminal Court could be punished?—A. He did; and I recommended moderate measures—by recommending the Major to be sent for, or the officer next in command.

Q. Did you know the contents of the letters or summons written to the officers composing the Criminal Court this day?—A. I did.*

Q. Did you know the contents of the letter written to Major Johnston this evening, accusing the officers of treason?—A. I did.

Q. Was you consulted on the propriety of that letter?—A. I saw no impropriety in it.

Q. Was you present at Sydney on the day the magistrates met to consult on the seizure of the bodies of stills, the property of J. McArthur, Esq're?—A. I was in the Court during the trial.

Q. Was you not sent for to Wallomoolo the next day to be consulted how Mr. McArthur could be punished for the language made use of before the magistrates?—A. I was sent for to look at the proceedings taken before the Bench, and to advise how far they were proper.

Q. Who sent for you?—A. The message came in the Governor's name.

Q. Who was present?—A. Mr. Griffin the Governor's Secretary, and Mr. Palmer.

* Note 81.
Q. Did the Governor consult you on the subject at any time?—A. I think it was by the Governor's desire; I was to give my opinion in writing.

Q. Has it not been determined by the Governor in your presence that Mr. McArthur should be punished by pillory and imprisonment, or flogging?—A. No.

Q. Did you not receive an assurance that you should be appointed to act in some legal capacity at the Court which assembled on the 25th inst.?—A. No.

Q. Did you not boast that if the officers objected to your coming into Court to assist the Judge-Advocate, that the Governor would take their commission from them?—A. No.

Q. Did you not tell James Larra so, or words to that effect?—A. No; I said to somebody that if the Governor gave me an authority, under the seal of the colony, I thought the Court would be very bold to object.

Q. Did you receive a written authority from the Governor to plead in any Court?—A. I did, in the case of Mr. Gore.

Q. Have you been bred to the law?—A. I have.

Q. What punishment has the law ordained on any attorney who has been convicted of perjury, that shall afterwards become an agent, or be concerned in any suit pending before any court of justice?—A. None after a pardon, or in this country at any time.

GEO. CROSSLEY.

Sworn before me, 26th Jany., 1808—C. GRIMES, J.-A.

A true Copy compared with the Original by us.

A. F. KEMP, J.P.
CHAS. THROSBY, J.P.

[Enclosure No. 16.]

PROCEEDINGS AT THE TRIAL OF JOHN MACARTHUR.


John McArthur, Esquire, placed at the Bar, and the following Indictment read:

New South Wales, } Charles Grimes, Esquire, Acting Deputy Cumberland, to wit. } Judge-Advocate to our Sovereign Lord the King, and acting as Judge-Advocate, lawfully appointed by George Johnston, Esquire, Lieutenant-Governor of His Majesty's Territory called New South Wales, on behalf of our said Lord the King, delivers of Record of the Court of our said Lord the King of Criminal Jurisdiction, the said Court being held at Sydney, in the County of Cumberland, in the Territory aforesaid, on the Second day of February One thousand Eight hundred and Eight, and then and there informeth the said Court to understand that John McArthur, late of Parramatta, in the County of Cumberland, in the Territory of New South Wales, Esquire, is charged to be guilty of certain charges and offences contained in the subjoined Indictment prepared by Richard Atkins, Esquire, the Judge-Advocate, and laid before the Court of Criminal
Jurisdiction assembled the twenty-fifth day of January last, in answer to which Indictment the said John McArthur did appear before the said Court of Criminal Jurisdiction, and was arraigned at its bar, the Acting Judge-Advocate therefore prays that the said John McArthur may plead in answer to the said Charge prepared by the Judge-Advocate, Richard Atkins, Esquire, and take his Trial thereupon according to due course of law.

Richard Atkins Esquire Deputy Judge
Cumberland (to wit) Advocate to our Sovereign Lord the King

and Acting as Judge Advocate lawfully appointed of our said Lord the King in and for His Majesty's Territory called New South Wales in the county of Cumberland on behalf of our said Lord the King delivers of record of the Court of our said Lord the King of Criminal Jurisdiction the said Court being held at Sydney in the County of Cumberland in the Territory aforesaid in the twenty-fifth day of January one thousand eight hundred and eight and then and there informeth the said Court and giveth the said Court to understand That John McArthur late of Sydney in the County of Cumberland in the Territory of New South Wales Esquire is charged to be guilty of the Charges and Offences hereinafter mentioned and prays that the said John McArthur may plead in Answer to the said Charges and take his Trial thereupon in due course of Law and the said Charges so delivered of record and recorded in the said Court having been reduced into writing according to the direction of the Letters Patent were in due form of Law read over to the said John McArthur in the words or to the effect as followeth (that is to say)

Cumberland (to wit) Richard Atkins Esquire Judge Advocate of our Lord the King informeth the court of Criminal Jurisdiction in and for the same Territory of New South Wales and charges John McArthur late of Sydney in the County of Cumberland Esquire with the hereinafter mentioned Misdemeanors and Outrageous Offences (that is to say) for that the said John McArthur not regarding the Laws and Statutes of this Realm of England or the Orders and Regulations of the Colony made agreeable to the Same did unlawfully without the Licence and consent of the Governor of this Territory for that purpose first had and obtained unlawfully import or cause and procure to be imported or brought into this Territory in a certain Ship or Vessel called the Dart of which said Ship or Vessel the said John McArthur was Owner reputed owner or part owner two certain Stills Articles of Merchandize or Utensils called Stills used for distilling of Spirituous Liquors which said Utensils are not lawful to be in the possession of any private person in the Colony without such Licence or consent first had and Obtained. That William Bligh Esq. Governor in Chief of this Territory having had Notice that such unlawful Merchandize (to wit) the said Stills were on board the said Ship or Vessels afterwards (to wit) on the eighth day of March One thousand eight hundred and seven to prevent the same being unlawfully used in this Territory ordered and directed that the same Stills should be sent back to England by the first opportunity but that in the mean time the said Stills might be landed from the same Ship or Vessel the Dart upon Condition that the same should be put into His Majesty's public Store there to be kept until another Ship or Vessel should arrive in Port Jackson that would receive the said Stills on board to be exported to England in confirmation of the
said Order or direction on that Occasion given, That the said John McArthur not regarding the Laws of this Realm or the ordinances or Regulations of the Territory made in that respect or the directions of the said Governor given conformable to those Laws did in contempt and violation of the same and in breach of the Condition on which the said Governor had given permission for the said Stills to be landed from the said Ship or Vessel the Dart in order to be deposited in the said Public Store and in contempt and violation of the Laws in force against having in the Possession of any person private or unlawful Stills contrary to Law and the Ordinances and Regulations of this Territory in that behalf made, he the said John McArthur did wrongfully and unlawfully take out of the said Vessel the Dart the bodies of the said Stills and did cause the same to be unlawfully removed to the house of him the said John McArthur in Sydney aforesaid in the County aforesaid and then and there unlawfully kept the same in his own possession and refused and neglected to deposit the same in the said public Store agreeable to the Order and directions given as a Condition on which the said Stills were allowed to be landed out of the said Ship or Vessel the Dart as aforesaid and the said John McArthur having after Notice refused or neglected to perform such Condition in contempt of the Laws and regulations used in this Territory and the Laws of the Realm that the said Jno. McArthur having unlawfully kept the said Bodies of Stills out of the said Public Stores from thence until the twenty second day of October One thousand eight hundred and seven aforesaid, the same Governor was pleased to order and direct that the said Stills and every part of them should be put on board a certain other Ship or Vessel called the Duke of Portland the said last mentioned Ship or Vessel the Duke of Portland then lying in Sydney Cove outward bound for England or some port in England. That one Robert Campbell the Younger being lawfully authorized to put the said Stills on board, and to take the Bodies of the same from the house of the said John McArthur, and then and there with the heads and Worms to Ship them on board the said Ship or Vessel the Duke of Portland for the purpose of their being conveyed in that last mentioned Ship to England agreeable to the Conditions on which they were first allowed to be removed out of the said Ship or Vessel the Dart, he the said Robert Campbell on the twenty second day of October aforesaid in the Year afores'd at Sydney aforesaid in the County aforesaid in obedience to the order and direction of the said Governor in order to put the said Bodies of Stills with the heads and Worms on board the said last mentioned Ship or Vessel the Duke of Portland the said John McArthur being minded and intending in that respect to oppose and hinder the lawful executive power of the Governor of this Territory and to obstruct and hinder the due Administration of the Laws of the Realm and Justice of the country as by Law duly Authorized and being minded and intending unlawfully to bring the Governor and Government of the Territory into disrespect, hatred and Contempt of the people of this Colony and unlawfully to libel and falsely to calumniate the said William Bligh Esquire the said Governor in Chief of this Territory and concerning the Administration of Justice in the same Territory and of and concerning the Acts and Orders of the same Governor in the said Government the said John McArthur with design to Speak and publish divers libellous and Outrageous unlawful words in the presence and hearing of divers good and worthy
1808.  
11 April.  

Proceedings at the trial of John Macarthur.

Subjects (to wit) the words and Sentences hereinafter mentioned he the said John McArthur did falsely and unlawfully cause the said Robt. Campbell the Younger (afterwards to wit) on the twenty fourth day of October One thousand eight hundred and seven to be brought before Richd. Atkins Esq. and other His Majesty's Justices at Sydney when the said John McArthur in order unjustly to raise the attention of the people of this Territory and to cause them to assemble on pretence of hearing the said untrue allegation of the said Jno. McArthur against the said Robt. Campbell the Younger but in fact to speak the unlawful words of the Governor and Government in the hearing of those people did falsely on the said twenty fourth day of October One thousand eight hundred and seven aforesaid at Sydney aforesaid among other things allege that the said Robert Campbell the Younger "did on the twenty second day of October aforesaid take away by the assistance of several Men out of the Dwelling house in the Town of Sydney belonging to him the said John McArthur and Mr. Blaxcell (meaning one Garnham Blaxcell) two Copper Boilers value forty pounds Sterling" and in course of the said unlawful charge there being divers persons to the Number of One hundred or thereabouts then and there assembled under pretence of hearing the said unlawful charge against the said Robert Campbell the Younger he the said John McArthur did among others use the following false and unlawful words or Arguments intending seditiously to inflame the Minds of those people against the Governor and Government of this Territory of New South Wales, and to bring the Governor and Government of the Territory into hatred and Contempt of the people with an unlawful and Seditious intent to libel the Acts of the Governor in the Government did then and there on the same twenty fourth day of October aforesaid in the Year last aforesaid at Sydney aforesaid in the County of Cumberland aforesaid in the presence and hearing of divers good and worthy Subjects then and there assembled to the number of One hundred or More, he the said John McArthur did falsely wickedly and libellously seditiously and maliciously with intent to incite those people to hatred and Contempt of the said Governor and Government for the Acts of the said Governor in his Government of this Territory falsely say declare and publish these false and Libellous Words or Words and Sentences to the meaning purport and effect as follows (that is to say) "I have produced Evidence to prove to the Court that two Coppers or Bodies of Stills were taken out of my house on the twenty-second instant (meaning the twenty-second of October aforesaid) without my Consent. Mr. Griffin, the Governor's Secretary, has declared in Evidence that the Governor (meaning the said William Bligh, Esq.) told Mr. Robert Campbell, Naval Officer (meaning one Robert Campbell, Esq., a Justice of Peace for the said County of Cumberland and acting as Naval Officer in Port Jackson in the said County of Cumberland) to take those bodies of Stills and Ship them on board the Duke of Portland (meaning the said Ship or Vessel, the Duke of Portland) by the acknowledgment of the respectable young Gentleman, Mr. Robert Campbell, Junior, he was told by his Uncle to execute that Command; it would therefore appear that a British Subject, living in a British Settlement in which the British Laws are established by the Royal Patent, has had his property wrested from him by a non-accredited individual, without any Authority being produced or any other reason being assigned than that it was the Governor's order.
It is therefore for you, Gentlemen, to determine whether this be the tenor on which Englishmen hold their property in New South Wales"—which said false, scandalous, libellous, wicked, seditious, and unlawful words were then and there wickedly and unlawfully intended to libel the Governor and Government of this Territory and to bring the Governor and the Acts of the Governor in the execution of the Government into Contempt, disgrace, and hatred of the people, and to incite the people to hatred and contempt of the Governor of the same Territory, to the evil example of all others in the like cases offending in contempt of our said Lord the King, and his laws and in contempt of the Governor and Government of this Territory, contrary to the form of the Statute and against the peace of our said Lord the King, his Crown, and Dignity.

And the said Richard Atkins Esq. Judge Advocate of our said Lord the King in and for the Territory of New South Wales aforesaid on behalf of our said Lord the King informeth and giveth the said Court of Criminal Jurisdiction further to understand and be informed That the said John McArthur, late of Sydney aforesaid in the County of Cumberland aforesaid, Esq., being a person of evil mind and disposition and of dishonest Conversation and being minded and desirous to raise dissatisfaction and discontent in the people of this Colony against the Constitutional Government of the same and to raise hatred and Contempt and dissatisfaction against His Excellency Wm. Bligh Esq., the now Governor in Chief of the same Territory, and its Dependencies and to raise discontent, ill will, hatred, and mistrust in the Minds of the people against other the Officers of Justice in this same Territory of New South Wales as by His said Majesty appointed and by legal Authority authorized to execute the Laws of the Colony in the County of Cumberland aforesaid, He the said John McArthur unlawfully wrongfully deceitfully and unjustly devising and intending to create discontent in the Minds of the people and to incite the people of this Colony in the County of Cumberland aforesaid to hatred and Contempt of the Government according to the Laws and Constitution established on the seventh day of December One thousand eight hundred and seven at Sydney aforesaid in the County of Cumberland aforesaid did with intent to raise dissatisfaction in the Master Mates and Crew of a certain Ship or Vessel of which the said John McArthur was Owner part Owner or reputed Owner called the Parramatta Schooner then lying in Sydney Cove in the County of Cumberland aforesaid did write or cause to be written and to be delivered to one John Glen (he the said John Glen being then Master or Commander of the said Ship or Vessel the Parramatta Schooner) a certain false and Libellous defamatory Letter to the purport and effect as follows (that is to say)

"Sir, "Sydney, New South Wales, 7th December, 1807.

"In Consequence of the illegal and extraordinary Conduct of the Naval Officer, Robert Campbell, Esq’re, in retaining the Schooner Parramatta’s Papers and preventing her from entry (altho' the return of the Papers has been repeatedly required and the entry of the Schooner solicited), I must consider myself as virtually dispossessed of her. This is therefore to give you, the Mate and Seamen of the said Schooner, Notice, which you will make known to them, that I have abandoned the said Schooner, and that neither you nor them are henceforward to look to me for Pay or provisions.
I have also to require that you will wait upon the said Robert
Campbell, Esquire, Naval Officer, accompanied by sufficient Wit-
nesses, and that you do deliver to him a Copy of this Letter,
signifying at the same time that you are ready and desirous to give
him an Inventory of the Schooner's Stores, Provisions, and Cargo
before you leave her.

"I am, &c.,
JOHN McARTHUR.

To Mr. John Glen,
Master of the Parramatta Schooner, Sydney Cove."

which said Letter was then and there falsely and deceptfully meant
and intended to raise dissatisf'n in the Minds of the Master Mates
and Crew of the said Ship or Vessel and to incite and cause dis-
content and disobedience in the Seamen and other the Crew of the
said Vessel the Parramatta Schooner and to cause them to come on
Shore from the said Vessel in an unlawful manner in breach and
violation of the rules and regulations of this Territory as by Law
established and to Stir up and create disorder and tumult amongst
the Officers and Crew of the said Vessel to the disturbance of the
peace and that after receipt of the said Letter the said John Glen,
the Master, the Mates and Crew of the said Vessel the Parramatta
Schooner came on Shore in breach and Violation of the Colonial
Regulations in that behalf made for keeping peace and good order
in the Territory and the said John Glen afterwards (to wit) on
the fourteenth day of Decemr. afores'd at Sydney aforesaid in the
Year last aforesaid in the County aforesaid being on the occasion
of coming on Shore in Violation of the Port Orders before the said
Judge Advocate with the Ship's Crew or the greater part of them
put to Answer why he had unlawfully abandoned the said Ship or
Vessel and Why he had suffered the Seamen to come on Shore when
he had suffered the Seamen to come on Shore when
he the said John Glen and other the Crew of the said Vessel the
Parramatta Schooner on Oath charged the said John McArthur as
being the occasion of their so doing, and the said John Glen
delivered a Copy of the said Letter abovementioned Signed by the
said John McArthur as a reason for his so acting, and the said
John McArthur was thereupon by Letter from the said Judge
Advocate among other things required and summoned to attend
before the said Judge Advocate at Sydney aforesaid on the then
next day at ten o'Clock in the forenoon to shew cause for such his
Conduct therein but the said John McArthur did not attend but
refused or neglected so to do, and thereupon wrote a Letter on
Service addressed to Richd. Atkins, Esqr. Judge Advocate to the
purport and effect as follows:—

"Sir,
"Parramatta, 14th December, 1807.
"I am to acknowledge the receipt of your Letter of this date,
acquainting me that the Master, Mates, and Crew of the Schooner,
Parramatta, have violated the Colonial Regulations by coming, un-
authorised, on Shore, and that they in their Justification say I have
deprieved them of their usual Allowance of Provisions, for which
Conduct you require me to come to Sydney to-morrow and shew
cause. I have only in reply to say that you were many days ago
informed that I had declined any further interference with the
Schooner, in consequence of the illegal conduct of the Naval Officer
in refusing to enter the Vessel and retaining her papers, notwithstanding I had made repeated Applications that they might be restored. So circumstanced, I could no longer think of submitting to the Expence of paying and victualling the Officers and Crew of a vessel over which I had no control; but previously to my declining
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to do so, my intentions were officially made known to the Naval Officer. What Steps he has since taken respecting the Schooner and her people I am yet to learn; but as he has had two Police Officers on board in charge of her, it is reasonable to suppose they are directed to prevent irregularities. And therefore I beg leave to refer you to the Naval Officer for what further information you may require upon the Subject.

"I am, Sir, Your H'ble Servant,

"JOHN MCARTHUR."

which said last mentioned Letter is unlawfully calculated for delay and to oppose the lawful orders of the Colony in respect of Vessels coming into this Port here, and to bring the Governor and Govern't of the Territory into disrespect and hatred and contempt and afterwards (to wit) on the fifteenth day of December aforesaid in the Year aforesaid at Sydney aforesaid in the County aforesaid the said Judge Advocate did in his Office of a Justice of the Peace in and for this Territory in form of Law make a Warrant under his hand and Seal and directed the same to one Francis Oakes, Chief Constable at Parramatta to be executed according to Law by which said Warrant after reciting that Complaint had been made before him on Oath that John McArthur Esq. the Owner of the Schooner Parramatta then lying in this port (meaning Port Jackson) had unlawfully stopped the provisions of the Master Mates and Crew of the said Schooner whereby the said Master Mates and Crew had violated the Colonial Regulations by coming unauthorized on Shore And Whereas the said Judge Advocate did by his Official Letter bearing date the fourteenth day of December require the said John McArthur to appear before him on the fifteenth day of December at Ten o'Clock in the forenoon of the same day And Whereas the said John McArthur did not appear at the time aforesaid or since, the said Francis Oakes was by the said Warrant in His Majesty's Name commanded to bring the said John McArthur before the said Judge Advocate and other His Majesty's Justices on Wednesday then next, the sixteenth of the same instant December at 10 o'Clock of the same day to Answer in the premises and thereof fail not, which said in part recited Warrant afterwards (to wit) on the same day and Year last aforesaid at Sydney aforesaid in the County aforesaid was delivered to the said Francis Oakes the Chief Constable aforesaid to be executed according to the exigency and direction of the same therein contained and afterwards (to wit) on the same day and Year last aforesaid at Sydney aforesaid in the County aforesaid the said Francis Oakes went with the said Warrant to the house of the said John McArthur and then and there shewed the said John McArthur the said Warrant under the hand and Seal of the said Richd. Atkins Esq. the Judge Advocate (be the said Rd. Atkins having full power and lawful Authority to grant such Warrant) and the said Francis Oakes told the said Jno. McArthur that he, the said Francis Oakes was to bring the said Jno. McArthur down to Sydney and the said John McArthur having read the said Warrant and taken a Copy of the same said to the said Francis Oakes these false libellous wrongful seditious and unlawful words in Contempt of the Laws of the Realm and of the Authority of the said Judge Advocate in his Office of Judge Advocate in Contempt of the executive power of the Government in him vested by Virtue of his Office "You may tell the persons directing that Warrant (meaning His Excellency Wilm.
Bligh Esquire Governor and the said Judge Advocate) that I (meaning himself the said John McArthur) will never submit to it (meaning the said Warrant) until I (again meaning himself the said John McArthur) am forced for I (again meaning himself the said John McArthur) treat it (meaning the said Warrant) with Scorn and Contempt as I (meaning himself the said John McArthur) do the persons who has sent it (meaning the Governor and Judge Advocate); had the person who directed it (meaning the said Judge Advocate) served it instead of you (meaning the said Francis Oakes) I (meaning himself the said John McArthur) would have spurned them from my presence” and the said John McArthur then and there told the said Francis Oakes that if he came a second time to come well Armed, for he (meaning himself the said Jno. McArthur) never would submit till blood was shed (meaning that the said John McArthur would resist the lawful Officers in the execution of their duty in arresting him on said Warrant by force of Arms) and the said John McArthur then and there represented the Gov. as a Tyrant and said they (meaning the Governor and Naval Officer) had robbed him of Ten thousand pounds and the said Jno. McArthur then and there told the said Francis Oakes he would not submit to the Warrant (meaning the aforesaid Warrant the said Francis Oakes then in Order had to Arrest the said Jno. McArthur upon) and the said Jno. McArthur called the Governor (meaning the said Wm. Bligh Esq. Governor in Chief of this Territory) a Tyrant (meaning in his Government of this Territory) and said he (meaning the said John McArthur) would not submit to any such Tyrannical power (thereby meaning and falsely alleging that the Governor in the Executive power of the Government of this Territory acted unlawfully and ruled by Tyrannical power contrary to the Law and Constitution of this Realm), And the said John McArthur having taken a Copy of the same Warrant so shewn him as afores'd by the said Francis Oakes he the said John McArthur wrote on a piece of Paper certain words and then took a Copy of the words he had so written for him to keep, when the said Fras. Oakes having no other person with him to assist in the execution of the said Warrant, said to the said John McArthur “shall I wait on you in the Morning, Sir” in reply to which the said John McArthur said take this paper (meaning the Paper he the said John McArthur had before written and took a Copy of the words of as aforesaid to keep) and You (meaning the said Francis Oakes) will have no blame (meaning that such paper would excuse or indemnify the said Francis Oakes for not taking the said John McArthur into Custody by virtue of the said in part recited Warrant) and the said John McArthur then and there delivered to the said Francis Oakes the said paper so by him as aforesaid written which said paper contained (in writing) the false, scandalous, Seditious, Libel and unlawful defamatory words following (that is to say) “Mr. Oakes, You will inform the persons who sent you here with the Warrant You have now shown me and given me a Copy of, that I never will submit to the horrid tyranny that is attempted until I am forced, that I consider it with Scorn and Contempt as I do the persons who have directed it to be executed. John McArthur, Parramatta, 15th Decr., 1807,” and the said John McArthur then and there said to the said Francis Oakes these false, scandalous, malicious, defamatory, seditious words (that is to say), Mr. Oakes be careful of yourself, I (meaning himself the said John McArthur) don't blame you (meaning the said Fras.
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Oakes) but they (meaning the said Governor, Judge Advocate and other Officers in power for the Government of the Territory) have made you the unhappy Instrument to accomplish their own ends (meaning thereby to intimidate the said Francis Oakes in his Office of Constable in executing the said Warrant; and also meaning that the Governor, Judge Advocate and other Officers of the Government were Acting in an Unlawful manner and for illicit purposes) which said false, scandalous, inflammatory, seditious, wicked and deceitful words and writings so as aforesaid used and published by the said John McArthur as aforesaid were then and there (to wit) on the same fifteenth day of December aforesaid at Sydney aforesaid in the County of Cumberland aforesaid unlawfully and maliciously intended by the sd. John McArthur falsely and seditiously to incite the people of this Territory to the hatred and Contempt of our said Lord the King in his Government in this Territory and to bring the Governor, Judge Advocate and other Officers having the executive power of the Laws of the Government and the Governor of the Territory as by Law established into contempt and disgrace and hatred of the people to the evil example of all others in like cases offending contrary to the form of the Statute in such case made and provided in contempt of our said Lord the King and his Laws and against the peace of our said Lord the King his Crown and Dignity.

And the said Richd. Atkins Judge Advocate of our said Lord the King in and for the Territory of New South Wales aforesaid of our said Lord the King informeth and giveth the said Court of Criminal Jurisdiction further to understand and be informed that the said John McArthur, late of Sydney aforesaid, in the county of Cumberland aforesaid, Esq. being a Malicious and Seditious Man and of a depraved Mind and wicked and diabolical disposition and deceitfully wickedly and maliciously contriving and abetting against Wm. Bligh, Esq., His Majesty's Governor in Chief of the Territory of New South Wales aforesaid and maliciously contriving and abetting against Richd. Atkins, Esqre. His Majesty's Deputy Judge Advocate in and for the Territory of New South Wales and other Officers of the same Territory by His Majesty lawfully appointed and duly Authorized by the laws of this Realm to administer Justice according to the Laws and Constitution of that part of Great Britain called England and to vilify and represent the said Wm. Bligh Esq. and others as unjust Officers and Ministers and little fit to be used and entrusted by our said Lord the King in the weighty Affairs of this Territory of New South Wales and to bring the said Wm. Bligh, Esqre., the said Governor in Chief and other Officers of Government (as much as in him the said John McArthur lay) into an ill opinion hatred and Contempt of His Majesty's Liege Subjects and to represent the said Governor in Chief and other the Officers as Corrupt persons and to bring them into great Scandal infamy and hatred with all the Liege Subjects of our said Lord the King; he the said Judge Advocate having lawfully made a Warrant under his hand and Seal the said Richd. Atkins, Esqre. being a Justice of the Peace, by Virtue of his Office in and over the Territory of New South Wales and having lawful and competent Authority to make such Warrant against the said John McArthur, by which same Warrant, one Francis Oakes (the said Francis Oakes being then and there Chief Constable of the Town of Parramatta in the Territory aforesaid) was for the reasons therein set forth
in His Majesty's Name commanded to bring the said John McArthur before the sd. Judge Advocate and other His Majesty's Justices on Wednesday then next the sixteenth day of December aforesaid at ten o'clock of the same day to Answer in the premises in the said Warrant alleged and the said Francis Oakes going to Arrest the said John McArthur by virtue of and under colour of the same Warrant for the Offences therein mentioned and having permitted a Copy of the same Warrant to be taken by the said Jno. McArthur he the said Jno. McArthur did among other things say, declare, write and publish divers false, scurrilous, feigned, scandalous, Seditious and Malicious Words in Substance and effect that he the said John McArthur would not submit to the said Warrant (meaning the said Warrant above in part recited) until he was forced, and the said John McArthur said to the said Francis Oakes "You may tell the persons directing that Warrant (meaning the said Richd. Atkins, Esq., the Judge Advocate afores'd) that he the said John McArthur never would submit unto it until he was forced" (meaning that he would resist the execution of the said Warrant on his person by force) that he, the said John McArthur treated it with scorn and contempt, as he, the said John McArthur, did the persons (meaning the said Governor in Chief and Judge Advocate) who had sent it, that had the persons who directed it served it instead of the said Fras. Oakes, he the said John McArthur would have spurned them (meaning the said Governor in Chief and Judge Advocate) from his presence, and the said John McArthur then and there said that if he the said Francis Oakes came a Second time (meaning if he came again to execute the said Warrant) to come well armed for he (the said John McArthur) never would Submit till Blood was shed (meaning that the said John McArthur would resist the execution of the said Warrant on his person by force of Arms) And the said John McArthur then and there represented the Governor (to wit) the said Wm. Bligh Esqr. Governor in Chief of this Territory, as a Tyrant and said they (meaning the said Governor and other Officers of the Government) had robbed him (meaning the sd. John McArthur) of Ten thousand pounds, and the said John McArthur said that he would not submit to the Warrant (meaning the Warrant the said Fras. Oakes had to Arrest him upon) but the said John McArthur said let them alone (meaning the sd. Wm. Bligh Esq. the Governor Judge Advocate and other Officers of Justice in the Colony) they (meaning the aforesaid Officers) would soon make a rope to hang themselves and the said Jno. McArthur then and there called the Governor (that is to say Wm. Bligh Esqr.) a Tyrant and said he (the said John McArthur) would not submit to any such tyrannical power (meaning that the said Wm. Bligh and other the Officers of Government) in the execution of the Government of this Territory acted by unlawful and tyrannical power And the said John McArthur then and there wrote and subscribed a certain false scandalous and libellous paper writing and then and there did cause to be written and published the same paper writing in these or the like words: "Mr. Oakes (meaning the said Fras. Oakes) You will inform the persons who sent you here with the Warrant you have now shown and given me a Copy of that I never will submit to the horrid tyranny that is attempted until I am forced; that I consider it with Scorn and Contempt as I do the persons who have directed it to be executed. John McArthur, Parramatta, 15th Decr., 1807," to the great scandal and infamy of
the said Wm. Bligh Esq. Governor in Chief of our said Lord the King in and over His Majesty's Territory called New South Wales, and also to the great scandal and infamy of the said Richd. Atkins Esq. the Judge Advocate of our said Lord the King in and over the said Territory and other the Officers having lawful Authority to Administer Justice in the same Territory in contempt of our said Lord the King and his Laws, to the evil and pernicious example of all others in the like case offending and against the peace of our said Lord the King his Crown and Dignity.

_Plea—Not Guilty._

RICHARD ATKINS, Esq., sworn:—

Question from Mr. Atkins, the late Judge-Advocate, to the Members of the Court.—Whether I am bound to answer any questions that may be put to me that has reference to my late official Office as Judge-Advocate of this Territory, under His Majesty's Sign Manual? The Court are of opinion that you are bound to answer the questions proposed to you.

Question from Court.—Are the papers, specified in the following List, the same as left by you in the Court of Criminal Judicature, on the 25th of January last, and detained by the Officers composing that Court?:—List of papers:—Indictment; List of questions to support the indictment; Proceeding of a Bench of Magistrates; Warrant, dated 15th December, 1807; Warrant under which the Prisoner was apprehended; Proceeding of a Bench of Magistrates on Prisoner's Commitment; Paper delivered by the Constable—said to be delivered by the Prisoner; Letter, 14th December, 1807; Letter, answer from the Prisoner, 14th December, 1807; Letter, protesting against the Judge-Advocate, to the Governor, with the Governor's answer; Notice of Trial; Bail Bond; Judge-Advocate's determination to record Sentence of Guilty; Mode of punishing the prisoner; Deposition of Francis Oakes, 16th December.—A. They are.

Q. Are you ready to come forward to prosecute John McArthur, Esq., on the Indictment framed by you and which You have heard read?—A. I am not.

Q. State your reasons.—A. The reasons that I give are the following: That the information which I instituted against John McArthur, Esq., and which has now been read, and to which the said John McArthur, Esq., has pleaded not guilty, I did not in my individual Capacity as Richard Atkins, Esq., but in my public one as holding His Majesty's Commission; I therefore conceive that my Official Duty is for the present completely finished, consequently cannot stand forth as the Prosecutor of John McArthur, Esq.; but in any other Capacity I have no objection to answer any questions that may be put to me, and are relevant to the Subject.

Q. Was the Indictment against John McArthur, Esq., framed by you as Judge-Advocate?—A. It was to have been exhibited by me as Judge-Advocate, and I do apprehend that his Office does not exclude him from the advantages arising from the superior knowledge of any man that may be more conversant in the object upon which the Judge-Advocate consulted him than he (the Judge-Advocate) was.

Q. Were not the Evidences on behalf of the Crown furnished by you or any other person with your knowledge with a list of Questions to be asked them before the Court?—A. The Evidences were
not furnished by me, neither was a single question contained in the following list before the Court, and which I intended to ask the respective Evidences on the part of the Crown, framed by me.

**List of Questions.**

[Here followed a list of the questions,* which were intended for the examinations of Edmund Griffin, Robert Campbell, Jr., John Harris, Robert Campbell, John Palmer, John Glen and Francis Oakes, all of which were used in the examination of the said witnesses in this trial with the exception of the following:—]

JOHN HARRIS, ESQRE.

**Questn. 1.** Were you not the Naval Officer in this Port when the Ship the Dart arrived in March last?

2. Did you or not at that time receive orders from the Gov. to see that two Stills that were imported in that Ship were put into the King's Stores for Safe keeping?

3. Was or not the Condition of landing those Stills that they should be so deposited in the Store until an Opportunity offered to send them to England and were the Bodies of those Stills put into the Store agreeable to the Condition of that Permission to land or not?

4. How long might it be after the order given to have them put into the Store that it came to your knowledge that the Bodies of them were taken to Mr. McArthur's or any other house?

5. Upon it being discovered that the Bodies of these two Stills had been removed to Mr. McArthur's house and that Contrary to the Condition on which they were allowed to be landed from the Vessel did you or not cause any Application to be made to Mr. McA. to have them brought to the King's Store or not?

6. Is it not the Custom of this Colony for known persons to execute the orders of the Governor without any Warrant in writing for that purpose and did you ever know any Question made of the legality of an Order given by the Governor verbally being quest'd because it was not in Writing and has it not been the Custom for every Gov. to give verbal orders in cases like that under inquiry?

7. You have many Years acted as a Justice of the Peace in this Territory and as such are acquainted with the Statutes and local orders of the Colony, do you think it consistent with those laws that a private person without the licence of the Governor has any right to have in his possession Utensils to distil Spirituous Liquors in this Colony, and has it not always been the Custom to seize and destroy such utensils whenever found, declare all you know on this occasion, and explain what has been the Usage and law in practice in respect of private Stills in this Colony as you know or believe.

8. Has it not been the usual Custom in this port in cases of particular Ships to place Constables or other Officers on board to prevent the Cargo being Smugled on Shore or landed without perm iss'n or any Goods being put out of the Ship without a permit or order for that purpose being first obtained?

MR. FRANCIS OAKES.

**Quest. 1st.** You are the Chief Constable of the Town of Parramatta look upon the paper writing now produced and shewn to you and say if you did not receive that Warrant with orders to Arrest the Pris'r as therein mentioned.

2. When you received that Warrant did you apply to any person to know how you should act and to whom declare?

* Note 82.
JOHNSTON TO CASTLEREAGH.

3. You are well known to the Pris'r to be the Chief Constable at Parramatta are you not?

4. Did you or not go to the House of the Pris'r and did you see him?

5. Did you or not tell him you had orders to take him to Sydney under that Warrant?

6. Did you shew him that Warrant and did you not suffer him to take a Copy of it?

7. After you had shewn this Warrant to the Pris'r and let him take a Copy of it, had you any Conversation with him?

8. In the course of that conversation when speaking on public duty did the Pris'r say to you "You may tell the persons directing that Warrant that I never will submit unto it, until I am forced for I treat it with Scorn and Contempt as I do the persons who have sent it, had the persons who directed it served it instead of you, I would have spurned them from my presence" or such or the like words?

9. Then you say that the Pris'r did use such or the like words.

10. As you understood at the time who did the Pris'r mean by the persons directing that warrant?

11. Can you say as to your belief who the Pris'r meant when he said "I treat it with scorn and contempt as I do the persons who have sent it"?

12. Did or not the Pris'r tell you that if you came a second time to come well Armed for he never would submit until blood was shed?

13. By the Pris'r saying he would not submit until Blood was shed did you not understand that he meant to resist the Officers in the execution of the Warrant by force of Arms?

14. Did or not the Pris'r say to you that the Gov. was a Tyrant?

15. Did he not mean His Excellency Gov. Bligh the Gov. in Chief of this Territory?

16. Did he not say they had robbed him of £10,000 and if he did who did you understand he meant had robbed him of that sum?

17. Did or not the said Jno. McArthur say to you that the Gov. was a Tyrant and that he wd. not submit to any such Tyrannical power?

18. By saying the Gov. was a Tyrant did he not mean Gov. Bligh?

19. By saying he would not submit to any such Tyrannical Power did you or not understand him to mean that Gov. Bligh in the Executive power of the Govt. of this Territory acted unlawfully and ruled by Tyrannical power and contrary to the Law and Constitution or what else did he mean?

20. After Mr. McA. had taken a Copy of the Warrant you had ag't him did he or not write upon a piece of Paper some words and then take a Copy of what he had written to keep, and if he did did he not say to you take this paper and you will have no blame?

21. Did he not then deliver you the Paper he had so before written and taken a Copy of?

22. Look upon the paper now produced and say if that is the paper so wrote in your presence, and after having taken a Copy of it, delivered it to you.

23. Previous to your having this paper delivered to you did you not say to the Pris'r shall I wait on you in the Morning, Sir, and was not that paper given as a reply to that Question?

24. You had no Assistants with you, had you or not?
25. Then you say that the paper which the Pris'r wrote in your presence and took a Copy of and some short time after delivered it saying if you took that paper you would have no blame?

26. Did or not the Pris'r after this say to you these or the like words "Mr. Oakes be careful of yourself I don't blame you but they have made you the unhappy Instrument to accomplish their own Ends"?

27. Can you Say who the Pris'r meant by "they have made you the unhappy Instrument to accomplish their Ends" was it or not as you understood Gov. Bligh the Judge Advocate and other officers?

28. Did you understand that the Pris'r meant to insinuate that the Gov. and other Officers were Acting in an unlawful manner, and for unlawful purposes?

29. Did the Pris'r or not say "let them alone they will soon make a rope to hang themselves" if you did whom did he mean by they as you understood?

The Prisoner's Examinateing Mr. Atkins:—

Q. Was not the Indictment or information framed by Geo. Crossley, a person sent into this Country as a Convict under the Sentence of the Law for Perjury?—A. It was framed by Geo. Crossley, and who, I believe, was sent into this Colony for the crime as stated in the question.

Q. Did you receive the information so prepared by George Crossley because you approved of its contents or because you were commanded so to do by the Governor?—A. In consequence of having received directions to prosecute Mr. McArthur, he having been committed for Trial by a Bench of Magistrates; and knowing the very great difficulty that I laboured under in not having had what is called a legal education, and feeling it a matter of a most momentous nature, I wrote a letter to Mr. Crossley, directed to him at the Hawkesbury, but before I had sealed it I heard Mr. Crossley was down at Sydney, but I sent the Letter to Mr. Devine's, where he usually sleeps, purporting that he (Crossley) being better versed in such a business, that I should be obliged by his assistance, and that I was sure the Gov'r would be equally so. When I saw Crossley, he told me that Mr. Divine had written to him, desiring his immediate Attendance. Some short time after Crossley brought me the Information in his own handwriting, of which the one before the Court is a Copy. I wished to make some immaterial alteration, which was objected to by Crossley.

Q. What caused you to be sure that the Governor would be pleased by Crossley's interference?—A. Because the Governor had before employed Crossley on a similar occasion, and had been in the custom of consulting Crossley on law business.

Q. State to the Court on what particular occasion the late Governor did employ Crossley to draw up an information or Indictment?—A. The information against O'Dwyer and others, which was for misprision of Treason or intending to disturb the Peace of the Colony, and the questions on that Trial were framed by Crossley.

Q. Was he not employed or consulted in drawing up an information against the late Provost-Marshal?—A. He was both employed and consulted by the Governor on that business.

Q. Was he (Crossley) not employed as an Advocate for the Provost-Marshal on his Trial, and did not the Governor order the Criminal Court who tried the late Provost-Marshal to admit Crossley
into that Court as an Advocate?—A. He (Crossley) was ordered by
the Governor, to the best of my belief, to act as Advocate or Friend
for Mr. Gore on his Trial, and he was admitted as such the first
day only under the direction of the Court that no question was to
be put to him, but by the prisoner (Mr. Gore), to whom he might
suggest any question that he (Crossley) might think necessary to
his justification.

Q. Then you mean to say that Crossley was first employed to
prepare the Accusation against the late Provost-Marshal, and after­
wards to convince the Court that the Accusation was good for
nothing?—A. It certainly appears so by my Answers.

Q. Were you induced to give it as your opinion that Crossley could
be admitted to advocate any cause in a Court of Justice because you
really thought so or because you was obliged to give that opinion
from the terror you was under from the threats of the Governor?—
A. It certainly was my opinion that Geo. Crossley, notwithstanding
he had been found guilty of Perjury, that his having received a
free Pardon under the Seal of this Colony, as well as having
expatiated his Offence by having served the term of his Transporta­
tion, that he was in the Eye of the Law a new man, and was as
competent, and ought to be considered as possessed of the rights
of a Citizen, as any other Person, and that was my reason to give
it my opinion that he was competent; but upon looking further into
the Statutes at large, and more particularly an Act, but in whose
reign I do not this moment recollect, but the tendency of which was
that if any Attorney, Councillor, Agent, or any other person
connected with the Law, after having been so convicted, should
come into any Court to plead in any cause before that Court, it was
competent for the said Court, after having enquired in a Summary
way, the Court could transport such person for seven years. In
consequence of which I did alter my original opinion during the
Trial of Mr. Gore.

Q. As you knew it was Criminal for any Attorney who had been
convicted of Perjury, to practise as an Attorney or Agent in any
suit at Law, what induced you to consent to Crossley being em­
ployed as an agent to prepare the information which now causes
me to stand in the degraded and humiliating condition of a Criminal
at the Bar of this Court?—A. You will give me leave to make a,
pointed distinction between a Person coming into a Court as Attor­
ney or Agent and that of a person knowing his abilities as a
private individual and possessed of that knowledge which I found
myself deficient in. I therefore did not consult him as an Attorney
or Agent, but as an Individual possessed of such knowledge as I
required.

Q. Do you mean to say that a man who is employed to do
another's business is not his agent?—A. I certainly do mean to say
that he is not, and for this reason: As the word Agent in the Eye
of the Law, for if any gentleman of any condition was possessed
of knowledge which I wished to acquire and I did obtain it, the
general acceptation in point of Law could not be applied to such
person from whom I obtained such information.

Q. If I understood your evidence right, you have not only declared
that you consulted Geo. Crossley and acted upon his Opinion, but
that you did absolutely employ him to draw up the Information
against me, and which Information so prepared by Crossley I am
now obliged to defend myself against. I therefore repeat again:
Did you not know it was improper to employ any such character in performing so solemn an Instrument as that of an Accusation against a Gentleman of Honor and Character, which accusation it appears from a paper in your own handwriting was intended to overwhelm him with Disgrace and Misery, and to expose him to a punishment worse than Death—a Public and Disgraceful exposure in the Pillory?—A. I did consult Geo. Crossley for the purpose of obtaining every Information he could give me upon the object of my then Attention, and I did conceive that the most useful manner in which he could give me that knowledge was by drawing up that Information in the technical Terms of the Law, of which, as I said before, I felt a deficiency. I request that that paper, alluded to in the question, may be produced, that I may be enabled to make such remarks upon it that may satisfy the Court that it was not for sinister purposes alluded to in the question. The Paper read as follows:

“If any one by writing, printing, preaching, or other speaking shall use any Words or Sentence to incite the People to hatred and contempt of the King or of the Government and Constitution of this Realm, he shall incur the punishment of a high Misdemeanour—that is, Fine, Imprisonment, and Pillory; and for a second offence he is subject to a similar punishment or transportation for seven years, at the discretion of the Court.” “But a prosecution for a Misdemeanour under this Act must be brought within Six months; and this Statute shall not affect any prosecution for the same crimes by Common Law, unless a prosecution be previously commenced under the Statute. This Statute is to continue in force until the end of the next Session of Parliament after the demise of the Crown. 36 Geo. III, c 7.”

I answer that having asked Geo. Crossley under what Act he conceived the Crime with which McA. was charged would come, he told me that it was the 36 Geo. III, c 7. Knowing as I did that I was not possessed of that Act I asked him what could be done for the want of it, conceiving that it might be called for; Crossley told me that it would have been better if the Act had been in the Colony, but as it was not he told me that Mr. Lord had the last edition of Blackstone’s Commentaries. I should find a note subjoined by Mr. Christian, the Editor of that last Edition, which said note quoted that part of the said Act applicable to the Case. I sent for it and extracted what appears before the Court in my handwriting, and I believe that it will be admitted that it was my duty, as Judge-Advocate, to make myself Master of the Law, that in the event Mr. McA. had been found Guilty, to give the necessary information to the Court, that they might apply all or any part, in their discretion, and that it could not be, nor can it be considered without forcing the Intent of that Paper to be viewed in any other point than that I have stated, or prejudging the Case. I further say that let a man be Guilty of such and such Offences, which has nothing to say whatever to the point on which he is consulted; and as I believed that there was no other person in the Colony so competent to give it as Crossley, I was under the necessity of applying to a bad Character for that information which, if I could have got from an honest man, I would not have applied to Crossley.

Q. Do you, or do you not, know that it was unlawful to employ Geo. Crossley in the way you have?—A. To which I answer that perhaps as Judge-Advocate, and as a Law Officer, it would have
been much better to have been guided by my own judgment than to have had recourse to any other persons; but as I did not abide by that, I conceive it no further improper than because Mr. Crossley was a bad character; and it is no uncommon thing for even judges in England to take the opinion of solicitors, councillors, or attorneys without enquiring the characters of the persons applied to.

Q. Do you mean to say it is no uncommon thing for a judge in England to take the private opinion of an attorney who has been convicted and publicly punished for perjury?—A. I believe that a judge will not ask the opinion of any person in public, and who they ask in private is more than I can answer to.

Q. I have endeav'rd by all the means my humble abilities can suggest to me to obtain a direct answer to a plain question, and I now beg to submit to the court the propriety of their deciding whether Mr. Atkins shall answer to the question: Did he, or did he not, know that it was unlawful to employ such a character as Geo. Crossley in preparing such an instrument as the information on which I am now tried?—A. I do not think it unlawful, but improper.

The prisoner requests Mr. Atkins's letter to him, informing him of the irregularity of the officers and crew of the Parramatta schooner, may be read—which was read as follows:

"Sir,

14th December, 1807.

I have it in command from His Excellency the Governor to acquaint you that the master, mates, and crew of the Schooner Parramatta, of which you are owner, have violated the colonial regulations by coming unauthorised on shore, and that in their justification they say you have deprived them of their usual allowance of provisions, and that they have no means of subsistence on board your schooner. In consequence of such their representations I request your attendance at Sydney to-morrow morning, at 10 o'clock to shew cause for such your conduct.

I am, &c,


Rd. Atkins, J.-A.

Q. Was this the first complaint that you received of the same kind from the officers and seamen of the Parramatta schooner?—A. I think it was. I was sent for up to government house, and from information that the governor had received (I believe from Mr. Campbell) that Mr. McA. had stopped the wages and provisions of the officers and crew of the Parramatta schooner, I was desired by the governor to send for the master, mates, and crew of the said schooner and take their depositions on that head; I did so, and the following is the deposition taken:

14th December, 1807.

Mr. John Glen, master of the Parramatta, being required to state his reasons why he has abandoned the command of said ship, and why he suffers the sailors to come on shore, delivers the accompanying paper as his reason for so doing; that in consequence he went to Mr. Rob't Campbell, the naval officer, and delivered to him a copy of the said letter, before witnesses, who told him that he would acknowledge he had got a copy of the same, but had no answer to give; that as soon as he had left Mr. Campbell he went to government house for the purpose of showing the letter to the governor, who refused receiving it. That he then went on board
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and read said Letter to the men and sealed up the hold. Says that
since that period—the 8th Inst.—he has not received any Provisions
whatever from his Owner, Mr. McA., and that since that period he
has considered himself as divested of all Command over the said
Vessel and Crew, nor has he exercised any since that time.

"JNO. GLEN."

"Mr. John Graves, Chief Officer of said Ship, says that he was
present on board the Parramatta at the time Mr. Glen read Mr.
McArthur's Letter to the Ship's Crew; that in consequence he left
the Vessel and has since that time received no provisions from her
or from his Owner, nor has he exercised any Command whatever
over the Crew.

"George Brown, John Knight, Christopher Shelto, George Piecy,
and Alexander Lincoln, John Thomas and John Marks, sailors be­
longing to the Schooner the Parramatta, respectively say: That
since the 8th Inst. they have done no duty on board the said Ship;
neither have they received any provisions; that they have since that
time generally been on shore, but usually slept on board.

"GEO. BROWN (his x mark).
"JOHN KNIGHT (his x mark).
"CHRIST'ER SHELTO (his x mark).
"GEO. PIERCY (his x mark).
"ALEXR. LINCOLN (his x mark).
"JOHN THOMAS.
"JOHN MARKS (his x mark)."

In consequence of that Deposition I wrote the Letter.*

Q. Were you directed by the Governor to write the Letter?—A.
I will not positively say that I was or was not, but that I was
desired by the Governor to take the Depositions and act upon
them.

The Prisoner requests the Letter to be read, in Answer to the one
of the 14th of December, which was read as follows:—

[Here followed a copy of the letter from John Macarthw to
Richard Atkins, dated 14th December, 1807, which was also in­
cluded in the indictment.]

Q. At the time you rece'd the above Letter, did you not know that
the Naval Officer had refused to enter the Vessel or to allow her
Cargo to be landed?—A. Mr. Campbell informed me that he had
done so—Mr. Campbell, the then Naval Officer.

Q. Did you not also know that the Naval Officer had possession
of the Schooner's Register and all her Papers, and that he refused
to give them up, although repeatedly pressed so to do?—A. I have
no doubt that he was in possession of all the Papers, and that he
had refused to give them up.

Q. As it appears that the Schooner's Cargo could not be landed
because Entry was refused, and it is certain she could not go to
Sea without her papers, was it right to call upon me to be answer­
able for the conduct of Officers and Seamen belonging to a Vessel
over which I had no control?—A. I thought it was right.

Q. How long would you have considered me bound to be answer­
able for the Conduct of the Officers and the Crew of the Schooner if
her papers had never been restored or she been permitted to enter?—
A. So long as the Crew had no means of living on board, or until
something was settled respecting the Schooner.

* Note 82.
Q. Then it was to be understood that if the late Governor and the Naval Officer had thought proper never to settle the matter in dispute respecting the Schooner, I should have been for ever bound to pay, victual, and to be answerable for the Conduct of her Officers and Crew?—A. If the Governor or Naval Officer, or either of them, did an illegal Act, an action would lay and they must answer it.

Q. Do you mean to say that if I had brought an Action against the Naval Officer, and that he had urged in his justification that he had acted by the Orders of the late Governor, that you, under the then existing state of things, would have presumed to allow me to enter an Action?—A. To that I answer that if Mr. McArthur had come to me and said I want to enter an Action against Mr. Campbell for £10,000, the Action or Writ would not have been refused him; but when the cause came to be heard and was at issue, I cannot take upon myself to say what the Decision of the Judge-Advocate and the two Members would have been, or what plea Mr. Campbell would have set up. I would not have refused to enter an action against Mr. Campbell as Naval Officer.

Q. Did you not know that the Schooner had been removed from a place of safety in the Cove and taken by order of the Naval Officer or Governor into one so exposed that she was in the greatest danger of drifting on Shore?—A. I did not.

Q. Do you not know that it is the duty of the Master of any Vessel immediately to make a Protest in behalf of himself, his Owners, and the Underwriters concerned whenever he shall conceive that he has been illegally treated?—A. I dare say it is.

Q. Is not making a Protest the first Legal preparatory step to the commencement of a Civil Action?—A. I do not know that it is.

Q. Were you not the Notary Public of this Colony?—A. Governor King appointed me to that Office.

Q. Did not the Master of the Parramatta Schooner, accompanied by myself and Mr. Blaxcell, present a Protest to you?—A. He did.

Q. Did you not at first refuse to note that Protest?—A. I did.

Q. Did I not request you to acquaint yourself with its Contents?—A. I think you did.

Q. Did you not then read the Protest and require some hours to consider whether you should note it or not?—A. I think I did.

Q. Did you not return the Protest, refusing to have anything to do with it?—A. I returned the Protest with my Compliments, and begged leave to decline receiving it.

Q. Did you not first consult the Governor, and ask him whether you should or should not discharge the Duty of your Office?—A. I carried the Protest up to the Governor to know if I should receive it or to that effect; but I must observe that it was no more than my usual Practice to do when the Executive Government was in any manner concerned.

Q. Did you consult the executive Authority in those cases because you thought it was right, or because you were afraid had you done otherwise that you would have been ill-treated?—A. If I had taken it without the Governor's consent, I should, I have no doubt, have been reprobed by him, and should have incurred his Displeasure.

Q. Has the late Governor ever expressed his displeasure to you for acting in a manner that you knew to be right, in indecent and outrageous Invectives?—A. He certainly has expressed his Displeasure in a manner that has hurt my feelings.
Q. State to the Court the most improper Expression that you recollect he has ever made use of to you on such an Occasion?—A. I have received very abusive language from him, but cannot call it to mind.

Q. Has he never told you, and at the same time shaking his fist in your face, "Sir, you have two Opinions, have you—a Public Opinion and a Private Opinion"?—A. I think he did make use of the Gesture and Words.

Q. Did he never call you a Wretch or Villain?—A. Never to my recollection.

Q. Did he never so operate on your feelings by his threats and by his violence as to induce you to declare that if you knew His Excellency's Opinion you would take care to make your own conform to it?—A. Such a circumstance is not within my Recollection; but I might have said that in trifling things I would give way rather than have words with him.

Q. Have you not, through fear of his Vengeance, been induced to give Opinions and to decide on Causes contrary to what you know to be just?—A. I do not think it a proper Question, therefore decline answering it.

Q. Did you never alter an Opinion which you had given as Judge of the Civil Court by Order of the Governor?—A. I cannot call it to mind.

Q. Do you think it impossible that you did so?—A. I do not think it likely that I did so.

Q. You have heard the Letter of the 14th Decr, read;—Did you not, in consequence of the receipt of that Letter, issue the following Warrant for the apprehension of my Person. Warrant read, as follows:

"New South Wales: Whereas Complaint hath been made before me upon Oath that John McArthur, Esq., the Owner of the Schooner Parramatta, now lying in this Port, hath (illegally) stopped the provisions of the Master, Mates, and Crew of the said Schooner, whereby the said Master, Mates, and Crew have violated the Colonial Regulation by coming unauthorized on shore; And whereas I did by my Official Letter, bearing date the 14th day of this Instant Dec'r, require the said Mr. McArthur to appear before me on the 15th day of this Instant Dec'r, at ten o'Clock of the forenoon of the same day; And whereas the said John McArthur hath not appeared at the time aforesaid nor since, these are therefore, in His Majesty's name, to Command you to bring the said Jno. McArthur before me and other His Majesty's Justices on Wednesday next, the 16th Inst. Dec'r, at ten o'Clock of the same day, to answer in the premises; and hereof fail not.

"Given under my Hand and Seal, at Sydney, this 15th day of December, 1807. "RICH. ATKINS, J.-A.

"Mr. Francis Oakes, Chief Constable, Parramatta."

—A. I did.

Q. Did you issue that Warrant by order of the Governor?—A. No; but with the Approbation of the Governor.

Q. Under the Authority of what Law or Statute did you issue that Warrant?—A. I conceived that I issued that Warrant for a contempt of not obeying the official Summons I sent.

Q. What Summons do you allude to?—A. The Letter* I wrote to you on the 14th Dec.

* Note 83.
Q. Do you not know that the law requires a Summons should be directed to a Constable, Commanding him to serve it, and do you not know that a sealed Letter is no Summons?—A. I do know that a sealed Letter is no Summons in Law; and if my politeness to Mr. McArthur has brought me into an error, I think it ought not to be taken advantage of.

Q. Do you not think, when you talk of Politeness, that Politeness and Justice required you should have taken Legal Measures; if you thought your letter not properly attended to, that you should have issued a Summons and not a Warrant, which was to drag a Gentleman from the bosom of his family at a late hour of the night?—A. I conceived Mr. McArthur would have taken that Letter as I meant it—a Summons; therefore, it not being attended to, I did issue a Warrant.

Q. Do you conceive that because you choose to disregard Legal Forms all other persons are bound to conform to your Practice?—A. I certainly do not.

Adjourned to 9 o'Clock to-morrow morning.

3rd February.—Court met pursuant to Adjournment. The Prisoner continued to cross-examine Mr. Atkins.

RICHARD ATKINS, Esqr., Sworn:—

The Prisoner requested the Warrant,* dated 15th December, may be read, which was read accordingly.

Q. Did you think the Cause assigned in that Warrant sufficient justification to order the Arrest of my Person?—A. I did, in consequence of supposing my Official Letter had the full effect of a Summons, and conceiving that Letter was treated with Contempt, was the cause of my issuing the Warrant.

Q. Do you not know that when two or more Magistrates are assembled in Sessions that they are a Court of Record, and possess more ample powers than any single Magistrates; and do you not know that it is declared in Burns's Justice "that the Sessions cannot award an Attachment for Contempt in not complying with their orders"?—A. I know of no such Court in this colony as a Court of Sessions; all Judicial Proceedings in this Colony have been guided by the Patent, and it there expresses that the Courts of Civil and Criminal Jurisdiction shall be Courts of Record. I believe no attachment of the person can issue from a Court of Sessions in England.

Q. Do you not know that it is declared in Addington's Penal Statutes that no Justice of the Peace can meddle with any matters except some Statute gives them power, for they have all their power by Statute and none by Common Law?—A. I do not recollect that Addington mentions it. I have not been in the habit of consulting law books, but on such cases to obtain information as were at the time under my consideration.

Q. Can you produce any Statute or Law Authority to justify the apprehension of my person for not choosing to comply with the request, or order, communicated in a Sealed Letter?—A. I cannot.

Q. Do you not know that it is declared by Burn "that if a Magistrate issue a Warrant, wherein he hath no Jurisdiction, or in a matter wherein he hath no Cognizance, the Officer ought not to

* Note 84.
execute such Warrant; for if a Justice send a Warrant to a
Constable to take up one for slander or the like, the Justice hath no
Jurisdiction in such cases, and the Constable ought to refuse the
execution of it".—A. I dare say I have read it, and have no doubt
it is as stated by Mr. MacArthur.

Q. What steps did you take after being informed that that War­
rant had not been executed?—A. Mr. Oakes came to me in the
morning to my Office, about 6 o’Clock in the Morning, 16th December,
and acquainted me with the Circumstances that did occur in the
Execution of that Warrant on Mr. McArthur at Parramatta. Mr.
Oakes informed me that he had received my Warrant and that in
consequence that he had gone to Capt. Abbott to mention that he
had such a Warrant; that after that he went to Mr. McArthur’s
house and found him in bed; he (Oakes) rapped at the window,
on which Mr. McArthur got up, and, on Mr. Oakes entering the
House, informed Mr. McA. that he had a Warrant against him.
Mr. McArthur requested to look at it and Oakes gave it to him,
and I think said a Copy was taken by Mr. Han’l McArthur; that
Mr. McA. flew into a violent passion and said he never would
submit to it, and he stated also that Mr. McArthur said he never
would submit to such horrid Tyranny; that Mr. McArthur wrote the
following Paper:—

"Mr. Oakes,—You will inform the Persons who sent you here
with the Warrant you have now shewn me, and given me a Copy
of, that I never will submit to the horrid Tyranny that is attempted
until I am forced; that I consider it with Scorn and Contempt, as I
do the persons who have directed it to be executed.

"Parramatta, 15th December, 1807. " J. McARTHUR.

Which being read, Mr. McArthur acknowledges to be the Paper he
wrote and gave to Mr. Oakes. I further state that Mr. Oakes
informed me that he had said to Mr. McA., "Shall I wait on you in
the Morning, Sir?" Mr. McA. replied, "Keep that Paper, for that
will be your justification," or to that effect; and that Mr. McA.
further said, "Leave them alone; they will soon find a Rope to
hang themselves," or words to that effect. Oakes then went away
from Mr. McA., and came down the next morning and related what
I have before stated, on which I went up to Government House
and asked for the Governor. They informed me he was not stirring,
on which I went away, and was sent for in about half an hour. I
related to the Governor what Oakes had told me, and showed
the Governor the Paper, on which the Governor ordered me to
convene a Bench of Magistrates, which I did, and they met. The
following Paper being read is their proceedings thereon:—

**BENCH OF MAGISTRATES.**

The Judge-Advocate; Major Geo. Johnston; Robt. Campbell, John
Palmer, Esquires.

"16th December, 1807. "

"Mr. Francis Oakes, Chief Constable at Parramatta, came this
day before us, and deposed on oath that in consequence of a
Warrant from the Judge-Advocate to him directed, he went to the
house of John McArthur, Esq., and presented to him the said
Warrant; that after his having read it, he fell into a great rage,
and said he would not submit to it until he was forced; and said,
‘You may tell the Person that he treated it with Scorn and Con­
tempt as he did the Persons that sent it,’ and said that if the
Persons directing that Warrant had served it instead of him (the Deponent) he would have spurned them from his presence; and Deponent further says that the said Jno. McA. declared in his presence that if he came a second time to come well armed, for that he would never submit until there was blood shed. The said John McA. averred that he had been robbed of £10,000; that he did not consider he had committed a Criminal Act; and that he would not go, but said, 'Let them alone; they will soon make a Rope to hang themselves.'

"Sworn before us, this 16th December, 1807,—

"R.D. ATKINS,
"GEO. JOHNSTON,
"ROB'T CAMPBELL,
"JNO. PALMER."

Mr. Oakes further says that he saw John McArthur, Esq., write the Paper.*

The Court was then cleared, and after much Conversation respecting the business before them, they were of Opinion that as I had issued the first Warrant it would be better for me to issue the Second, which I did, and the following is a Copy which was read:

"New South Wales: Whereas on the 15th day of December, in the Year of our Lord 1807, I issued my Warrant, directed to Mr. Francis Oakes, Chief Constable at Parramatta, authorizing him to bring before me John McArthur, Esq., to answer in the Premises; And Whereas the said Francis Oakes came this day before a Bench of Magistrates, the Judge-Advocate, Major Geo. Johnston, Robert Campbell, and John Palmer, Esq., Justices assigned to keep the Peace being present, and deposed on Oath that the said John McArthur had refused to obey the said Warrant, but treated it in the most contemptuous and disrespectful manner; these are therefore to authorise and require you to take into your Custody the Body of the said John McArthur, Esq., and him safely lodge in His Majesty's Jail until he shall be discharged by due Course of Law;—for which this shall be your Authority:

"Given under my Hand and Seal at Sydney, this 16th day of December, in the Year of our Lord 1807.

"RICHARD ATKINS, J.-A.

"To Mr. John Redman, Chief Constable at Sydney; Mr. Francis Oakes, Chief Constable at Parramatta; and all other His Majesty's Peace Officers and all others whom it may concern."

I delivered the Warrant into the hands of the persons to whom it is directed and they went away. In a short time they returned and said they could not find Mr. McArthur. Some little time after, Mr. Gore, the Provost-Marshal, came and acquainted me that Mr. McArthur was at Mr. Grimes's, the Surveyor-General. This being communicated to Redman or Oakes, either by me or Mr. Gore, in consequence of which they went to Mr. Grimes's House, and, I suppose, found Mr. McArthur there, for he (Mr. McArthur) was almost immediately brought before me. In consequence as they (Redman and Oakes) informed me that Mr. McArthur wished to be brought before a Magistrate, and Mr. McA. was by me admitted to bail to appear before a Bench of Magistrates as on the next

* Note 84.
1808.
11 April.

Proceedings at the trial of John Macarthur.

morning. A Bench of Magistrates was, in consequence, convened for the next morning. The following Paper being read to the Court is their proceedings thereon:—

**FULL BENCH OF MAGISTRATES.**


"17th December, 1807.

"The Bail of John McArthur, Esq., having brought him into Court, and the Bench was going to proceed when Mr. McArthur objected to Mr. Campbell sitting as a Magistrate on this Investigation, stating, among other reasons, that his improper conduct as Naval Officer has been the cause of the present business, and that he had Notice given him that it was his intention to institute an Action against him for £10,000, and that for these reasons he considered Mr. Campbell as an interested person, therefore objects to him.

"On the Bench being cleared Two of the Magistrates were of opinion that the Objections against Mr. Campbell sitting were sufficient, and two Magistrates were of a contrary Opinion.

"On the Court being opened, and the Opinion of the Bench read, Mr. McArthur, after having addressed the Bench in a few words, waived his Objections against Mr. Campbell's sitting; but Mr. Campbell declined taking his Seat, and the Bench proceeded.

"Mr. Gore, the Provost-Marshal, came into Court and delivered the following Messages from the Governor to the Judge-Advocate: 'His Excellency the Governor-in-Chief is debarred the opportunity of consulting with the Judge-Advocate, the only Law Officer of the Crown in this Territory; he has directed me to submit to the Judge-Advocate, now sitting in Court, whether the affair now investigating before the Bench—it being a matter not of Property but a charge of a Criminal Nature—whether a Member of the Bench can be excepted against as incompetent, from interested motives, to sit as a Member thereof.'*

"Mr. Francis Oakes, Chief Constable at Parramatta, sworn, says that he received a Warrant from the Judge-Advocate for the purpose of bringing John McArthur before him, in consequence of which he went to the house of Mr. McArthur and served it on him. Mr. McArthur asked him to let him look at it, which he did. After having read it he fell into a great Rage and said. 'You may tell the persons directing that Warrant that I never will submit unto it until I am forced, for I treat it with Scorn and Contempt, as I do the persons who have sent it.' He further said: 'Had the person who directed it served it instead of you he would have spurned them from his presence.' He further said, 'that if I came a second time to come well armed, for he never would submit till blood was shed.' He further said: 'That he had been robbed of £10,000, and that he had not committed any Criminal Act, and that he would not submit to the Warrant; but let them alone, they will soon make a Rope to hang themselves.' He likewise mentioned the Governor's Name with a great deal of disrespect. The Paper being shewn him, he says he saw Mr. McArthur write that paper, which he afterwards delivered to him.

"FRANCIS OAKES.

*Note in the original.—This message answered by letter to His Excellency the Governor, but not copied in the proceedings.

† Note 84.
Mr. McArthur being asked if he has anything to say, states: 

"That he stands before you, Gentlemen, as a Prisoner under the Authority of a Warrant from the Judge-Advocate." Mr. McArthur proceeding to call in question the legality of the Judge-Advocate's Warrant, the Bench stopped him, not considering it an Object for their Consideration.

"Mr. McArthur stands committed for a Criminal Court.

RD. ATKINS.

GEO. JOHNSTON.

ED. ABBOTT.

JNO. PALMER."

Bail given.

In consequence of such Committal Mr. McArthur was admitted to Bail to appear before the next Criminal Court.

Questions from the Pris'r to Mr. Atkins. When you went to the Government House to inform the Governor of what I had said respecting your first Warrant, did you take Oakes with you, or was he sent for?—A. He was sent for to Government House, and he came.

Q. What occasioned the late Governor and yourself, with Oakes, to go out of Government House and to walk on the high Ground behind?—A. To prevent any Person hearing what was said.

Q. Was not Oakes's Story put into a state of arrangement during this walk, as it was to be told before the Bench of Magistrates ordered to assemble?—A. It was not. Oakes related his story to the late Governor, the Governor asked him some questions respecting the business, and Oakes was desired to attend the Bench of Magistrates and relate what he knew and had stated to the Governor.

Q. Was the late Governor civil and kind in his manner to Mr. Oakes?—A. He was.

Q. It appears from the Proceedings of the Bench of Magistrates who committed me for Trial that Mr. Campbell voluntarily declined sitting after being objected to by me;—Do you think he did so because he thought he had no right to sit or because he was ashamed to sit after the remarks I had made on his attempting it?—A. I must confess that I was surprised that on Mr. McArthur making the first objection to him that he did not decline sitting; and I gave him an opportunity by saying, I think, "What do you say, Mr. Campbell?" but he made no Reply, and the Court was cleared, and on the opening of the Court Mr. McArthur then addressed the Court on the impropriety of Mr. Campbell sitting; but Mr. McArthur waived his objection, when Mr. Campbell declined sitting, and the Bench proceeded.

Q. Do you remember that when Mr. Gore, the Prov't-Marshal, came before the Bench of Magistrates and delivered a Message requiring the immediate attendance of the Judge-Advocate on the Governor, that he, amongst other things, said "that he was directed by the Governor to accuse me of an overt Act of high Treason," and my requesting that part of the Message might be taken down?—A. I well recollect Mr. Gore, the P.M., delivering a Message to that effect.

Q. Do you remember that when I was brought before the Bench of Magistrates on the 17th Dec'r that you declared the Bench had power either to commit me for Trial or to punish me at their discretion, either by Fine or Imprisonment?—A. Such an Assertion is not within my recollection.
Q. Previous to the Bench assembling, had you not a firm reliance that two Members of the Bench—namely, Messrs. Palmer and Campbell—would coincide in your Opinion as to the manner I was to be treated?—A. I firmly believe, from the Observations that I have made on those Gentlemen as Magistrates, that they would in most cases—but I will not take upon myself in all—give their opinion in a manner most congenial to the late Governor's opinion.

Q. After my Commitment you have stated that Geo. Crossley prepared the Information now exhibited against me;—did he do that with the Approbation or by the desire of the Governor?—A. Crossley told me he did.

Q. Have you not been obliged to govern yourself by the Opinion of Crossley in every step which has been taken since my Commitment until the late Governor was happily superceded?—A. Crossley's Opinion as to the mode of proceeding did govern me to the extent stated.

Q. Was the Paper now before the Court, containing questions to be asked, the Evidences in support of this Prosecution drawn up by you or by Crossley?—A. Not a single question was drawn up by me, but the whole by Crossley; and I recollect that Mr. Palmer, one of the Witnesses, in my presence asked Geo. Crossley for the Copy of the Questions to be asked him, which he (Crossley) had promised to furnish him with. Crossley replied he should have them in the course of an hour.

The following Paper the Prisoner requested might be read, which was read as follows, viz.:

"25th January, 1808.

The King v. John McArthur. Court of Criminal Jurisdiction.—It is ordered by the Court that unless the Defendant plead to issue, on or before Eleven o'Clock, on the Twenty-sixth Day of this instant January, Judgment of Guilty be recorded in this Cause.

"By the Court.

R.A., J.A."

Q. State to the Court, was that Paper prepared by You or Geo. Crossley?—A. I copied it from a Paper prepared by Geo. Crossley.

Q. To what purpose was it intended to be applied?—A. That, in the event of Mr. McA. refusing to plead, that Judgment of Conviction should be entered upon Record agreeable to the Statute.

Q. Why was it expected that I should refuse to plead?—A. It was a matter of doubt, suspecting that Mr. McA. would object to me as Judge of the Court, and should his objections have been overruled by the Court, Mr. McA. might not have pleaded, and then Judgment might have been entered on Record agreeable to the Statute.

Q. Did you expect that if I had objected to you as a Judge in my cause, that the Court would have overruled the Objection; and if you did, did you expect that they would have been governed in their Opinion by fear of Consequences?—A. I am sensible that whatever Opinion they might have given on that occasion, that they would not have been biased by fear of Consequences, but would have been actuated by the dictates of their own Ideas.

Q. You have repeatedly declared that the first Comp't in the information relating to the affair of the Stills was introduced contrary to your Opinion?—A. When Mr. Crossley brought me the Information in his own handwriting, he informed me that the first Comp't was grafted from an Information which he had drawn up some time back by the desire of the late Governor, and which I
knew nothing of, and that it was expressly the Governor's direction to him, though contrary to his Ideas, that that should make the first Compt' in the present Information.

The Prisoner requests the Proceedings of a Bench of Magistrates of the 24th Oct'r, 1807, may be read, which was read as follows, viz.:—

[Here followed a copy of the proceedings in the suit of John Macarthur v. Robert Campbell, Jr.; a duplicate of those forwarded as enclosure numbered 11 to Governor Bligh's general despatch to the Right. Hon. William Windham, dated 31st October, 1807.]

Q. Did you take the above Proceedings up to the late Governor that day?—A. I did.

Q. Did you not meet me in the Street that Evening and tell me that you had been grossly abused for having done your Duty?—A. I cannot recollect it.

Q. Were you not grossly abused at Government House when you took up the Proceedings of the Bench?—A. When I went with the Proceedings to Gov't House I was accompanied by Messrs. Campbell, Palmer, and Gore; upon going into the room where the Governor was, accompanied by those Gentlemen, I began, as usual, to read the Proceedings. After having read the whole, the Governor did not say anything, but as far as looks would go, appeared to me to be highly dissatisfied. A Conversation then took place between Messrs. Campbell, Palmer, and Gore, and Mr. Griffin, in which I appeared to be the butt of their Obloquy and Sarcasm for the opinion I had given on those Proceedings; this continued for near half an hour; at last the Governor said, "Never mind it; this will do"; the expression was said in such a way as clearly indicated to me the dissatisfaction of the Governor to the Opinion I had given on that occasion, and that I did on that Evening and since mention to several persons that "my feelings were never more hurt than they were on that day." I thought I had been bullied and browbeaten by those persons.

Q. Do you remember meeting me in the Street a few days previous to the 24th October, and having said that I was not aware of the hundredth part of the Wickedness going forward in the Government House?—A. I will not take upon myself to say that I made use of those express words; but I remember opening myself very freely to Mr. McArthur at that time, and I have no doubt that I did express my high Dissatisfaction at what was going on at Government House.

Q. Previous to the Assembling of the Criminal Court on the 25th of January last, did I not make repeated written Applications to you for a Copy of the Information on which I am now prosecuted on?—A. I received three Letters on that Subject from Mr. McArthur, and my reason for refusing to give it was because Mr. Crossley had informed me that by Law he was not entitled to it until he had pleaded to it.

Q. Has not the late Governor declared in your presence that his Will should be the Law, and woe be to him that dared to oppose it, or words to that effect?—A. He has.

Mr. Atkins's Depositions—which he acknowledges to be correct—the Prisoner requests may be ent'd in the Minutes—which are as follows:—

[4 copy of the deposition of Judge-Advocate Atkins was also forwarded as enclosure No. 9 in this despatch.]

1808.
11 April.

Proceedings at the trial of John Macarthur.
Q. from the Court to Mr. Atkins.—Have you reason to suppose that Mr. Campbell is acquainted with the questions he was to be asked on Mr. McArthur's Trial?—A. I cannot speak to my own knowledge; but Mr. Crossley informed me that he was going down to Mr. Campbell to show them to him.

MR. EDMUND GRIFFIN being sworn:

There being fifteen Questions found in the Papers left by Mr. Atkins in the Court on the 25th January in the handwriting of Mr. Griffin, the Governor's Secretary, which questions Mr. Atkins intended to ask this Evidence on the present Trial, the Court asked them in their original Order.

Q. 1. Was you or not present on the 8th day of March, 1807, or at any other and what time, when the Master of the Ship or Vessel the Dart came to Govt House with Mr. Harris, the then Naval Officer, or with any other and what person, to make a Report to the Governor of the Arrival of that Vessel, with the Manifests or accounts of the Cargo?—A. I was.

Q. 2. Upon his delivery to the Governor, or any and what other Person, the Accounts of that Vessel's Cargo, did it or not appear there were two Stills on board; and if yea, Did or not the Governor direct that those Stills should be deposited in one, and which, of His Majesty's Stores, to be there Safely kept until an opportunity happened that they might be sent back to England, or what directions were then made with respect to those Stills being suffered to be landed, and on what Conditions?—A. Upon Mr. Harris, who was the then Naval Officer, with the Master of the Vessel producing the Ship's Papers, it appeared on one of the papers that there were two Stills on board the Vessel, and I think that Mr. Harris particularly pointed them out; the late Governor expressed much surprise at it, and desired that they should be put into the bonded Store, on which Conditions they were allowed to be landed, and directed Mr. Harris to have them in readiness to be sent back to England.

Q. 3. Then you say that the Governor's permission to let those Stills be landed was only on the Condition that they should be put out of the Ship into one of the King's Stores to be kept safe until they could be sent back to England?—A. I did understand so.

Q. 4. Those directions were given by the Governor in your Presence to Mr. Harris, the then Naval Officer,—were they or not?—A. They were.

Q. 5. Did you at any time after, and when, hear Mr. Harris tell the Govr that the Bodies of those Stills were at Mr. McArthur's house and not in the Store?—A. I heard Mr. Harris tell the Governor so, some time the latter end of March or April.

Q. 6. What did the Gov'r direct Mr. Harris to do on the receipt of such an Account, or what Orders did he give?—A. The Governor directed Mr. Harris to comply with his original Orders that the Stills as invoiced should be lodged in the bonded Store.

Q. 7. Was you present in the Month of Oct. last, or at any other time, when the Governor gave a direction to Rob't Campbell, Esq., the now Naval Officer, to have those Stills taken from the Store and sent on board the Ship or Vessel the Duke of Portland?—A. I was present when those directions were given at the time Stated.

Q. 8. Was or not the Vessel the Duke of Portland at that time laying in Sydney Cove, and in a short time expected to depart on her Voyage to England, or how else?—A. She was laying in the Cove and expected to sail for England.
Q. 9. Upon it being at this time discovered that the Bodies of those two Stills were not put into the King's Store, according to the condition they were suffered to be landed upon, what Orders did the Governor, or any other person, to your knowledge, give on that occasion?—A. The late Governor directed Mr. Campbell, the Naval Officer, should Ship the Stills compleat.

Q. 10. Do you in any ways know the handwriting of the Prisoner (John McArthur, Esq.) and if yea, look upon the Paper writing now produced and shewn to you, and say if it is or not the handwriting of the Prisoner, as you know or believe. Letter read as follows:

"Sir, " Sydney, 19th October, 1807.

"Mr. Blaxcell has communicated to me the Contents of a Letter from you of the 12th Inst., relative to two Stills imported into this Colony in my Ship the Dart, which you state the Governor has directed are to be shipped on board the Duke of Portland.

"In Answer, I must beg you to acquaint the Governor that I have nothing to do with the Still belonging to Capt. Abbott, and that it is my intention to dispose of my own to some Ship going to India or China. If that sh'd be objected to, the head and worm can be disposed of as His Excellency thinks proper, and I shall appropriate the Copper to some domestic use.

"I am, etc.,

"Robert Campbell, Esq. " JOHN McARTHUR."

A. Letter produced (as above), To the best of my knowledge is Mr. McArthur's handwriting.

Q. 11. It not only appears by this Letter that the Prisoner was Owner of the Ship the Dart—as he calls it my Ship the Dart;—do you or not know by any other and what way that the Prisoner was the Owner of that Vessel or not?—A. I have no doubt Mr. McArthur was an Owner of the Ship Dart.

Q. 12. Did you hear the Prisoner make a Speech, or address, which at his request was taken down by the Judge-Advocate; and if yea, look upon the Paper Writing now produced to you, and say if those are or are not the words then and there pronounced by Mr. McArthur or not: declare?—

[Here followed a copy* of Macarthur's address (attested by Richard Atkins, J.-A.) to the court in his suit against Campbell, jr.]

A. Yes.

Q. 13. Do you or not believe and understand these words, and the manner in which Mr. McA. used them, that this Speech was made to incite hatred and ill-will to the Governor and Government of this Territory in the minds of the People there assembled, or how otherwise?—A. After leaving the Court, I expressed myself on my return to Government House to the Governor and several Gentlemen assembled there that I did conceive Mr. McArthur had spoken a very inflammatory Speech, and that it appeared to me to have a tendency to incite hatred and ill-will against the Governor and Government of this Territory.

Q. 14. Does it or not appear to you by the Words then used that the Speech was calculated to inflame the minds of the bye-standers against the executive Power of the Government, and to insinuate to the People that the rights and property of the individuals were unlawfully infringed upon by the Governor and those in the Authority of the Government, or how else?—A. It did so appear to me.

* Note 86.
Q. 15. Is it not Customary for the Governor to give his directions verbally in matters like those enquired of?—A. The Governor always gives his orders to the Naval Officer verbally, to the best of my recollection.

The Prisoner, being asked what questions he has to propose to this Witness, asks:

Q. Are you not in the habit of being consulted by the late Governor and of giving your Opinion on most subjects of Public business to him?—A. I have been.

Q. Did the Governor on important business frequently follow your Advice?—A. Yes, in some instances.

Q. How old are you?—A. Twenty-one in September next.

Q. On the Oath you have taken, did you not know that the Bodies of the Stills remained in my possession from the time that they were landed until the time they were forcibly taken away?—A. I did not know they were in Mr. McA.'s possession until I heard it from Mr. Harris, some time in March or April.

Q. As you heard the Bodies of the Stills were in my possession in March or April, did you not know that they remained there until they were seized?—A. In Oct., when the late Governor gave the Naval Officer (Mr. Campbell) directions about the Stills, I expressed my doubts that Mr. Harris had put them in the Bonded Store.

Q. You have stated that you thought the Speech I made to the Bench of Magistrates respecting the unlawful Seizures of the Bodies of those Stills was an inflammatory one, and that it appeared to you to carry hatred and ill-will to the Governor and Government of this Territory;—Pray, Sir, were you born in England or Turkey?—A. I was born and educated in England.

Q. Now, Sir, as you have acted as Counsel to the Governor, are you not acquainted that the property of an Englishman cannot be taken from him without lawful Authority in writing?—A. I do not know the Law sufficient to answer it.

Q. Do you not know that these Coppers were taken from me without any Authority in writing?—A. I really believe there was none.

Q. Has it never occurred to you that such a seizure of property and such a mode of proceeding was more likely to incite hatred and ill-will against the Gov'r than anything I could say or do?—A. No, never in the most distant manner, except that I suppose Mr. McArthur would not like it.

Q. How did you know I would not like it?—A. I supposed so, the Stills having been brought into the Colony, and the Gov'r ordering them out again.

Q. Did you not know that these Stills were regularly entered in the Custom House at London, and that they were fairly and openly brought into this Colony; and do you not know that the Manifests from the Custom House contained a Specification that two Stills made part of the Cargo of the Dart?—A. The two Stills did appear on one of the Ship Dart's Public Papers; by that paper the Stills did appear to be brought openly into this Colony.

Q. Do you not know that the Heads and Worms of both Stills were readily given up to the Governor's order and lodged in the Public Stores?—A. I did know, from Mr. Harris's report, in March or April, that the Heads and Worms were given up directly and sent into the Public Stores, but that Mr. McA. said that he would keep
the boilers—they were full of Medicines, which came packed from England, in them—and after their being emptied he would employ them for domestic purposes.

Q. Can you State to the Court what made the late Governor so particularly anxious to get those Stills out of the Colony?—A. The Governor conceived they were illegally imported, and that he would send them to the Commissioners of the Customs.

Q. On the Oath you have taken, did you never hear anything of a Plan of carrying on a Public Distillery, under the firm of Palmer, Campbell, and Co., or either of those persons?—A. Never heard such a thing hinted at.

Q. You have stated that the Governor frequently gives verbal Orders—not written ones?—A. To the Naval Officer.

Q. Does he not frequently give verbal Orders to other persons?—A. Yes.

Q. Have you never heard the Governor assign a reason for declining on a variety of occasions to give written Orders, and declining on many others to give written Answers?—A. I cannot charge my recollection.

Q. Have you never heard the Governor tell persons, at their peril, never to give any written messages he might send them with?—A. I cannot charge my recollection.

The following Paragraph being read from the Copy of the Governor's public Letter to the Secretary of State, by the Duke of Portland:

"The Distillation of Spirits being prohibited for the best and wisest reasons, everything has been done to prevent such a destructive business being carried on; nevertheless a Defiance has been set up to Government by Mr. McArthur in importing a Still of sixty Gallons, directed to himself, and another of forty Gallons directed to Capt. Abbott, of the New South Wales Corps, brought out in the Ship Dart, consigned to Mr. McArthur as part Owner of the said Ship with the House of Hulletts and Company, of London. These Stills I ordered into the King's Stores to be sent to the Custom House, in London, by the safest opportunity. On their being directed to be shipped on board the Duke of Portland the Coppers were found in Mr. McArthur's house, from whence, after some objection, they were taken by a young gentleman (the Naval Officer's clerk) in consequence of my orders, and shipped with the other parts; but Mr. McArthur, not being satisfied, called the Naval Officer's Clerk before a Bench of Magistrates (the Minutes of which are enclosed) on which I regret being obliged to shew by his Speech the inimicability of his mind to Government, and particularly in renewing a remembrance of a Person who has been the disturber of the tranquility of the Colony."*  

The Prisoner requires the Evidence to state why this erasure was made?—A. The Governor, on comparing the Copy, desired it to be left out without assigning any particular reason; but I think the Governor thought it too severe.

Q. By what Act do you divine the Governor's thoughts?—A. I do not pretend to any such Act.

The Prisoner having closed his Cross-Examination of this Witness on the part of the Crown, wished to defer the Examination on his own part until he had made his Defence, which was overruled by

* The pen had been drawn through the words printed in italics (see note 87).
1808.
11 April.

Proceedings at the trial of John Macarthur.

1808.
11 April.

HISTORICAL RECORDS OF AUSTRALIA.

the Court, who are of opinion that Mr. Griffin should now be examined fully.

Court adjourned until 8 o'clock to-morrow morning.

4th February, 1808. The Court met, pursuant to adjournment.

MR. EDMUND GRIFFIN, SWORN:—

Q. FROM THE PRISONER. I am charged with endeavouring to excite hatred and ill-will in the minds of the inhabitants of this Colony against the Governor and Government of this Territory, and you have been brought forward to support that Charge. It is now my purpose to call upon you to prove that I am an innocent and falsely accused man. I therefore ask you whether you ever witnessed any Act of mine which displayed a determination on my part to commit so enormous an offence?—A. It does not come within my knowledge; only the act of making a Speech before a Bench of Magistrates, which I conceived to be inflammatory.

Q. There is the Speech* alluded to—Point out the part that you conceived inflammatory?—A. That part, "It would therefore appear, &c.," and from the very particular manner the Speech was delivered to the bye-Standers.

Q. Do you not know that my property was taken from me?—A. I know that the two Bodies of the Stills were taken from your house.

Q. What Office does the Person hold in the Colony that took them?—A. The Person that took them was, I believe, Mr. Robt. Campbell, Junior, and he was Clerk, as I understood and know, to Mr. Rt. Campbell, Magistrate and Naval Officer.

Q. What Authority had that person for seizing these Copper boilers?—A. I believe he had the Naval Officer's verbal Orders.

Q. Did you ever hear or ever read of any man being Criminaly prosecuted for going before a Bench of Magistrates and Complaining that his property was wrested from him by a non-accredited individual, who had no authority to show to justify such a deed of violence?—A. I do not recollect ever having read or heard of such an Act.

Q. Did you ever hear of any man being dragged as a Criminal to the Bar of a Court of Justice for calling upon the Magistracy of the Country to decide whether his property could be so taken from him with impunity to the Offender?—A. No, I never did.

Q. Do you not know that the Law allows every man to complain to the Magistracy of any Injustice he may conceive he may have suffered?—A. I have always understood that every Individual has that right.

Q. What more then have I done, and upon what ground do you defend your Declaration that I intended to excite Hatred and ill-will in the minds of the People against the Governor and Government of this Territory?—A. I have no other ground than having been present and heard it, and it is my Opinion.

Q. When you came as a Spectator of the Proceedings of that Bench of Magistrates, can you on your Oath say that you came with an honest, impartial, and unprejudiced mind?—A. I cannot say that I was unprejudiced against Mr. McArthur from everything I had heard.

Q. You have frequently seen me at Government House in apparent habits of familiar intimacy with the late Governor?—A. No more familiar than any other Gent'm that visits Government House.

Q. Have you not frequently seen me Breakfast, Dine, and Sup at Government House on the same day?—A. I cannot charge my recol-

* Note 86.
JOHNSTON TO CASTLEREAGH.

Q. Do you not know that the Governor has more than once lamented that he had not a spare Bed in the house to accommodate me or any part of my Family when down at Sydney?—A. Yes.

Q. When you have seen me at Government House, have I not always been respectful and attentive to the late Governor?—A. It always appeared so to me.

Q. Have you not always seen the Governor polite and attentive to me?—A. Yes.

Q. Do you not know that during this apparent friendly intercourse that the Governor was taking measures, both by his Speeches and his Letters, to distress and ruin me?—A. No, I do not.

Q. Did you never hear the Governor give any Opinion of me during that time?—A. I cannot charge my recollection.

Q. Did you never hear the Gov'r speak of me before he came here?—A. I do not recollect.

Q. Do you not know that he had determined, before he came here, to obstruct me in my pursuits?—A. No, I do not.

Q. Have you never heard any reason assigned for my ceasing to visit at Government House?—A. No. I heard the Governor say one time, on his coming from Parramatta, that Mrs. McA. paid a visit at the Gover'n't House there, when she apologised for Mr. McA. not calling on account of ill-health, on which the Governor said to Mrs. McA. that he w'd call on Mr. McA. He did so, and Mr. McA. came in from riding while he was there, and Mrs. McA. informed the Governor he had just been riding round his Farm. The Governor expressed his surprise at seeing Mr. McA. so well, having been informed the day before by Mrs. McArthur that he kept his room. Mr. McA. told the Gov'r that that was the first time of his going out since his illness, and that Mrs. McArthur seemed confused. The Governor said he thought it was done that Mr. McA. might have to say that the Gov'r had called on him and that he would not return the Visit, since which time Mr. McA. has not been at Gov't House.

Q. Were you present as Secretary to the Governor in the Court of Appeal when a Suit of mine was brought forward against And. Thompson?*—A. I was.

Q. When that Court adjourned the first time, had I been heard in support of my Appeal, or in answer to a paper given in by the respondent?—A. No.

Q. Did you afterwards furnish me with a Copy of the respondent's Paper?—A. I did at your request.

Q. When the Court of Appeal was opened did I not present a Paper to the Governor, stating it was an answer to the Respondents?—A. Yes.

Q. Did not the Governor refuse to receive it?—A. Yes.

Q. Did he not instantly direct you to read his Award against me, without ever having heard me utter a word in support of my Plea?—A. Yes, he did.

Q. Have I ever been in Government House since that day?—A. To the best of my recollection, you never have.

Q. During the time the Sydney Gazettes were published, was not the Proof Sheet always brought to Gov't House to be corrected and approved?—A. Yes.

* Note 88.
Q. In the Gazette which was published the week before the Governor pronounced Judgment against me, was there not a Paragraph which completely corresponded with, and appeared calculated to justify, the Governor’s decision. Gazette produced, and read as follows:

“The extraordinary Fluctuations that have taken place in the Price of Wheat since the Flood in March, 1806, have given rise to many Litigations, which a little sincerity might have superseded. It is generally known that when Grain was plentiful nearly all Bargains made at the Agricultural Settlements were for the produce of the Ground at the Store prices. The amount in cash was divided into Bushels, and Notes issued, rating Wheat at its then present maximum—which seldom exceeded 7s. 6d. per Bushel, though now at 28s. to 30s. Losing sight then of the Value of the Commodity in exchange for which these Notes had been exacted, and the specific terms of the Contract are conscientiously demanded, without any consideration of the excessive Loss which must evidently fall upon an unfortunate Debtor who, to cover an original demand of £50, must necessarily expend £200. How conscience can reconcile the Requisition must be referred to those who are interested in the event of such Transactions.

“It is a happy reflection, however, that Disputes of this nature are no longer permitted to arise from an indiscretion in the mode of granting Notes of Hand. By referring to His Excell’y’s General Order of 1st November, 1806,* and the Proclamation published on the 3rd of January last,* we find a remedy to an evil which many have to lament the pressure of. In the Public Ordinances above quoted we beg to remind the public it is enacted ‘that all outstanding notes, payable in Copper Coin or Colonial Currency, are to be considered as Sterling Money, and the amount sued for as if the term Copper Coin or Colonial Currency had not been expressed; and further, that all Checks and Promissory Notes shall be drawn payable in Sterling Money, in consequence of the undefined manner in which Notes have hitherto been given, and the many evils and Litigations which have resulted therefrom in the Colony.’ It is not only the Duty but the interest of every well-meaning man to pay strict obedience to a Regulation, the design of which is to abolish the Chicanery to which the inaccuracy of these Instruments gave rise. Grain was once considered as a Legal Tender for a Debt contracted, and was, therefore, one Species of Colonial Currency. It is evidently dangerous, however, for an individual to bind himself in the payment of any specific number of Bushels of any Article to which unforeseen events may give even a tenfold value—and Shylock still insists upon his Bond. The Orders admit not of misconstruction; the Sterling value of the Note when drawn, in justice should be demanded, whatever be the mode of payment, and any excess upon that just demand is unquestionably an invasion of another’s rights”?

Q. On the day after the Governor pronounced his decision in the Court of Appeal, was not another Gazette published containing a Paragraph completely applicable to my suit? The Gazette produced (12th July) Vizt:

EXTRACT.

“In cases respecting Wheat-Notes, wherein the present holder is not the person to whom a Note was originally granted, is it not an

* Note 89.
insult to common Justice that he should require a greater consideration for it than he had himself allowed?

"This question is suggested in the idea that if A. receive from B. a Note of Hand (drawn payable to the latter by C.) for twenty Bushels of Wheat—it then being at 8s.—he must of consequence have taken such Note in consideration of the Sterling sum of £8 at the most. Then, if A. retain possession of the Note until Wheat became five times as valuable as it was when he received it, and then insists upon the sum of twenty Bushels, whether does he sue for £8 or £40; and if any Sum that exceeds his first and only equitable Claim, upon what principle of Equity can he pretend to justify it?"—A. I recollect the paragraph.

Q. Do you remember in the following Gazettes the Publication of two Letters under the signature of "An Oculist"?—A. Yes.

Extract from the Sydney Gazette of the 26th of July, 1807.

"To the Editor of the 'Sydney Gazette.'

"Sir,—Every lover of truth must be pleased at the impartiality of your excellent Publication; but much as I admire your luminous style of reasoning and the logical precision of your Arguments in general, I confess they failed of their usual effect in the Lecture you favoured us with in your last paper on A., B., C.

"Permit me to continue the Case you have assumed, and to suppose C. holds an Obligation drawn by A., when Wheat was at 8s. per Bushel, to deliver a certain quantity to B. or Bearer, and that before the Obligation is discharged it falls to 5s., could C. demand either from A. or B. the difference in value occasioned by such a depression of the Price? If not, it appears that the literal Tenor of every Engagement ought to be fulfilled, and that specific Contracts must be sacred and binding, as it surely will not be denied that if the holder of an Obligation is to bear the loss when the commodity he has bargained for falls in its Value, he ought not to be deprived of the benefit of its rise.—Your constant reader,

"AN OCULIST."

"P.S.—I think your honest Zeal has animated you rather too much in your Paper of the 5th Inst., and the interest I feel for the success of your useful labours induces me to recommend you to abstain as much as possible from calling Names, for, altho' well-informed, liberal people are sensible of the powerful effects of that Practice, there are many narrow minds with whom it may do you injury."

"To the observation of 'An Oculist,' the Publisher begs leave to reply that, unconscious as he is of any Superiority in his style of reasoning, yet he has by no means an Inclination to doubt the sincerity of the very flattering Encomium with which so well-informed a Correspondent has been pleased to honor him.*

"That the manner in which the 'Oculist' has continued the quoted proposition is at once precise and logical, the judicious reader doubtless will pronounce; but how far his reasoning may be considered to preponderate must be submitted to the Public Opinion.

"Before he presumes to offer an objection to the above Statement of the case between the parties A., B., and C., the Publisher respectfully refers the reader to his observations on the subject of Wheat Notes contained in the Gazette of the 5th and 11th of the present Month, wherein he presumes not to oppose the fulfilment of specific

* Note 90.
Contracts, but to warn the Individual against entering into engage-
ments that might be attended with consequences fatal to his
interests. He considered it a well-known fact that the Notes
floating about the different Settlements were made payable in
Grain, because it was, with little exception, the only mode of
payment which the Settler had, and ought therefore rather to be
considered as a security for the payment of a specific sum than as
a specific Contract for furnishing the number of Bushels expressed.
In the one case, the holder of a Note for twenty Bushels, granted
to him under a presumption that 8s. per Bushel would be the Market
Price when due, upon the receipt of £8 in money could not be a
loser, since that was in the first instance the very extent of his
demands. That circumstances may induce him to give a preference
to the mode of payment expressed must be admitted, as may a
portion of inconvenience likewise from the incapacity of the Drawer
to comply with the strict Letter of the Note.

"In reversing the picture, the Publisher requests the 'Oculist's'
attention to the doleful condition of a Drawer, who, to satisfy an
actual demand of £8 originally, must from the most direful
necessity, produced by the most disastrous of Events, procure by
Purchase what Providence had deprived him of, and that at a
period too, when instead of 8s., the Market Price was advanced to
£4 Sterling per Bushel.

"In answer to the Query—Supposing a depression in the price to
have taken place?—he begs to observe, that in engagements of this
kind, men generally look forward to natural events, and that as no
such depression could happen unexpectedly, it was in every man's
power to guard against its consequences; but now, unhappily, the case
was different, the rise was rapid and not gradual, Distress and Con-
sternation were universal. It was a dreadful reverse, which none but
the Supreme could have averted, and against which man had not the
power to provide. Upon reference to the Papers above alluded to, the
'Oculist' will perceive that the publisher was not so immoderate
as to presume a wish that his poor opinions should be accepted as
a Lawful Standard. To conscience did he appeal, and if his
opinions were erroneous, he trusts they are not unreasonable.

"To the Charge contained in the Postscript, he is at a loss to reply,
as he never has in any instance so far departed from a principle of
justice as to have recourse to Personal Animadversion or reflection,
and he considers the 'Oculist' to be in possession of too liberal a
mind seriously to suppose him capable of so manifest a breach of
Duty and good Manners."

EXTRACT from the Sydney Gazette of the 2d of August, 1807.

"To the Printer of the 'Sydney Gazette.'

"Mr. Editor,—If I disapproved of your representations and
reasoning on the subject of Wheat-Notes previous to the Publication
of my Letter, my disapprobation is not diminished by the reply that
accompanied it, for you still persevere in what now appears to me
a studied attempt to mislead and confound the Public opinion.

"I have nothing to do with the persons who you say persecuted
the unfortunate sufferers from the Flood at the Hawkesbury, and
endeavoured to compel them to expend £200 to discharge an obliga-
tion originally not worth £50. For the Credit of the Colony, I hope
no circumstance of the kind has happened, and as far as my own
knowledge extends, I must say, I know of no instance of such obduracy; but on the contrary, of many wherein the holders of Contracts have humanely postponed their demands to the present Year.

"In your Paper of the 5th and 12th Ult., you assert that 'the Sterling Value of the Note (meaning Wheat-Notes) when drawn in justice, should be demanded, whatever be the mode of Payment; and any excess upon that just demand is unquestionably an invasion of another's right; and that to demand more for such a Note than the original value given 'is an insult to common justice.'"

"An endeavour to propagate such Doctrines excited my attention, and was the cause of your being troubled with my Sentiments. The spirit of what I am desirous to maintain is, that if I, this Year, agree and pay for a certain quantity of Wheat to be delivered next Season, I have an indisputable right to demand its delivery, however it may rise in price; because, let it fall ever so low, I am obliged to receive the Wheat without any compensation for its diminished value.

"Should it, however, be the will of Providence to afflict this Colony again, and to cause a large portion of our Crops to be destroyed, I must indeed be insensible to every feeling of humanity, were the person with whom I have contracted amongst the sufferers, if I did not commiserate his distress. But is the same forbearance to be expected by every Individual that I may have dealings with? Am I to forego my right with the man who has escaped the Calamity, and only resists my claim that he may sell his Wheat at a tenfold price, or employ it in some profitable Speculation? Or if I do not comply with such a demand, am I to be stigmatised with 'exacting,' with insensibility to the feelings of 'Conscience,' with the opprobrious epithet of 'Shylock,' with being 'an invader of another's rights,' 'an insulter of common justice.'"

"To use such Language upon any occasion is in truth, Mr. Editor, 'a manifest breach of Duty and good Manners'; and what is infinitely more reprehensible, the pernicious Doctrine with which you have contrived to work up these invectives, is calculated to produce no less an effect than that of destroying all confidence in our mutual dealings with each other, and to banish integrity and good faith from our Society.

"Before I conclude, allow me to correct an Error you have entered respecting my expectations of the effect my Letter would produce. Be assured, I never indulged an Idea that my reasoning, however logical, however just, would 'preponderate' against the force of any opinion you have avowed."

"AN OCULIST."

Q. What sensation did those Letters produce upon the Governor and yourself?—A. I do not recollect any particular sensation they produced, or any remark being made upon them; but I recollect the Printer's answers were said by the Governor to be well written.

Q. Did you never hear the Governor say who he supposed the "Oculist" to be—yes or no?—A. I do not recollect that I did.

Q. Did you never hear him denounce vengeance against the Author?—A. No; I do not recollect.

Q. Do you not know that I have never been paid the money awarded to me in the Court of Appeal of which I have been speaking?—A. I knew it was not paid some time since, but not now.
Q. Did you not send me in a Bill of £5 odd for Fees in the Court of Appeal?—A. Yes.

Q. Did I not send you back a Draft on the Provost-Marshal for the amount, accompanied by an advice underneath, in which I desired the P.-M. to pay your demand and to remit me the Balance of what might remain due on the Sums the late Governor had awarded me?—A. You did.

Q. Did you not send me back that Draft with an indorsement on the back that it was refused payment for want of effects?—A. I did.

Q. Did I not immediately send the Money, and obt'ned your Receipt?—A. Yes.

Q. Did you not then feel that I had appealed to the Governor for the recovery of a just Debt, and all the justice I had got was a refusal to be heard in support of my Plea and £5 odd money out of pocket?—A. No, I did not.

Q. Did you not know, Sir, that a Verdict had been given by the Governor in my favour for £35; did you not know that I had not received a farthing of it, although many months had expired; and did you not know that I had been obliged to pay you £5 odd Fees?—A. I knew the Verdict was given in favour of Mr. McA.; the Provost-Marshal told him the money was not paid, and the £5 odd money was paid me for Fees.

Q. As Secretary in the Court of Appeal, knowing these circumstances, was it not your duty to have informed the Gov'r that such a dreadful stain was cast upon the Justice of this Government?—A. I do not conceive I am obliged to answer any questions that may criminate myself—not that I conceive this to be one. I told Mr. Gore, the P.-M., that I conceived he ought to have put the Verdict in effect. Mr. Gore did not conceive he had, until applied to by the parties; but on my advice he got attested Copies of the Award from me, saying he would execute it.

Q. Did you never tell the Governor this circumstance?—A. I think I did, some time afterw'ds.

Q. What did he say?—A. I do not recollect what he said, or if he said anything.

Q. Did he give you no Orders?—A. None that I recollect.

Q. You have seen Geo. Crossley, the well-known perjured and pilloried Attorney, frequently at Government House?—A. I have.

Q. Do you know whether the Gov'r consulted him on points of great consequence respecting the Government of this Country?—A. Yes.

Q. Did he not consult Geo. Crossley and follow his advice by sending a Letter to His Honor, the Lieut.-Governor, accusing the Officers composing the Criminal Court, which assembled on the 25th January, of Treasonable Practices? Letter read as follows:

"Government House, Sydney,

"26th January, 1808.

"In answer to my Letter of yesterday, I received a verbal message by my Orderly from you that you were rendered by illness totally incapable of being at Sydney. I apprehend the same illness will deprive me of your assistance at this time; and the Judge-Advocate having laid a Memorial before me against Six of your Officers for practices which he conceives Treasonable, I am under the necessity of summoning them before me, and all the Magistrates have directions to attend at Nine o'Clock to-morrow morning."
"I leave it for you to judge whether Capt. Abbott sh'd be directed to attend at Sydney to command the Troops in your absence.

"To Major Johnston,

"Commanding His Majesty's New South Wales Corps."

A. I wrote such a Letter by the Governor's direction from the Governor's own handwriting; but I suppose the Governor did consult Crossley, as the Governor and Crossley were in an adjoining room, and the Governor brought that Letter in his own handwriting.

Q. Did not Crossley draw up the Information which I am now defending myself against by Order of the late Governor?—A. The Governor sent an order for Crossley for that purpose; but when Crossley came down he produced a Letter from the Judge-Advocate, requesting him to draw out such an Indictment or Information which the Governor approved of, saying that he had sent to Mr. Crossley to see how far the information drawn by Crossley would agree with that drawn by the Judge-Advocate, and the Governor approved of Crossley's proceeding to draw out an Information, and directed him to do it.

Q. Did not Geo. Crossley write all the questions which the Judge-Advocate was to ask the Evidences to support this Prosecution?—A. Yes.

Q. You also copied them?—A. Yes.

Q. Did you ever hear or repeat your Answers to these questions before the late Governor?—A. I did repeat the purport of what I could answer to those questions to the Governor.

Q. Were you present at Gov't House on the 24th October, when the Judge-Advocate brought the proceedings of the Bench of Magistrates to the late Governor?—A. Yes.

Q. Was not the Judge-A.'s opinion on that Bench very much found fault with?—A. Yes.

Q. Who found fault with it?—A. I believe I did myself, and the Gov't too.

Q. In what manner was he found fault with?—A. I do not recollect the particular manner in which he was found fault with.

Q. Would you not have been very much hurt if you had been spoken to in the same Language that you used to the J.-A. on that occasion?—A. I think I should.

Q. Was it not determined between that day and the 1st of the following month that the Judge-Advocate should be punished for his opinion by a representation to Government against him?—A. No, it was not; the representation was determined on before.

Q. Has not the Judge-Advocate been terrified by the Threats and Violence used towards him at Government House into a declaration that he would take care that his opinions should always agree with the Governor's—or words to that effect?—A. I do not know.

Q. Have you ever heard that he has been opprobriously abused by the Governor?—A. Yes.

Q. In what language?—A. I do not recollect the particular language.

Q. As you have declared you have repeatedly given your Opinion to the Gov't, did your humanity ever induce you to point out to him the indecency of abusing an old man of 60 years of age,* who filled the first Law Office in the Colony?—A. I never did give my opinion on that head as I recollect.

* Note 91.
Q. As you have stated that my words and manner before the Bench of Magistrates was in your opinion calculated to excite the hatred of the People against His Majesty's Government, did it never occur to you that degrading and abusing the only Judge in the Colony was more likely to bring the Government into contempt than any words or looks of mine?—A. No; it never did occur to me.

Q. On the 25th October, the day following that on which my complaint was made before the Bench, did you not go to Woolamoolla, by order of the Gov'r, to consult with Crossley on the best means to pursue to punish me for having made that complaint?—A. I did go to Wallamulla, by order of the Gov'r for Crossley to make his remarks, which he did in writing, stating it was indictable, and an Indictment or Information was drawn up by Crossley.

Q. I suppose you went to Wallamulla because it is in a remote situation, and there was a better chance that your meeting with Crossley might be kept secret?—A. No; a message was first sent to Mr. Devine's; but Crossley being at Wallamulla, I went down there.

Q. Who was present at the Consultation?—A. Mr. Palmer, myself, and Crossley.

Q. In consequence of this Consultation, it was determined to draw out an Indictment against me, which Indictment or Information now stands as the first compt in the information before the Court, does it not?—A. To the best of my recollection it does.

Q. What was the cause that this first part of the Information was laid by?—A. I do not recollect the cause, but it was so determined by the Governor.

Q. As you found it was not to be brought forward, had you not the curiosity to enquire why it was preserved?—A. No.

Q. At what time was it determined that this Paper should be brought forward again?—A. At the time Oakes made a complaint.

Q. Were the Warrants that were issued against me issued in consequence of any orders or directions from the Gov'r?—A. It does not come within my knowledge.

Q. When the information was received at Government House in what manner I had treated the first Warrant, was there not a great deal of joy and exultation?—A. None, that I recollect.

Q. Did you feel no particular satisfaction?—A. No.

Q. Was the punishment that was to be inflicted upon me never talked of?—A. I think I recollect Crossley telling the Governor what the Punishment would be if the charges were proved.

Q. Was it never suggested that it would be necessary to send me out of the Colony?—A. I have frequently heard the Gov'r speak on that subject, but never say that it would be absolutely necessary, or that it would be done. I have heard, but from whom I do not recollect, that there was an idea that Mr. McA. would make his escape from the Colony and not stand his Trial.

Q. How long is it since you first heard the Gov'r talk of sending me out of the Colony?—A. Prior to the issuing of the Warrants and since.

Q. Was it not intended to favor me with a little Fine and Imprisonment before they sent me away?—A. It was intended, if you had been convicted before the Court, and that they had awarded a sentence of Fine and Imprisonment, that that Sentence sh'd have been put in execution, as I suppose.
Q. Did you never hear the Pillory spoken of? — A. I have heard that you w'd be subject to that Punishment. Crossley said it.

Q. Was it not also thought a little flogging would be beneficial? — A. I do not recollect any such thing.

Q. Do you know the principal cause of the Governor's dislike to me? — A. No, I do not; but I have heard the Gov'r say that it was extraordinary that a gent. of Mr. McA.'s property could not live quiet, and that he thought Mr. McA.'s general conduct very improper.

Q. How long ago is it since you heard the Gov'r say so? — A. Before the business of the Stills.

Q. What proof of disquietude had I shown before the business of the Stills? — A. I do not know. I do not myself recollect any.

Q. I suppose had I submitted quietly to the unlawful seizure of my property and the Illegal Arrest of my person, I sh'd have passed with the Gov'r as a quiet, good sort of Man? — A. I cannot say.

Q. Did you never hear the Gov'r express a dislike to my possessing so large a Property in the Colony? — A. No; but the Gov'r in general terms had expressed his disapprobation of large Tracts of Land being given to Individuals, as to Mr. McA., Blaxland, &c.

Q. When it was found that the Officers who were appointed to sit on the Criminal Court on the 25th Jan'y would not allow Mr. Atkins to sit as Judge of the Court, what did the Gov'r determine to do with me? — A. The Governor appeared undetermined what to do before Mr. Gore's Deposition was taken, after which it was determined to keep the Pris'r in Jail until delivered by due course of Law.

Q. When it was determined to charge the Officers of the Criminal Court with Treasonable Practices, was it not also determined to charge me with the same? — A. Not to my knowledge.

Q. Was the Memorial charging the Officers with Treasonable Practices drawn up by Crossley? — A. I believe it was, and copied by Mr. Atkins's Clerk, and signed by Mr. Atkins, and sworn to at Government House, in the Governor's presence, before Messrs. Campbell, Palmer, Arndell, and Williamson.

Q. Was it not then determined, if the Officers did not submit to the will of the Governor, that the Criminal Court sh'd be set aside altogether and the Magistrates be invested with the Criminal Court's power? — A. No; but what I understood was, that what crimes could be taken cognizance of by the Magistrates would be; but in Criminal Cases they were to lay over until the Governor should hear from England.

Q. Have you never heard it said at Government House that I wanted to be the Oliver Cromwell of this Country? — A. Yes, I have; but do not recollect when or whether the Gov'r was present, or who said it.

Q. You have stated in your Evidence this day that you are in the confidence of the Governor; that you frequently give your opinion to him; that you have heard me accused of being a troublesome man—of being desirous of becoming the Oliver Cromwell in this Country;—now state what instances you know of troublesome ness, of Criminal or Bloody Ambition, which I have ever been Guilty of? — A. I cannot state any, or know of any.

Q. Do you know that I have ever attempted, directly or indirectly, by flattery, entertainments, or other sinister means, to form a Party in this Country against the late Gov'r? — A. I cannot say that I do know of any.
Q. Do you know of a single Act of Injustice that I have ever committed against any human being?—A. I cannot say that I do.

MR. ROBERT CAMPBELL, junior, sworn:

[This evidence was a repetition of that given by the same witness in the suit Macarthur v. Robert Campbell, Jr., a copy of which was forwarded as enclosure numbered 11 to Governor Bligh's general despatch to the Right Hon. William Windham, dated 31st October, 1807. This witness was not cross-examined by Mr. Macarthur.]

ROBERT CAMPBELL, Esquire, sworn:

The Nineteen Questions intended to have been asked Mr. Campbell by the late Judge-Advocate, the Court are of Opinion should be asked in their Original Form.

Q. 1. Did you or not, in the month of Oct. last, or at any other and what time, receive directions from His Excellency the Gov'r to have two Stills that had been brought into this Colony in the Ship or Vessel the Dart put on board the Ship or Vessel the Duke of Portland, to be sent in that Ship to England; and if yea, please to state what these orders were, and what you did in respect of those orders?—A. About the 10th Oct. the late Gov'r gave me verbal orders to go to the King's Stores and see that two Stills were lodged there, and, as I understood, were landed from the Dart, to be shipped on board the Duke of Portland. I think on or about the 12th of Oct. I wrote a Letter to Mr. Blaxcell mentioning the circumstance; about five or six days afterw'ds I received a Letter addressed to me as Naval Officer, the contents of which I communicated to the late Governor. He then told me that he could not comply with Mr. McA.'s request, for it was on the condition of the Stills being sent to England by the first Ship that he had allowed them to be landed, and enforced his former orders.

Q. 2. Was you or not present on the 24th Oct. last when the Pris'n'r made a charge against Mr. R't Campbell, the younger, for taking the bodies of these Stills out of his Dwelling-House a few days before; and if yea, did not the said R't Campbell, Jun., act in that matter by your Orders, and how many people might be assembled at that place on that occasion, as you believe?—A. Mr. Robert Campbell, Junr., acted by my orders in conseq'nce of the orders I received from the late Gov'r. I was present at the Bench of Magistrates on 24th Oct. I believe there might be Sixty or Seventy Persons present.

Q. 3. Did you hear the Pris'r make an Address or Speech on that occasion; and if yea, look upon the paper* now produced and say if those are or are not the words, or the tenor and purport of the words, used by him on that occasion: declare?—A. To the best of my recollection, those were the words spoken by Mr. McA., or to that effect.

Q. 4. Do you or not believe and understand by the words and the manner which the Pris'r used when he spoke those words, that that address was calculated by the Pris'r to excite hatred and illwill to the Governor and Gov't of this Territory in the minds of the people that were assembled on that occasion, or how else: declare?—A. It is a matter of opinion, but I certainly considered the Language inflammatory.

Q. 5. Does it not appear to you by the words "It would, therefore, appear that a British Subject, living in a British Settlement in which the British Laws are established by the Royal Patent, * Note 92.
had his property wrested from him by a non-accredited Individual, without any authority being produced or any other reason being assigned than that it was the Governor's orders," that the Prisoner's by such assertion meant to inflame the minds of the People to hatred and contempt of the Governor and Gov't, and to assert that the Governor's orders were contrary to the known Laws of the Land: declare?—A. I have always conceived that the Governor of this Territory could always give such Orders as he thought proper, though repugnant to the known Laws of the Land, and I know it has been done; but what were Mr. McA.'s motives in making that Speech is impossible for me to say.

Q. 6. Does it not appear to you by the words used by Mr. McA. in that speech: "It is, therefore, for you Gent'm'n to determine whether this be the tenor on which Englishmen hold their property in New South Wales," that he meant to incite the Eyestanders to hatred and contempt of the Government and those entrusted with the Executive Power of the Gov't, by insinuating that the property of Individuals was unlawfully taken, &c., thereby Libels the Gov'r and Gov't, or how else?—A. I suppose that Mr. McA., when he made that speech, did conceive that it was unlawful to have his property sent out of this Colony in the Duke of Portland. (Here read that part of the Patent* "our present and all our future Governors and Lieut.-Governors, and our Judge-Advocate for the time being shall be Justices of the Peace within the said place or Settlement. And that all and every such Justice and Justices of the Peace shall have the same power to keep the Peace, Arrest, take Bail, bind to good behaviour, suppress and punish Riots, and to do all other matters and things with respect to the Inhabitants residing or being in the place and Settlement aforesaid as Justices of the Peace have within that part of Great Britain called England, within their respective Jurisdictions.")

Q. 7. The Court knows that every Justice of the Peace has a Right by Law to order unlawful Stills to be seized, and do you or do you not know it is so?—A. I have always understood that Stills were prohibited in this Colony, and that the Justices had the power to seize them.

Q. 8. Is it not the custom in this Colony for known persons to execute the orders of the Governor without any Warrant in writing for that purpose; and did you ever know any question made of the Legality of an Order given verbally by the Governor of it being illegal because it was not in writing before this cause of the Prisoner in Oct. last: declare?—A. I know of no instance; I have always read my orders as Naval Officer verbally.

Q. 9. Is it not the custom for the Governor to give his directions verbally in matters like that now inquired of or not?—A. Answered before.

Q. 10. In or about the month of Nov'r last, did or did not the Vessel the Parramatta Schooner arrive in this Port; and, if so, was or not one John Glen the Master, and the Prisoner, John McArthur, Esq., the Owner or part Owner?—A. Yes; there was such a Vessel, commanded by John Glen, and Mr. McA. was part Owner.

Q. 11. Did or not that same Vessel sail from this Port on or about the month of June last?—A. Yes.

Q. 12. Upon that vessel's returning here, was or not a charge made against the Masters and Owners, or some of them, with having suffered one John Hoare, a Prisoner under conviction in this

* Note 93.
1808. 11 April.
Proceedings at the trial of John Macarthur.

HISTORICAL RECORDS OF AUSTRALIA.

Colony, to escape in that Vessel, and was not such accusation under some legal investigation after the return of the Ship?—A. Yes.

Q. 13. Was or not one or more Constables, by order, and whose order, in the month of November or December last, put on board that Vessel; and, if so, was it not given in charge to such Constables and other Officers that they were placed there to prevent the Cargo or any part of it being smuggled on shore, or landed, or put out of the Ship without the usual permission?—A. Constables were sent on board by order of the Police Officer, and I understand for the sole purpose of preventing any part of the Cargo being landed until permission was given.

Q. 14. Is it not usual and customary in this Port to put any and what Constables or other Officers on board Vessels to prevent smuggling, or having the Cargo or any part of it landed without legal permission?—A. It is customary to send a Military Guard. This is the first instance where Constables have been sent in charge, to my knowledge.

Q. 15. In a Letter, purporting to be written by the Prisoner to John Glen, in which letter the Prisoner charges you with a refusal to enter the Vessel the Parramatta Schooner, and other matters, and in the same Letter he desires Glen will give you a Copy of that Letter before a legal Witness; did you receive from Mr. Glen any such Copy?—A. I did.

Q. 16. Was not your reason for denying the Schooner to be entered because John Hoare, a Prisoner, had escaped in her from this Colony, and the Masters and Owners had refused to give the security to pay the penalty of their Bond if recovered by Law?—A. I received orders from the Governor not to enter the Schooner Parramatta; but wish to refer to my Letter-Book, which is now in the possession of His Honor the Lieut.-Governor.

Q. 17. That Suit being now depending, and security given to abide the event of an appeal, has not the Vessel since been entered and the Papers returned?—A. Yes, except the Register, all Registers being ordered to be kept in the possession of the Naval Officer until the Vessels got their clearance, which is the custom, as I understood, in other Ports.

Q. 18. Then the Bond, being as well for the Master and Owners as the Vessel and its Cargo, were engaged to perform the condition when security was given that what was recovered by Law if, in the event of the suit the recovery of the Penalty of the Bond should be affirmed, the Papers were restored and the Vessel entered in due course; was it so or not?—A. The necessary Bonds were given as required, and the Vessel was entered.

Q. 19. Is not that Letter of which you had a Copy, said to be written by the Prisoner to Mr. Glen, the Master of that Vessel, and by him directed to be read to the Ship's Crew, in your belief, calculated to create dissatisfaction in the minds of those people with respect to the administration of Justice in this Colony?—A. I rather think the letter was written for the purpose of making the Naval Officer responsible for the damage the Owners might receive by the detention of the Schooner, rather than influence the minds of the Crew against the Government.

Q. from the Court. Do you know by whom the above questions were framed?—A. I saw them in the handwriting of Crossley. He brought them to my house, for the purpose of shewing them to me, on the 18th ulto.
Questions from the Prisoner:—

Q. It seems the questions you have answered were shewn to you some time ago, in the handwriting of the well-known perjured and pilloried Attorney, Geo. Crossley;—have you ever, to him or to any other person, recited the Answers, or the purport of the Answers, you intended to give to those questions?—A. I never recollect having done so to any person.

Q. Do you consider it consistent with the honor of a Magistrate, and the integrity of a British Merchant, to receive any Information from such a character, relative to a prosecution on which you knew you were to be called as an Evidence?

Mr. Campbell declines answering the question. The Court cleared.

Q. In your answer to the 1st Question, you have stated that you rec’d a Letter from me in Answer to one of yours respecting two Stills; that Letter I wish to be produced (letter produced and read*);—did you answer that Letter?—A. I did not.

Q. Is it not usual when Letters are written to Official Persons, and when the Letter expressly requires an answer, that either a written or verbal one sh’d be given?—A. Certainly it is customary; but I was ordered by the late Governor not to answer that Letter.

Q. Did the Governor assign his reasons for not allowing you to answer that Letter?—A. The Governor said those Stills were allowed to be landed from the Dart on the express condition of their being sent to England in the first Ship, and that no request of keeping any part of them could be complied with, and informed his former orders.

Q. Did you communicate this determination of the late Governor to me; but did you not, without any explanation, send your Nephew to my house to bring the bodies of the Stills away?—A. No; I did not communicate the Gov’s determination, and sent to order the Bodies of the Stills away.

Q. When you sent your Nephew to the King’s Stores did he not find the Heads and Worms of those Stills in the King’s Stores?—A. Yes.

Q. When I required a Receipt for the two Bodies which were in my possession, why did you insist upon my taking the following receipt, which expresses two Bodies, Heads, and Worms complete; and why did you refuse to give me a Receipt for the Bodies I declared myself ready to give up? Receipt produced and read, as follows:—

"Naval Office, Sydney, 22nd October, 1807.

"Received from Mr. G. Blaxcell, Agent for the Ship Dart, two Stills, with Heads and Worms, which were entered by that Ship on the 9th March last, addressed for Capt. McArthur and Capt. Abbott, and allowed to be landed on the express condition of being sent to England by the first Ship, and which Stills are now to be shipped on board the Duke of Portland, by order of His Excellency the Governor.

"ROB’T CAMPBELL, Nav. Officer."

A. As the orders given by the late Gov’r to me were to ship the Stills complete, I did not conceive it necessary to give but one Receipt.

Q. You have admitted that you rec’d the Heads and Worms from the King’s Stores; it is also admitted that I had no part but the bodies in my possession; would you, if you was to receive an Anchor

* Note 94.
Proceedings at the trial of John Macarthur.

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from a Blacksmith and a Cable from a Rope-Maker, refuse to give a receipt to each person because the Cable and Anchor are appendages to each other?—A. I would not.

Q. Upon what principle, then, did you insist upon my taking a receipt by which it would have appeared that I had two unlawful Implements in my possession, and which effect there can be no doubt that receipt was intended to effect to my prejudice in the minds of His Majesty's Ministers?—A. I declare I had no other motive than conceiving them to be one property.

Q. On the Oath you have taken, did you not know that the late Gov'r intended to make a representation to His Majesty's Ministers respecting those Stills?—A. I never knew it, from my own knowledge, but suppose all goods ordered away from the Colony by the Gov'r must be accompanied by a Certificate.

Q. You have declared that you considered the words I used before the Bench of Magistrates, before whom I complained of the seizure of those Coppers, was inflammatory; declare what words I used on that occasion you consider so? (Speech produced.)—A. The general tenor from "in which the British Laws, &c."

Q. You have acted as a Magistrate in this Colony, and do you not know that your Oath as a Magistrate required you to protect every man in the quiet possession of his property?—A. I have always acted to the best of my Judgment and agreeable to the Oath that I have taken.

Q. Have you never in your Magisterial Capacity been governed by the opinions of Geo. Crossley and the orders of the late Gov'r, in opposition to what your Oath and y'r conscience pointed out to you to be the right?—A. I cannot answer this question, it having a tendency to criminate myself.

Court adjourned till Half-past Eight o'Clock to-morrow (5th February).

The Court met pursuant to adjournment.

ROBERT CAMPBELL, Esq., sworn:—

The Prisoner being desirous not to proceed further in the Examination of this Evidence, but to submit to his own consideration the propriety of detailing to the Court all he knows of the events which has caused this trial.

Mr. Campbell details all the circumstances, as follows:—I was sent for by note from the Gov'r, as Naval Officer, to bring certain Documents respecting the Stills and the Parramatta Schooner, which I believe was for the purpose of framing an Indictment against Mr. McArthur. I was present when the Indictment was brought to Mr. Griffin and read by him to the Gov'r. No comments were made by either party, and I do not know why the Indictment was not acted upon, nor do I recollect if ever the subject was agitated in the presence of the Gov'r by Geo. Crossley; but I know the Indictment was framed by Crossley, when the Gov'r rec'd a letter from Mr. McA. respecting Mr. Atkins. Mr. Atkins was sent for, and he related to the Gov'r the whole of the quarrel that had taken place respecting a Bill of Mr. Bond's between himself and Mr. McA. I have been present within these few days with other Gent'm when Geo. Crossley was consulted by the Gov'r respecting the Criminal Court and the Officers then sitting. Mr. Atkins at that time related to the Gov'r what had passed in the Court, which the Gov'r minute down himself, and Crossley impressed on the Govr's mind that it could not be a Court without the Judge-Advocate, in which opinion Mr. Atkins strongly

* Note 86. † Note 95.
JOHNSTON TO CASTLEREAGH.

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JOHN PALMER, Esquire, sworn:—

Fourteen Questions asked by the Court, which were prepared in the handwriting of Edmund Griffin, Esq., Secretary to the Gov'r.

Q. 1. You have been many years an officer in this Territory; is it not customary for the Gov'r to give his directions by verbal orders, and has not that been the general custom in the time of every Governor of this Colony, as you know or believe?—A. I have in general had written orders—sometimes verbal ones.

Q. 2. You were present on the 24th October last, when a charge was exhibited by Jno. McAthur, Esq., against Mr. R't Campbell, Jun'r, by which Mr. McA. alleged that Mr. Campbell had taken out of his dwelling-house unlawfully two Copper Boilers, value £40;—was it or not so?—A. I was present.

Q. 3. This charge being made against Mr. Campbell as for a Crime had caused a great many people to assemble;—how many people, in your opinion, were there present and assembled as you know or believe?—A. From Sixty to One hundred Persons.

Q. 4. You, being one of the Justices met on that occasion, was of opinion there was no foundation for the Charge, was you or not?—A. I was.

Q. 5. Upon that occasion Mr. McA. made a speech, which was taken down at his request by the Judge-Ad.; did he or not, and if yea, as you heard those words, look upon the paper writing now produced,† and say if the same be not a Copy of the same words, as taken down by the J. A., and the identical words used by the

concurred, and that the Judge-Advocate could not be displaced. It was, by the advice of Crossley, determined patiently to let the Court proceed and see how they would act. Crossley was the principal Adviser to the Gov'r. It was determined also to send and demand the Papers left in the Court by the Judge-Advocate. I heard a Memorial* from the Judge-Adv., accusing the Six Officers of the Criminal Court of Treasonable Practices, read to the Gov'r in the presence of all the Magistrates. The Gov'r then quitted the room with Crossley, and returned with a written paper, and on its being read, Crossley recommended the Gov'r to summon by the Provost-Marshal all the Officers composing the Court before him and the Magistrates immediately; but I proposed milder measures, by the Gov'r sending to desire their attendance on himself only. Crossley wrote an order in pencil, and it was altered by Mr. Griffin to the shape it was sent in.† It was proposed, sh'ld the Officers attend, that the Memorial from the Judge-Adv. should be read to them and certain questions put to them, but what they were I do not know; but I understood, if they did not comply with the Gov'r's requisitions, that the Commanding Officer was to be directed to put them under Military Arrest, and that the Magistrates, with the Gov'r, were to be assembled to investigate the accusation made against the Officers of the Court by the Judge-Adv., and if proved that they had acted Treasonably, they were to be committed to Jail; or should they be committed on suspicion of Treason only, that the offence was bailable. On the receipt of the letter from the Court to the Gov'r accusing Mr. Gore, the P.-M., of direct and wilful Perjury, it was the general opinion of the Gentlemen at Gov't House that no answer be given, Mr. Atkins and Crossley being then away preparing an accusation against the Officers. The Gov'r must have heard from report the crime for which Crossley was sent to this Country.

* Note 80. † Note 96. ‡ Note 86.
Proceedings at the trial of John Macarthur.

Pris'r on that occasion, and before the People then and there assembled: declare?—A. The Paper produced, it is the same as taken at the time.

Q. 6. Then you heard the Pris'r rehearse those or the like words in the hearing of the people, and saw the Judge-Ad. write them, as he then produced and spoke them,—did you or not?—A. Yes.

Q. 7. By the way which Mr. McA. pronounced the words and the words of themselves, did you or not understand the Pris'r meant to incite the People to hatred and contempt of the Gov't and Constitution and the Gov'r of this Territory?—A. I conceived that the words and the manner in which they were delivered had a tendency to do so.

Q. 8. Is not Mr. Rob't Campbell, Jun'r, a person well known in this Colony as a person in the confidential employ of Rob't Campbell, Esq., a Justice of Peace and Naval Officer; and in your opinion did not Mr. McA. well know him previous to the 24th October last?—A. I suppose so.

Q. 9.* Do you not believe that the Pris'r made that Charge against Mr. Rob't Campbell, Jun'r, with design to collect a great number of people that he might make in their hearing such sort of representation of and concerning the Gov'r and Gov't as he did, and to incite the people to contempt of the Gov't, or how else?—A. I cannot say what Mr. McA.'s intentions might have been.

Q. 10. Has not the Pris'r always been a discontented person, as you have understood, in the time of every Gov'r that has been here, or how else?—A. I do conceive that Mr. McA. has been a discontented person under every Government in this Colony.

Q. 11. Do you know the handwriting of the Pris'r; and if yea, look upon the Paper Writing now produced,† and say if the same be or not the proper Handwriting of the Pris'r, as you know or believe?—A. I believe it to be his handwriting.

Q. 12. Do you know the handwriting of Rich'd Atkins, Esq., Judge-Ad.; and if yea, look upon the Paper Writing, now produced,‡ is not that a Warrant under his hand and seal, or how else, as you know or believe?—A. It is a Warrant under his hand and seal. Paper produced vizt:—

[Here followed a copy of the warrant; also printed on page 310.]

Q. 13. Is not Mr. Fra's Oakes, to whom that Warrant is directed, Chief Constable at Parramatta?—A. He was at that time.

Q. 14. Look upon the Paper Writing now produced and shewn;† say if that is or not the handwriting of the Pris'r, as you know or believe?—A. (The Paper produced) I believe it is.

Q. from the Court. Was you not furnished with a Copy of the questions now asked you on the part of the Crown by Geo. Crossley?—A. I think I was; I thought little of them and destroyed them.

Q. Did you not apply personally to Crossley to give you a copy?—A. I cannot take upon myself to say if I did or not.

The Prisoner's Cross-Examination of this Evidence:—

Q. Have you ever recited to the Gov'r, to Geo. Crossley, or any other person the answers you intended to give to the questions, of which you rec'd a Copy from Geo. Crossley, and to which questions you have now answered?—A. To the Gov'r, no; to Geo. Crossley I had some conversation about them; but to no other person, because I conceived when I came on my Oath I might think very differently.

* Note 97. † Note 98. ‡ Note 99.
Q. Are the answers you have now given the same as you would have given had the late Governor retained his Authority?—A. Yes.

Q. You have given it as your opinion that Mr. Rob't Campbell, Junr., did nothing illegal in taking the Copper Bodies of two Stills from my house without a written authority—did you form that opinion from evidence when you sat on the Bench, or did you not declare the same opinion before you heard a single evidence in support of my complaint?—A. I declared it from the evidence I heard on the Bench, and never thought of it before, that I recollect.

Q. You have said that a large assembly of People was collected together at the Court-House when I made my complaint;—do you know that those people were collected by my contrivance, or at my desire?—A. I do not know anything about it.

Q. Do you not think that they were rather collected by an anxious desire to hear whether the Magistrates would support the late Gov'r in ordering the private property of Individuals to be wrested from them?—A. I never gave it a thought at all.

Q. You have said that you understood by the words I uttered before the Bench of Magistrates, and by my manner and looks, that you think I intended to inflame the minds of the People against the late Gov'r?—A. I think the words and manner had that tendency; the Speech produced, I think the whole of it, had that tendency.

Q. Can you point out no particular expression in that Speech which appears to you to have that tendency?—A. No, but the whole.

Q. Was that part inflammatory in which I say that two Coppers—or Bodies of Stills—were taken out of my house on the 22nd Inst. without my consent?—A. I have before answered that the whole, in my opinion, was inflammatory.

Q. Were you not sitting as a Magistrate in the discharge of your Magisterial duty when I uttered what you conceived to be an inflammatory speech;—did you, or did you not, take any steps to punish me for the demonstration of such seditious intentions?—A. I was sitting as a Magistrate. There was no steps taken by me for the punishment of Mr. McA.

Q. Do you not know that your Oath as a Magistrate required you to leave nothing undone in your power to bring any man to justice who sh'd endeavour to excite the people to a breach of the Peace, either by inflammatory speeches or otherwise?—A. Yes.

Q. How then do you excuse such a manifest breach of your duty, to which you were bound by your Oath?—A. I merely give it as a matter of opinion. Had I been certain Mr. McA. had those intentions I should have given it my opinion that he should be committed.

Q. You have sworn that you consider me to have been always a discontented character under every Gov'r;—was I discontented under the Government of Gov'r Phillip?—A. I thought so.

Q. State one particular instance of discontent which you know?—A. Mr. McA. was discontented at Gov'r Phillip not allowing him to keep a Cask or two of Spirits, which Gov'r Phillip had ordered me to put into the Store.

Q. Do you not know that the Cask or two of Spirits to which you allude was the property of the present L't-Gov., and purchased from the Royal Admiral for the supply of the Regiment, by order of Major Grose?—A. No, I do not. It is so long ago I cannot speak to it.
Q. When you came to me with a message from Gov'r Phillip, desiring that this Cask of Spirits might be given up, did I not tell you that I had nothing to do with it; that it was lodged in the Regimental Store, of which I had the Charge; but that I would accompany you to Gov't House and explain the circumstance?—A. It is so long ago that I cannot recollect.

Q. Did you not accompany me to Gov't House; and when we were introduced to the presence of Gov'r Phillip did he not, in a violent passion, refuse to hear a word, and declare that he would instantly put me under Arrest?—A. I do not recollect; perhaps I might.

Q. Did I not reply: "Sir, you may please yourself. You are the first Officer that ever threatened me with an Arrest; and I give you my word of Honor, if I am put in Arrest, I shall require a full and sufficient explanation of the cause before I consent to sit quietly down under such a Disgrace"?—A. I do not recollect being present at such a Conversation.

Q. Did I not immediately retire, and having given you the Key of the Regimental Store, did you not cause "a Legar of Brandy to be rolled from thence and put into the Public Store?—A. I do not recollect it.

Q. Was not that Cask of Spirits given up the day after to Major Johnston, the Proprietor of it, by order of Governor Phillip?—A. It might; I cannot say.

Q. Do you not know that from the violent language used to me that night by Gov'r Phillip, I ever after refused to sit at his table?—A. I have already said I do not recollect being present at any conversation with Mr. McA. and Gov'r Phillip.

Q. Was I discontented under Major Grose, who succeeded Gov'r Phillip in the command?—A. I did not suppose an Officer would be discontented with the Commander of the Regiment, and did not mean to include Major Grose or L't-Col. Paterson amongst the Governors.

Q. Was I discontented under Gov'r Hunter?—A. I have always understood so.

Q. Do you know of any personal altercation or difference which took place between myself and Gov'r Hunter?—A. No; I do not recollect particularly.

Q. Do you not know that I had the Management of the greater part of the Public Concerns, and was entirely in his confidence, until, in an unfortunate moment, I unwisely advised him to be cautious of the Expenditure of Public Money, and not to suffer thousands of Bushels of Grains to be bought and put into the Public Stores to rot and perish?—A. No, I know nothing of it.

Q. Do you not know that I did give him some advice relative to the Expenditure of Public Money, and that from that moment he became so estranged from me, and acted in all points so contrary to my advice, that I found it incumbent on me to resign all further interference in the Public Affairs, assigning as a reason, by letter, that a due regard to my honor and character obliged me to do so?—A. No.

Q. Was I discontented under Gov'r King;—can you state any particular instance?—A. You was discontented under Gov'r King, or you would not have been sent out of the Colony in the manner you was.

Q. Did not the difference which existed between me and Gov'r King originate in his attempting to screen a man from the punish-
ment a Criminal Court had sentenced him to for assaulting Capt. Abbott, and threatening to assault me because we took the necessary steps to recover from his hands the plundered effects of a deceased brother Officer*?—A. I cannot say what it originated in. I was not in the confidence of Gov'r King.

Q. Was not our differences further increased by his putting me into an ignominious Arrest for meeting a person who had challenged me, and by his refusing to bring me before a Court-Martial to justify my conduct, and by his sending me a Prisoner to England, and taking every means in his power to deprive me of an opportunity of proving how greatly I had been calumniated, injured, and oppressed?—A. Yes, I suppose they might.

Q. Have you never, Sir, been discontented with Gov'r King?

A. Yes, in a state of Frenzy.

Q. Have I been discontented under the late Gov'r Bligh?

A. Yes, I think so.

Q. Can you state any particular instance of my discontent?

A. It is my opinion.

Q. Can you say whether any personal difference or altercation has ever taken place between myself and Gov'r Bligh?

A. Not that I know of.

Q. As you have been in habits of strict intimacy with the late Governor, and have been generally understood to be one of the principal Advisers of his measures, is it not likely, if any such altercation should have taken place, that he would have informed you?—A. I cannot say.

Q. Do you not know that the late Gov'r and his Family were in the habits of Social Intimacy with me and mine for many months after his arrival here?—A. I have known part of the Family to visit.

Q. Does it not come within your knowledge that the late Gov'r, his Daughter, and his late Son-in-Law were frequently entertained at my house?—A. I have heard so, but never saw them.

Q. Have you never heard the late Gov'r express a great dislike to me?—A. I never heard the late Gov'r express a dislike to any person whatever that I recollect.

Q. Have you not been in the late Gov'r's confidence?—A. I believe I was.

Q. Have you never heard the late Gov'r declare his intention to send me out of this Country?—A. Never in my life that I recollect, and believe it very foreign to his thoughts.

Q. Are you not acquainted that I have never visited at Gov't House since the late Gov'r decided against me in a Cause of Appeal without allowing me to offer a word in support of my plea?—A. I know nothing about it.

Q. Have you never heard it talked of in the Gov'r's presence how or in what manner my Commercial and Agricultural Pursuits might be interrupted?—A. No, never to my knowledge.

Q. Then you have never heard him speak with disapprobation of me?—A. In a small degree I may, but not seriously.

Q. Have you never been directed by the late Gov'r to do anything injurious to me?—A. Never.

* Note 100.
Q. Were you not directed by the late Gov’r to sit as a Magistrate in conjunction with Mr. Arndell and examine Geo. Crossley on Oath relative to any matters he chose to accuse me of?—A. No.

Q. Did you not examine Geo. Crossley on Oath respecting certain Seditious Expressions, and did you not allow him to swear that he had heard two other persons—namely, Messrs. Hobby and Pitt—declare that I had uttered Seditious Expressions?—A. All I recollect of the business is that Geo. Crossley was put on his Oath respecting what he (Crossley) said that Mr. Pitt had said. The Papers are forthcoming, and I have not thought of the business since till lately.

Q. Did you not know that the Law admits of no hearsay Evidence, and that it rejects with Horror all those who have been proved to be perjured?—A. Yes.

Q. Did you examine Mr. Hobby?—A. Yes.

Q. Did he contradict Crossley’s Testimony?—A. I cannot recollect, I thought it a matter of so little moment.

Q. Did you examine Mr. Pitt?—A. Yes; a few questions were asked him, which was the reason that Crossley was put on his Oath.

Q. Did not Mr. Pitt contradict the Charges of Crossley, and in y’r presence call Crossley a perjured old Villain?—A. He did, until Crossley was put upon his Oath, when Pitt acknowledged in part the charges.

Q. If it sh’d appear on produc’g those Minutes that Crossley’s testimony was completely contradicted by Mr. Hobby, and in most parts by Mr. Pitt, are you prepared to give a reason why you did not immedi’tly commit Crossley for Perjury, and for having formed a Criminal Conspiracy against me?—A. I did not consider it a matter of any moment, but put the proceedings into my pocket, as I was going to Sydney the next day, and showed it to the Governor.

Q. from the Court. Did you not relate every circumstance to the Gov’r of what took place at the Hawkesbury between yourself, Crossley, Hobby, and Pitt; and if you did, relate them to the Court, and the Gov’r’s opinion?—A. I did not, nor did the Gov’r give any opinion.

The Cross-Ex’m of this Ev’ce on the part of the Crown from the Court and Prisoner is here closed.

Questions from the Prisoner to this Witness in support of his Defence:

Q. You have been many years in the practice of taking the advice of G. Crossley?—A. On my own private affairs chiefly.

Q. Were you not a Member of a Bench of Magistrates assembled on the 24th October, and did I not bring before that Bench a complaint against Mr. Robert Campbell, Jun’r, for unlawfully taking two Copper Boilers, which I valued at £40 St’g, from my house?—A. Yes.

Q. Did not the majority of that Bench decide that the taking of those Coppers was not authorized?—A. Yes.

Q. I have been accused of making a Seditious and Inflammatory Speech before that Bench;—did you as a Magistrate sitting on it propose that I sh’d be either committed or in any other way punished for the words spoken on that occasion?—A. No, I did not.

Q. When the Bench broke up, did you go to Gov’t House?—A. I think I did.
Q. Did you make any representation to the Gov'r of what passed at the Bench?—A. I do not recollect I did.

Q. Were you present when the Judge-Adv'c'e took the Proceed'gs to the Gov'r?—A. I cannot take upon myself to say; I cannot recollect; I might have been.

Q. Were you present at the Gov'm't House that day when the Judge-Advocate was very violently abused and found fault with for the Opinion he had given on the Bench?—A. Not that I remember.

Q. Do you not remember that you did find great fault with the Judge-Advocate for his Opinion?—A. No, I do not indeed; I hardly suppose myself equal to do it.

Q. Did you never consult with any person how and in what manner I could be punished for the words I had uttered to the Bench?—A. Never, to my recollection.

Q. Was not George Crossley sent for to your house the following day, 25th October, to meet you and the late Gov'r's Secretary; and did he not come there, and was he not asked to give his opinion how or in what manner I could be punished?—A. I do not know if Crossley was sent for. He came there. Crossley was not asked any questions in my presence. I went out of the room and left him with Mr. Griffin.

Q. Were you not inf'd by Mr. Griffin of the business on which Crossley was sent for?—A. I can't recollect what the business was.

Q. Do you not know that Geo. Crossley gave it as his opinion that day at your house that the words I had uttered before the Bench of Magistrates the proceeding day were indictable, and might be punished by Fine and Imprisonment?—A. He might have said so, for he talked a great deal; but I do not recollect it.

Q. What was the cause of Crossley being sent for to your house?—A. I do not recollect his being sent for.

Q. Did you not meet Mr. Griffin that morning between yours and the Government House, and did he not tell you he wanted Crossley; did you not reply, "I will soon bring him or send for him"; and did you not soon after return to y'r own house and Crossley quickly follow?—A. I met Mr. Griffin, and soon after ret'd to my own house and saw Mr. Crossley there. Whether he came before me or after I cannot say; I do not recollect. Mr. Griffin said he wanted Crossley. I do not remember the conversation about Crossley. Mr. Griffin might have asked me about Crossley, but cannot charge my memory.

Q. Do you not know that Crossley drew up an Indict'm't which forms the first compt' which I read on opening your Ev'ce?—A. I have heard so; I never saw it or heard it read until in Court, to the best of my recollection.

Q. Who did you hear it from?—A. I cannot say who. I heard Crossley say he had been busy with Mr. Atkins about an Indictment.

Q. Did the late Gov'r never consult you whether it would be advisable then to prosecute me for what I had said at the Bench of Magistrates, or whether it would be more prudent to reserve it as a rod in pickle?—A. No, he never did.

Q. Did you go to Gov't House on the morning of the 16th December, the day on which you attended a Bench of Magistrates to hear the accusation of the Constable Oakes against me?—A. I go there every morning.

Q. Did the Gov'r inform you that morning what Oakes had accused me of, or did he consult you in what manner I sh'd be
proceeded against?—A. I think the Gov'r told me what Oakes had
said; but did not consult me what was to be done.

Q. When you attended the Bench of Magistrates that day to assist
in examining Oakes, did you think, from the E'vece he gave, that I
deserved to be apprehended?—A. I did.

Q. If you thought I deserved to be apprehended, why did you
refuse to join the Judge-Advocate in signing that Warrant which
was issued from the Bench, and only signed by the Judge-Advocate?
—A. Because it was the Judge-Advocate's opinion that it was all
that was necess'y, and the opinion of the whole.

Q. You attended the Bench on the 17th December, the day on
which I was brought a Prisoner before it?—A. Yes, I believe so.

Q. Did you go to the Govt. House in the morning before you
attended the Bench?—A. I might or might not; cannot recollect.

Q. Did you not determine, with y'r Brother-in-law, Mr. Campbell,
another Member of that Bench, that it w'd be prudent not to bring
me to any Trial, but to fine and Imprison me by the authority of the
Bench; and were you not satisfied that the J.-A. w'd be afraid to
oppose y'r opinions, and, therefore, to jail I must go?—A. No; nor
had I any conversation with my Brother-in-Law about Mr.
McArthur.

Q. Did I not object to Mr. Campbell sitting on that Bench,
assigning as a reason that he was an interested person; and did you
not strenuously contend that he should sit?—A. Mr. McArthur did
object to Mr. Campbell, and I thought Mr. Campbell ought to sit;
but do not recollect being strenuous about it.

Q. On the Oath you have taken, can you say that you came into
the Court-house with an honest, impartial, and unprejudiced mind?
—A. Yes, I can.

Q. Can you swear that you were actuated neither by rancour,
animosity, or a preconcerted plan, to disgrace me in the Eyes of
the World, and to ruin and distress a numerous, innocent, and
inoffending Family?—A. Yes, I do from my heart; and I say
further that I have felt very sorry for Mr. McArthur's Family.

Q. Have you never been present at Govt House when Geo.
Crossley was there?—A. Yes, I have.

Q. Have you never been present with the late Gov'r when he has
consulted him?—A. No, I do not recollect any particular consulta-
tion; I have heard the Gov'r ask his opinion on points of Law.

Q. Did you never recommend Crossley to the Gov'r as a good
sort of man?—A. I have said that he is not so bad as he is pointed
out. I never knew him to deceive me in anything I had to do with
him in his opinion.

Q. Were you present at Govt House the greater part of the 25th
and 26th January?—A. Yes, I was.

Q. Were you consulted those days by the Gov'r how it w'd be
proper to proceed with me and the Criminal Court then assembled?
—A. I do not recollect any particular consultation that day. I was
backward and forward in the Office.

Q. Did you not consult honest Geo. Crossley these two days?—A.
No, I did not.

Q. Did you not go down to Mr. Divine's house to hurry him in
drawing up the Memorial and other Papers wh he was preparing
for the Judge-Advocate to sign?—A. No, I did not.

Court adjourned till 9 o'clock to-morrow morning.
6th Feb'y, Court met pursuant to adjournment.

JOHN GLEN sworn:—

The Eighteen Questions intended to have been asked by the late Judge-Advocate, it is the opinion of the Court shall be asked in their original order.

Q. 1. Was you or not Master of the Parramatta Schooner?—A. I was.

Q. 2. Is or not John McArthur, Esq., a part Owner of that Vessel?—A. He is.

Q. 3. After you sailed from this Port, in or about June last, or at any other time when you got to sea, was or not one John Hoare, a Prisoner who had escaped from this Territory, found on board or not?—A. He was.

Q. 4. That John Hoare afterwards got away from your Ship—did he or not?—A. Yes.

Q. 5. On your return to this Colony in Nov'r last, some investigation into that matter of the escape of John Hoare was made the subject of Inquiry,—was it or not?—A. Yes at Gov't House. I was examined on oath before the late Governor, the Judge-Advocate, and Naval Officer respecting the voyage in general and John Hoare being on board.

Q. 6. And upon that the Court of Civil Jurisdiction gave a Verdict against you; but there is an Appeal depending, is there not?—A. Yes there was, and an Appeal is now pending.

Q. 7. Did you receive any Letter from the Prisoner, dated the 7th Dec'r last; and if yea, is the following Paper a copy of it? [Here followed a copy of the letter from Mr. Macarthur to Mr. Glen, dated 7th December, 1807; see page 295.]

A. It is a copy of it.

Q. 8. Did you not communicate the contents of this Letter to the Mates and Crew of the Vessel the Parramatta Schooner?—A. I did.

Q. 9. Did you make the application to Robert Campbell, Esq., Naval Officer, as directed by that letter?—A. I did.

Q. 10. Upon your communicating the contents of this letter to the Ship's Crew, did they or not consider themselves much hurt, in a distant Port from England, to be left without support?—A. They did.

Q. 11. Did not you and all or some of the ship's company, in consequence, come on shore; and if yea, was not you on that occasion before the Judge-Advocate?—A. Yes.

Q. 12. Was you not told by that Officer that by the Crew coming on shore you had violated the Colonial Regulations?—A. I was.

Q. 13. Did not you and them make Oath of the occasion being because of that letter, and did you or not shew the same letter and give the copy as an excuse for such your conduct, or how else?—A. I did.

Q. 14. In consequence of what you or the Crew said, is it within y'r know'ge that the J.-A. wrote to the Prisoner and required him to attend and show cause for his conduct, or have you heard it from the Prisoner?—A. I heard it from the Judge that he had wrote to Mr. McArthur.

Q. 15. Look upon the Paper now produced* and shown to you;—is it the handwriting of the Prisoner; and say if the two Police Officers mentioned to be on board were placed there for any other purpose but to prevent anything going out of the Vessel without a legal permit, or how else?—A. I believe it to be the handwriting of Mr. McArthur; and I understood that the Police Officers were put on board the Schooner to prevent anything being landed from

* Note 101.
Proceedings at the trial of John Macarthur.

Q. 16. As you are a seafaring man, did you ever know of one of the Owners in a distant Country making an attempt to discharge the Master, Mates, and Crew from an English Vessel; and do you think such conduct is consistent with justice or not?—A. I did not consider myself discharged. I waited on the Naval Officer to deliver the copy of the letter, as I was directed by my Owner. The Naval Officer said he acknowledged the receipt of the letter, but had no answer to give. I waited on Mr. McA. after leaving the Naval Officer, who desired me to wait upon the Governor to show him the letter and see if he would give me redress. I did go to Gov't House. I met His Excellency at the back door, and delivered the letter to him that I received from my Owner, Jno. McA., Esq're. The Governor asked me who I was. I told him my name, on which he gave me the letter back without opening it, and told me, for a Scoundrel to be gone; that he knew nothing about me or my Owners either—saying, clenching his fist and stamping with his foot, "Damn you, Sir, I will teach you to take away Prisoners from this Colony, you Scoundrel"; he said, "If ever I catch you on my premises again"—then stopped and ordered me to be gone.

Q. 17. Do you not consider Mr. McA. answerable for the damages you may have sustained by reason of such conduct, if neither you nor the Ship's company had acted in such way to the Owners as to make such conduct necessary?—A. There was no damage sustained by me or the Ship's company.

Q. 18. Was you and all the Ship's Crew discharged from this Vessel?—A. No.

Cross Questioned by the Prisoner:

Q. When you arrived, did you not come to Anchor at the head of the Cove in a place of safety?—A. Yes, I did.

Q. Did not some person shortly after come off, and after having taken possession of the Vessel, did they not cause her anchor to be weighed, and removed the Schooner into a dangerous situation done by the Naval Officer's order?—A. The Gov't's Coxswain ordered the pilot to weigh the anchor again, and remove the Schooner opposite the Naval Officer's Stores, outside the Porpoise.

Q. Did you not lay in that situation several days in great danger, and were you not once nearly on shore?—A. She was in a state of danger, and I had informed the Naval Officer that she had not anchors sufficient to hold her in the situation she had been moved to. She was near going on shore.

Q. You have said that two Police Officers were put in charge of the Vessel soon after your arrival; state whether you was not obliged also to give up all your Ship's papers, comprising your Registers, your Licenses, Port Clearances, and, in short, every paper that could show either yours or your Owner's title to the Vessel?—A. Yes.

Q. Did you not after that frequently apply to the Naval Officer to enter the Vessel, and did he not always refuse?—A. I did, and was always refused.

Q. Did you not, after being refused entry, repeatedly apply that your papers might be returned, and were they not refused?—A. Yes.
Q. When you informed me of this, did I not tell you that as the vessel was refused entry, and thereby prevented landing her Cargo, that as your papers were refused, and the vessel consequently prevented sailing to another Port, and as the Naval Officer had two Police Officers on board of her, I considered myself as completely dispossessed—that you must therefore apply to the Naval Officer for directions what you was to do with yourself, Officers, and Crew?—A. Yes.

Q. Did I not, in consequence of that, give you the Letter,* and desire you to leave a Copy with the Naval Officer?—A. You did.

Q. Had you not plenty of provisions on board—both Bread and Meat?—A. Yes.

Q. The reason why you did not use those Provisions was because, as the vessel's Stores and Cargo were given up to the Naval Officer, you thought it necessary to have his instructions before you used any more of them. When the Mates and some of the Seamen of the Parramatta went to state their situation to the Naval Officer, and required his instructions, did he not threaten to kick them from his door?—A. I did not think it proper to use any provisions until I knew whose directions I was to be under; and I was told the Naval Officer had threatened to kick the Mates and Seamen when they went to require his directions.

Q. Have you, your Officers, or any part of your Crew, ever been confined, tried, or punished for breaking the Colonial Regulations, altho' I am here a Prisoner at the Bar, charged with having caused you so to do?—A. No.

FRANCIS OAKES, sworn:—

Says on the 15th day Dec'r last I rec'd a Warrant from the Judge-Advocate, R'd Atkins, Esq., wherein I was directed to bring to Sydney, on the 16th, John McArthur, Esq., to appear before the Judge-Advocate, among other of His Majesty's Justices of the Peace. I being well aware that it was a delicate piece of business, I called on Capt. Abbott, a Justice of the Peace—under whose particular directions I had been for a considerable time—and informed him of the business, and shewed him the Warrant, and asked him, as it was specified in the Warrant for me to bring Jno. McA. to Sydney, whether it was necessary for me to go personally with him. Capt. Abbott replied and said he did not conceive it was, and gave me directions to go to Mr. McA. and present the Warrant. He dared to say that he would comply with it, and that I might go down to Sydney as if I was going on my own business—only to see that Mr. McA. made his appearance, agreeable to the directions of the Warrant. Under these directions I went to Mr. McA.'s house and inf'd one of his servants—who was in the Kitchen—that I wanted to see Mr. McA. on some particular business. The Servant went and informed Mr. McA., in consequence of w'h Mr. McA. came to the back door of the house. I informed him that I had just rec'd a Warrant from R'd Atkins the J.-A., wherein I was directed to bring him to Sydney to-morrow, 16th. He asked me to give him the Warrant, which I did, and he politely asked me into the Parlour; he ordered me a chair to sit down, and made me a Glass of Grog. During the same time he was perusing the Warrant, and said that it was an illegal thing, and requested me to take it to Capt. Abbott for him to back it. After saying a great deal, in consequence of the Warrant being presented, desired pen, ink, and

* Note 102.
Proceedings at the trial of John Macarthur.

1808. 4 April.

Paper might be given me that I might write down what he had said, which I declined to do, in consequence of w'h Mr. McA. took a pen and wrote the Note—which being produced before the Court* is the same or to the same effect. I remarked it was a disagreeable business and hoped he would not be angry with me. He gave me that paper as a justification that I had done my duty in serving the Warrant, and with great reluctance I took it off the table, asking him if it was his will that I sh'd take it. Mr. McA. replied, “By all means.” I asked him if I should wait on him in the Morning. I do not recollect him making any reply; in consequence of w'h I came away with the paper.* I went to Capt. Abbott a second time, who I found in bed. I requested the Servant in the Kitchen to inform Capt. Abbott that Mr. McArthur would not comply with the Warrant, and that I had waited on him (Capt. Abbott) for directions how to proceed. Capt. Abbott, I believe, did not get up; but I went to the window and informed him that Mr. McA. had given me his written objections why he w'd not comply with the Warrant, and I informed Capt. Abbott verbally of the substance of it, and asked his advice how I s'd proceed. He replied and said that he did not think the Warrant was sufficient to use violence. I then asked him if I had better to proceed on to Sydney in the morning. He told me I had. I then made application to him for the Parramatta Boat. He informed me that it was at Sydney, and that I had better set off early in the morning. Under those directions I left Capt. Abbott's Yard. In going home, Mr. Edward McArthur overtook me and said that his father w'd go to Sydney, and requested the written paper again. I told him to deliver my compl'ts to his father; that I could not deliver it with propriety; but that if he complied with the Warrant I perhaps would not present it. In the morning I went to Sydney. I went to Mr. Atkins's Office and presented the paper that Mr. McA. had given me. Mr. Atkins desired me to wait until he had seen the Gov'r. Some short time after I was sent for to Gov't House and requested by Mr. Atkins to relate to the Gov'r and himself what had passed, w'h I did, and was as I have stated to this Court. The Gov'r seemed to blame me that I had not brought Mr. McA. down. On the same day I was brought before a Bench of Magistrates to give Ev'ce on the business, which I did. After my Ev'ce resp'ng the paper was gone thro', I informed the Bench that Mr. McA. had s'd at the time I first presented the Warrant at his house that “had the Person who issued that Warrant served it instead of me he w'd have spurned him from his presence,” or words to that effect; and that Mr. McArthur at the same time said, after cautioning me what I was about, that “If I came a second time to enforce the Warrant to come well Armed, that he never would submit till Blood was shed.” Mr. McArthur further remarked at the same time that he had been robbed of £10,000, but said, “Let them alone; they will soon make a Rope to hang themselves.” He said the Gov'r and them had robbed him.

Q. Relate the Conversation that passed several days after between the Gov'r and yourself?—A. There were certain questions put by the Gov'r, and I gave certain answers. I cannot recollect the particulars.

Q. State to the best of your recollection the purport of the questions that the Gov'r put to you?—A. The Gov'r said that it was necessary to explain some questions that he had got to put to me.

* Note 103.
The purport of them was the questions that were taken from the Depositions taken by the Judge-Ad. on the 16th. One question was to this effect: "What did Mr. McA. mean when he said he treated the Warrant with scorn and contempt, as he did the persons who issued it?" I told the Gov'r that I supposed he meant Mr. Atkins and himself.

Q. Was Mr. Atkins present when you had the above conversation with the Gov'r?—A. No.

Q. Was Geo. Crossley present?—A. No; he came upstairs to the Gov'r just after the questions and answers were concluded.

Q. Did Crossley put any questions to you, or had you any conversations with him on that subject?—A. He did not at that time put any questions. I asked him if I was warranted in breaking open Mr. Blaxcell's door, and he said I had done nothing but my duty. Crossley never put any questions to me, or ever took anything down in writing from me.

Q. Was you ever sworn in as Constable?—A. No.

Q. Did any conversation pass between you and the Gov'r wherein Mr. McA. was concerned but that which you have now stated to the Court?—A. I did state the circumstance of Mr. Hannibal McArthur taking a copy of the Warrant, and Mr. E. McA. going for Mr. Bayly. I was asked who I conceived Mr. McA. meant when he said, "Let them alone; they will soon make a rope to hang themselves"; and I answered I supposed he must mean every Officer in Power.

Q. You have stated to this Court that a conversation passed between you and the Gov'r at the time alluded to which you do not think prudent to mention;—what was that Conversation?—A. The conversation that passed as related in my last answer, and some other questions that I cannot recollect.

Q. Did or not the Pris'r say to you that the Gov'r was a Tyrant?—A. I do not recollect he did.

Q. Did you ever tell the Gov'r that the Pris'r had said that he, the Gov'r, was a Tyrant?—A. I told the Gov'r that Mr. McArthur represented him as a Tyrant, which opinion I formed from the paper delivered by Mr. McA. to me; but what I said to the Gov'r I did not say on oath.

Cross-examined by the Prisoner:

Q. You have stated in your Ev'ce that you are not a sworn-in Constable; did you not come to my house at Parramatta on the ev'g of the 15th December for the purpose of apprehending me, under the authority of a Warrant from the Judge-Advocate?—A. I came to serve one.

Q. Did you serve that Warrant?—A. I served it, so far as giving it into the hands of Mr. McA.

Q. Did you lay your hand on my person and require me to submit to your authority?—A. No.

Q. You say I gave you a Glass of Grog and offered you a chair, and you have recited the whole of my conversation;—pray did you say nothing?—A. You gave me a Glass of Grog and offered me a chair. I have not recited the whole of the conversation, but the particulars. I did say something.

Q. Did you not say that it was the common conversation of the place how shamefully the Naval Officer had behaved in stopping
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the Parramatta Schooner and her Cargo?—A. I do not recollect anything of the kind.

Q. Did you not say that the whole Country cried out against such arbitrary proceedings?—A. I do not recollect it.

Q. Did you not say that you knew the Warrant which you had brought was an illegal one; and, let the consequences be what they would, that you w'd not serve it?—A. No; I never considered the Warrant illegal I conceived I had served.

Q. Did I not say, "Oakes, you are a poor Man; you may give Offence. Go to Capt. Abbott, tell him I will not obey this illegal Warrant, and get his Instructions how you shall act"?—A. Mr. McA. said it was an illegal Warrant, and requested me to take it to Capt. Abbott to back it.

Q. Did you not reply, "I know it is of no use to take it to Capt. Abbott. I know he will not have anything to do with it"?—A. No.

Q. Why did you not immed'tly take it to him when you found he w'd not obey it?—A. I did immed'tly take it to Capt. Abbott.

Q. Did I not, immed'tly after I told you "I will not obey this Warrant," and desired you to go to Capt. Abbott's, sit down and write the paper produced to the Court?*—A. Yes.

Q. Did you not receive this paper as a justifi't'n of yourself and as a full and complete answer to the Judge-Ad.?—A. I did.

Q. Whilst I was copying this Paper, did you not say you was glad to have it, because it would prevent you making any mistake in repeating my words?—A. No.

Q. Did you not say, "Do you think I can be hurt, Sir, for not serving this Warrant, for I w'd on no acc't insult a Gentleman like you by taking him out of his house at this hour of the Night"?—A. I don't recollect.

Q. During the whole time that you were at my house, did I treat you with any unkindness or incivility?—A. No, but to the contrary.

Q. You have declared in y'r Ev'ce that my Son overtook you on your return home, and requested you in my name to return the written paper I had given you, w'h you refused, and by w'h ev'ce it appears as if I had been desirous to retract the answer I had sent to the Judge-Advocate. Now, I ask you, on your Oath, whether my Nephew† did not tell you the next morning that that message was never authorized by me, but sent by Mr. Bayly without my know-l'dge?—A. Yes.

Q. Then, why did you conceal that Cir'ce from the C'rt but with an intention to make me appear like one of the pusilanimous Tribe you had enlisted yourself amongst?—A. I did not see it necessary.

Q. Did you not tell Mr. Crook and Mr. Hassall, on your return from my house on the 15th Dec'r, that I had been very ill-used, or words to that effect?—A. No.

* Note 104. † Note 105.
Q. What did you tell them?—A. I did not tell them anything particular.
Q. Did you not tell Capt. Abbott that I was very ill-used, or words to that effect?—A. I do not recollect.
Q. When you came to Sydney the next morn'g, did you go to the Governor or the Judge-Ad. first?—A. I went to the Judge-Ad.
Q. How long after that was it that you went to the Gov'r?—A. Between eight and nine o'Clock.
Q. Where did you see the Gov'r?—A. In the Garden.
Q. Who was with him?—A. Mr. Atkins.
Q. You then showed him the paper, did you?—A. No; I had given it to Mr. Atkins before.
Q. Did the Gov'r talk much to you about what had passed the preceding ev'g?—A. No great deal.
Q. Did you continue in the Garden all the while you was with the Gov'r?—A. In the Garden, and from thence to the field at the back of the House.
Q. I suppose you went into that private situation, recollecting the old proverb that "Walls have ears"?—A. I do not know the Gov'r's reason.
Q. You rec'd a Warrant to apprehend me that day, did you not?—A. Yes.
Q. How many Armed Men accompanied you when you went to execute that Warrant?—A. Three, with Sticks or Cutlasses.
Q. Do you, upon y'r Oath, mean to say that you do not know that two of these men were armed with Cutlasses?—A. I believe two of them had Cutlasses.
Q. When you went to apprehend me on this Warrant, did you not go through the open rooms of Mr. Blaxcell's house in search of me?—A. Yes.
Q. Did not Mr. Blaxcell assure you I was not there?—A. Yes.
Q. Did you not go to a locked door of Mr. Blaxcell's and break it open, exclaiming, "We are no Children"?—A. After Mr. Blaxcell and his Lady were requested to open it and refused, it was bursted open.
Q. Did you find me there?—A. No.
Q. Where did you find me?—A. At Mr. Grimes's, sitting Publicly in Company with sev'l other Gent'm.
Q. When you produced the Warrant, did I resist it with any violence?—A. No; but you said you w'd not comply with it, desiring the Gent'l'm to take notice that he was taken against his will.
Q. Did you go to Gov't House after you had apprehended me?—A. I cannot recollect.
Q. Did you get nothing that day from the Gov'r?—A. I do not recollect I did.
Q. Did you get no Spirits out of the Store that day?—A. I do not recollect.
Q. How many Gallons did you get as your Share amongst the Constables?—A. I got ten Gallons as a Superintendent.
Q. Was not your Share always Five Gallons before?—A. Sometimes Five, sometimes Ten, as other Superintendents.
Q. Was not the quantity of Spirits to be issued on that occasion left to Capt' Abbott, the Magistrate at Parramatta, and did he not put y'r name down for Five Gallons only?—A. Yes; but in consequence of my name being down in the List of Supt's I rec'd the same as them.
Q. How often have you been at Gov't House since I was apprehended to be consulted on the Ev'ce you was to give on my trial?—
A. Once.

Q. How often have you seen Crossley since?—A. Never on Mr. McArthur's business.

Q. Has Crossley never shewn you or any other person the questions you were to be asked on this Trial?—A. Never.

Q. As you have acknow'dged that you told the Gov'r that I had represented him to be a Tyrant, had you no other reason for so saying than the opinion you formed on the written paper I gave you?—A. No.

Q. How do you justify yourself in the presence of God and man for being the cause of my standing at this Bar to defend myself against an accusation of calling the Gov'r a Tyrant and a Robber, when you acknowl'dge you never heard me utter such words?—A. I do not think that is the cause of your being brought here.

The Evidence on the part of the Crown being closed, the Court are of opinion that the Prisoner need not make any Defence.

**FINDING OF THE COURT.**

The Court are of Opinion that no one of the Charges of which you are arraigned before this Court have been proved; that the Speech you made before the Bench of Magistrates was not seditions or stronger language than an unauthorized seizure of your property might warrant, or they would have taken cognizance of it; and that the Warrant issued against your Person on the 15th Dec'r has been proved to the satisfaction of the Court to have been illegally issued and served; and that the Paper writing you delivered to Oakes, an unsworn Constable, you were defensible in. We therefore Unanimously and Fully Acquit you of all the Charges laid in the Information against you, and you are hereby discharged.

C. GRIMES, Acting Judge-Advocate.

A true Copy compared with the Original.

JOHN McARTHUR, J.P.
CHARLES THROSBY, J.P.

[Enclosure No. 17.]

**THE EXAMINATION of Mr. Robert Fitz, Deputy Commissary:**

New South Wales,
27th Jan'y., 1808.

Q. You have been a Deputy Commissary in this Colony about 17 Months?—A. Yes.

Q. During which time (until within a few weeks) you attended on Duty at the Commissary's Office?—A. Yes.

Q. Relate what you know as to the appropriation of His Majesty's Stores?—A. Governor Bligh has regularly been supplied with Cloth for all his Servants, and for which I believe no charge is made in the Books of the Office. The Governor has also been supplied with Spirits from the Bonded Store, and at one time took for his use a quantity of Port wine, and a few days prior ordered wine to be purchased from Mr. Campbell at £3 10s. per Dozen for the use of the General Hospital.

Q. What quantity of Port wine, as you suppose, was taken by the Governor?—A. As far as I can judge, about a Pipe.
Q. What quantity of Wine was purchased of Mr. Campbell?—A. I cannot recollect the quantity, but what was purchased was paid for by a bill on His Majesty’s Treasury.

Q. Has Mr. Palmer, the Commissary, been in the habit of issuing articles from the King’s Stores without previously obtaining the Governor’s Permission for that purpose?—A. He has.

Q. Does it come within your knowledge that Articles have been sent from the Stores to the Hawkesbury, where they have been appropriated to the private use of Governor Bligh?—A. Yes; but having been at Hawkesbury only a week I cannot speak to any more than a quantity of Nails.

Q. What number of Convicts are victualled from the Public Stores belonging to Governor Bligh’s farm at the Hawkesbury?—A. Upwards of 20. I believe 27 besides Captain Pitland’s men.

Q. What Quantity of Spirits has there been lately sent up to the Hawkesbury to be issued to the Settlers under your directions?—A. 1,040 Gallons by Gauge, which yielded 1,047 by issue.

Q. How was it distributed, and how was it paid for?—A. It was distributed in stipulated quantities by the Governor’s Order, and paid for by Wheat turned into Store, The Receipts being first signed by the Storekeeper, and then given to me.

Q. Does it come within your knowledge that other Hospital Necessaries, exclusive of the Port wine, as well as different kinds of Goods sent out by Government for Barter, have been taken by Governor Bligh, and appropriated to his private purposes?—A. I know of a quantity of curled hair, as well as Candles, Duck, and other Articles, as it was always customary to comply with all Orders sent by the Governor for the Issue of Stores.

Q. Do you know of a quantity of Oil having been purchased by Mr. Commissary Palmer of his Brother-in-Law, Mr. Campbell, for the public use, and what price was paid for it per Gallon?—A. I cannot speak as to the quantity, but what has hitherto been paid for was at 4s. Per Gallon.

Q. At the time Mr. Palmer was giving 4s. per Gallon for Oil, does it not come within your knowledge that he could have purchased it elsewhere at 2s. 6d.?—A. Mr. Lord has informed me that he offered Oil at that Price.

Q. Does Mr. Palmer still continue to take Oil from Mr. Campbell as he wants it for Public use?—A. Yes.

Q. Has Mr. Palmer to your knowledge any share in the Oil which he gets from Mr. Campbell?—A. I have heard that he has.

Q. Do you issue Stores at Hawkesbury by your own Authority, or do you receive Orders for that purpose from the resident Magistrate?—A. I receive Orders from the Magistrate.

R. Fitz, Dy. Commiss’y.

Taken before Wm. Minchin, Robert Townson, Nicholas Bayly, G. Blaxcell.

[Enclosure No. 18.]

The Examination of James Wilshire, Deputy Commissary:— Examination of James Wilshire.

Sydney, New South Wales, 26 Jany., 1808.

Q. Up to what Period have you given in to Governor Bligh The Return of Expenditure of Grain and Provisions in your Charge, and the Quantity of each Article remaining?—A. I cannot tell
1808.
11 April.
Examination of James Wilshire.

without referring to my Books; but I believe it is three weeks or a month since I gave the Governor my Return.

Q. Has not Mr. Commissary Palmer taken from you Stores at various times—Wheat, Flour, and Maize—which to your knowledge has been converted to his own private purposes as a Baker?—A. Yes, he has.

Q. You say he has taken Grain and Flour at different times; but, it is to be presumed, not without an intention of replacing it; Does he, therefore, at this time stand indebted to the Store in any quantity of the above Articles?—A. To the best of my recollection, he owes the Stores 100 Bushels of Wheat, about 2,000 lbs. of Flour, and 100 Bushels of Maize; but it can be more correctly ascertained by referring to my Books.

Q. Does it come within your knowledge that Mr. Commissary Palmer has been in the habit of directing Maize to be received into His Majesty's Stores, and ordering the same to be noted in the Books as Wheat received, charging One Bushel of Wheat for two Bushels of Maize?—A. Mr. Palmer at one time standing indebted to the Stores between Two and Three Hundred Bushels of Wheat, said he had a quantity of Maize which he would turn into the Stores, two for one—that is, meaning Two Bushels of Maize for One Bushel of Wheat. He put a Quantity of Maize into the Stores at that time; but, from Information which I conceive he received of this transaction being known, he directed me to give him Credit for the Maize, and afterwards made good the Wheat for which he then stood indebted.

Q. What was the Price paid for Maize received into the Stores at the time Mr. Palmer turned in the above quantity?—A. Six Shillings Per Bushel.

Q. What was the Price of Wheat?—A. Fourteen Shillings and nine Pence Per Bushel.

Taken before A. F. Kemp, Wm. Minchin, Wm. Lawson, G. Blaxcell.

[Enclosure No. 19.]

Examination of John Gowen.

Examination of Mr. John Gowen, Superintendent of Stores:—
New South Wales,
28th Jany., 1808.

Q. Are all Orders for the Issue of any Stores directed to you?—A. After being countersigned by Mr. Palmer.

Q. Do the orders state how the Articles are to be paid for?—A. Generally.

Q. Has Mr. Palmer Since Governor Bligh's Command received any Articles from you?—A. Mr. Gowen produces a List of the Articles issued to Mr. Palmer for which he has received his Verbal orders, who said He would at a future period give him the Governor's order; also two Boxes of Candles which he does not know if entered.

Q. Do you know if the Articles in the List have been paid for?—A. They have not been paid for nor are they entered in the Day-Book.

Q. Has Mr. Palmer not received any other Articles from the Stores under your charge?—A. None without being regularly entered.

Q. Has Charles Thompson received any Articles since Governor Bligh's command from your Stores, and by whose order?—A. He has received considerable quantities, both in his own name and others.
by orders Signed by Governor Bligh, and countersigned by Mr. Palmer, that the articles so delivered have been paid for either in Wheat Receipts, or Copper Coin on delivery.

Q. Do you know that Charles Thompson is in the constant habit of retailing the Articles he has received from the Stores at a great Advance?—A. Charles Thompson keeps a Public Shop, but the Dependent never was in it, but by common report has heard he does sell such Articles.

Q. Who have received the Boxes of Candles from the Stores?—A. The officers only.

Q. Has not Andrew Thompson received Stores on the Public Account by the Governor’s order?—A. He has, in large quantities.

Q. Is it not customary to send all articles for the Public Use to the Commissary or Storekeeper having charge of distant Public Stores?—A. Since Governor Bligh’s Command, Articles have been sent to Individuals and not to the Commissary or Storekeeper either at Parramatta or Hawkesbury, which mode was never practiced by any former Governor.

Q. Have you ever received Mr. Palmer’s or any other private Notes in payment for articles delivered from the Stores you have the charge of?—A. I have received private Notes and keep them until I have an order from the Commissary (sometimes verbally from Holmes, the Office-Keeper) for Sums of Money when he takes the Person’s receipt for the Sum so delivered, and charges in my Accounts to the Commissary.

Q. Have you not received more of Mr. Palmer’s Notes than any other Persons?—A. I have, by the particular direction of Mr. Palmer, received his Notes in preference.

Q. Has not Thomas Abbott, dealer, received quantities of Stores from you, and by whose order, and how paid for?—A. Thomas Abbott has received Articles from me; most of the orders were signed by the Commissary, Mr. Palmer only expressing that they were to be charged to Mr. Palmer’s Account.

Q. Do you within your knowledge know that Thomas Abbott sells the Articles he has received from the Public Stores openly in his Shop?—A. I never was in Thomas Abbott’s Shop, but have heard he does.

Q. Has Mr. Campbell received any Articles from the dry Stores, by whose order, and how paid for?—A. Mr. Campbell has received 312 Yards of Canvas by Mr. Palmer’s verbal order only in Dec’r, 1806, expressing that it was to be replaced the first Supplies; it has not been returned, nor entered in the Day-Book.

Sworn before me: C. Grimes, J.P.
A true Copy compared with the Original.

A. F. Kemp, J.P.
Chas. Throsby, J.P.

[Enclosure No. 20.]

Examination of Mr. William Baker, Storekeeper of His Majesty’s Stores at the River Hawkesbury, before A. F. Kemp, William Minchin, and C. Grimes, Esqres., 30th January, 1808.

Cumberland to wit.

Q. Are you the Storekeeper at the Hawkesbury?—A. I am.

Q. What Receipts do you give for Stores sent under your charge?—A. A List is sent by the Commissary, and I give a Receipt on the delivery.
Q. In what manner is Grain received into your Stores?—A. I give Receipts for all Grain I receive, which Receipts are taken to the Commissary's Office; and should the Persons be indebted to the Government the amount is placed to their Credit, but does not know how the persons are paid should they not be indebted to the Crown.

Q. Has there been any Irregularities in your Department in the expenditure of Public Grain under your Charge?—A. About three months since, when the Stores were not open for the General Receipt of Indian Corn, I was directed personally by Governor Bligh, in the presence of the Commissary, to receive the Indian Corn which had been grown on a purchased Farm of Gov'r Bligh's on the Hawkesbury River, and directed by the Governor to make out Receipts for the Grain so taken into the Stores in the name of Andrew Thompson, and that since that Period the Deponent has issued weekly from the Stores Eight Bushels of Maize for the private use of Governor Bligh's Farm; and the Governor in the presence of Mr. Palmer (the Commissary) ordered me to expend the Corn so issued in my Public Returns as issued for the use of Government Stock; another irregularity, about four or five months since, was that the Deponent was verbally ordered by Mr. Palmer, the Commissary, to issue to his (Mr. Palmer's) Overseer of his Farm at the Hawkesbury twelve Bed Ticks for the purpose of making Bags for carrying Grain, saying, "you know how to expend them." The Bed Ticks were issued and not entered in the Issue Book of the Store.

Mr. Baker further states that from 27th August, 1807, the Period that Governor Bligh purchased Tyler Farm at the Hawkesbury, thirty-three men have been victualled from the Public Stores, and one Woman, who were employed on the Governor's Farm. That when called on at the General Muster about Ten weeks since, as usual, to answer for the number of Persons victualled, he was designed by the Commissary (Mr. Palmer) not to take any notice of Governor Bligh's Servants, and Fifteen of the number were accounted for by Andrew Thompson, The Governor's Bailiff or Overseer of his Farm, and principal Constable at the Hawkesbury, as employed in the Camp Gang, which Gang are supposed to be working for the sole advantage of the Crown. There are now victualled Six Men on the Farm of the late Captain John Putland from the Stores at the Hawkesbury.

Q. Did you at any time receive payment for Grain from Mr. Commissary Palmer which was not put in the Public Stores?—A. Previous to Mr. Palmer's leaving the Colony for England, Mr. Palmer was indebted to the Deponent £53 Sterlg., and Mr. Palmer directed a Receipt for Grain put into the Public Stores (but does not recollect in whose name) to be made out by one of the Clerks. The Deponent is to his own knowledge certain that the Grain was never put into any Public Store, and the Deponent did receive the Receipt as payment of the above Sum of Fifty-three Pounds Sterling.

A true Copy compared with the Original.

Wm. Baker.