REPORT

OF

TRIAL OF AN ACTION

BROUGHT BY

MR. WILLIAM DAWE

AGAINST

VICE-ADMIRAL SIR CHARLES HAMILTON, BART

GOVERNOR OF NEWFOUNDLAND,

BEFORE

MR. JUSTICE BURROUGH AND A SPECIAL JURY,

AT THE CASTLE, EXETER, 26TH MARCH, 1824.

From the Short-hand Notes of Messrs. Richardson and Cherer.

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MDCCCXXIV

Exeter, 26th March, 1824.

IN THE KING'S BENCH.

DAWE *versus* HAMILTON, Bart.

Before Mr. Justice Burrough *and a Special Jury.*

Mr. C. F. Williams opened the pleadings.

Mr. Serjeant Pell then stated the case on the part of the plaintiff as follows:—May it please your Lordship, Gentlemen of the Jury, I am sorry that this case has devolved upon me, on behalf of the plaintiff, and I say so, because I feel the question to be of very considerable importance, and also because I find myself at present under such an indisposition that I almost fear I shall have much difficulty in concluding the case, but there is no personal inconvenience of any sort or kind, that shall prevent me as far as I am able from laying this case before you; and should it happen in the course of the case that I find myself so unwell as to be unable to proceed, I shall leave it in the hands of my friend Mr. Adam, and in better hands it cannot be. But I have every

reason to believe that it will not be so, for I am quite sure if ever there was a case, the nature of which would tend to produce that sort of excitement on any person that appeared to labour under indisposition, this is a case of that description, and when I say excitement, I mean just that portion of interest, that would induce a man situate as I am, in the discharge of such a duty as I have to perform, to take due care that I should at least in the opening address to you, be able to proceed to a termination of what I have to state, feeling every wish I have at my heart, will I am satisfied, supply me with strength at least to go through that part of the office which I am to perform.

Gentlemen, you have heard from my friend Mr. Williams, who has stated just enough of this record to you, to bring you acquainted with the parties upon it, and under a wish by me expressed to him that he would open the case as he has done to you in the shortest and simplest way imaginable, and he has stated to you that this is an action brought by the plaintiff, whose name is William Dawe, against the defendant, Sir Charles Hamilton, Bart., stating to you that the record charges upon this gentleman, Sir Charles Hamilton, that he has removed from his situation Mr. Dawe, who acted as a notary public at Newfoundland. My learned friend Mr. Williams would most readily have gone on with the statement, if it had not been thought more con-

venient to hear from the witnesses those parts of the record which tend to shew the publication of certain papers of a highly injurious nature to the plaintiff, whom I represent, and I cannot refrain from saying, shewing a spirit on the part of Sir Charles Hamilton, which, I trust, is not usually found in the breast of that gallant officer.

Gentlemen, I know not how it may happen to-day, but I shall use my best endeavours to avoid saying any thing, or using any expression that may be in the slightest degree offensive to a gentleman like Sir Charles Hamilton, he being a man of high rank, and having been intrusted with very great authority, and a most excellent and meritorious officer. I should think myself unpardonable indeed, if I used the miserable privilege I possess, of saying any thing I might think fit here, when at least, that gentleman could not interrupt me, or make any animadversion upon my conduct, if I were indeed, to avail myself of the power of saying any thing that might be in the slightest degree unpleasant to him. But having laid claim to Sir Charles Hamilton's attention, at least, to the sort of spirit which at this moment actuates me, for I have a duty to discharge to my client Mr. Dawe, which I will most faithfully and zealously discharge, nor is there any consideration on this earth, that shall prevent me from saying what I feel it my duty to say of him, both with reference to his conduct as a gentleman,—

as a man, and above all with reference to that to which your attention will be more immediately directed, namely, that transaction which on his part has given rise to this action.

Gentlemen, for this purpose allow me to state to you that the record is speaking of Mr. Dawe as representing him at the time in question which I will immediately almost mention, acting as a Notary Public at Newfoundland, of which place Sir Charles Hamilton was governor, in the year 1818. Mr. Dawe had, I believe, practised—I believe in England some years before as an attorney, and I have no reason to fear any thing to-day that can be said of Mr. Dawe's conduct, both before he went to Newfoundland, or during his continuance there. I believe the whole will be found of an uniform piece, and that piece not in the slightest degree unpleasant to animadvert upon, both with respect to his previous conduct in the anterior time of his life, or his conduct at the time in question. Sir Charles Hamilton, every one of you must know, or at least the country knows, undoubtedly, was Governor of Newfoundland at the time I have mentioned, and having stated to you that one part of the record alleges that Sir Charles Hamilton had removed Mr. Dawe from the office of Notary Public at Newfoundland, occasioning to him a very serious loss, and a certain degree of mental suffering from what then happened; I should mention to you

that other parts of the record allege that Sir Charles Hamilton had published certain papers of, and concerning Mr. Dawe, thus appointed, with the commands of Sir Charles Hamilton to him to cease acting as a Notary Public, which has occasioned to Mr. Dawe the most serious loss imaginable. The record alleges that Mr. Dawe in consequence of the conduct adopted by Sir Charles Hamilton has, as I have mentioned to you, sustained much pecuniary loss, and with reference to the nature of the loss or the extent of it, or with reference to any specific and particular damage in point of money that Mr. Dawe has sustained, I do not mean to lay before you to-day any evidence of any precise description ; I shall shew, however, the nature of the office which Mr. Dawe held, and I shall lay before you a general estimate of the advantages to be derived out of such an office at Newfoundland ; and then if I shall be so fortunate as to entitle myself to your verdict, the only question will be considering the nature of the office, and the extent of the average profit of such an office, what damages you shall be pleased to give, in consequence of Sir Charles Hamilton having removed Mr. Dawe from such an office.

But, Gentlemen, there is much beyond, I apprehend, the mere pounds, shillings, and pence, upon the subject of this action.—It is no slight thing for a man to be held up as an object of reprehension,—it is no small thing for him to be removed from the situation which he held ;—

it brings with it not only great pecuniary loss, but it is attended also with great mental suffering, if a gentleman is constituted as a gentleman ought to be; and although I do not mean to say that the damages are to take the direction of mental suffering, yet I know perfectly well it is one of the points which will not escape your observation; and I am quite sure if I make out my case, as I have every reason to believe I shall, it will form no small excitement to you as to the extent of damages which you shall be pleased to give.

Gentlemen, with these very few preliminary observations, I will now mention the circumstance which gave rise to the conduct of which Mr. Dawe complains, and which has led him to the bringing of this very unpleasant action. You will find that Mr. Dawe went out to Newfoundland, to act as a notary public; and that he was admitted by Sir Charles Hamilton, the governor of that place, without whose authority he could not have acted as a notary public; and you will find that he was acting in that capacity in the month of August, 1818.

Gentlemen, in that month, and on the 27th of it, a fire took place at Newfoundland. The fire appeared to be one of very considerable consequence, and undoubtedly his Majesty's governor, Sir Charles Hamilton, had a right to expect from every loyal subject,—for the fire had reached in some degree, and I believe did actually burn some

of the public offices,—he had a right to expect from every loyal subject of his Majesty, that he would afford every possible assistance in stopping so dire a calamity which then appeared about to take place. Mr. Dawe was present at the fire, and Mr. Dawe had some personal friend whose property was put into much danger, and I believe, I only mention this in the slightest way imaginable, just as introductory to that which I shall afterwards state in a more pointed way. Mr. Dawe I believe assisted some friend upon that occasion, and did the utmost he could, as I have every reason to believe, for the purpose of stopping the conflagration. However, in the course of that very dreadful night, the military interfering, as it was their duty to do, the officers of his Majesty's government, some of whom, and particularly a gentleman of the name of Manners,—Colonel Manners,—appears to have had much authority committed to him upon that occasion, and Mr. Manners taking the part that became him, it was supposed that some unpleasant circumstance happened between Mr. Dawe and Colonel Manners, and I cannot but think that a mistaken view was taken of Mr. Dawe's conduct on that night by the governor, Sir Charles Hamilton. Whether it was an erroneous representation to him of what did take place that night, or what other circumstance I cannot say, but he really seems to have conceived a notion that Mr. Dawe had misconducted

himself towards Colonel Manners, while Colonel Manners was very properly, in every sense of the word, discharging the duty imposed upon him.

Gentlemen, Mr. Dawe undoubtedly had reason to complain of the conduct of some persons on that night; for,—and let me only here again say that I shall not introduce any thing I am not able to prove, and I introduce it merely for the purpose of bringing you acquainted with the subject, more than any thing at present resulting from it,—Mr. Dawe undoubtedly had reason to complain of the conduct of two persons, one an inferior officer, and another of the rank of captain. They had misconducted themselves, and Mr. Dawe found it necessary to bring an action against those persons, a gentleman of the name of Faddy, and a serjeant of the name of Connell. And after this took place there was an action tried. It was an action for an assault, and it was tried on the 7th of September, so that you will have the goodness to remember that the fire took place on the 27th of August, when this unpleasant business took place between these gentlemen, Mr. Dawe, and Captain Faddy, and Serjeant Connell; he proceeded against them, and the action was tried on the 7th of September. He recovered small damages against the one, and no very great damages against the other, not very considerable, and it is not necessary to say any thing more upon that part of the case. There the matter stopped, at least

as far as Mr. Dawe had reason to know any thing on the subject, when, to his great surprise, on the 14th of September, in the same year, he received this letter from Sir Charles Hamilton. It is signed by the secretary of the governor, a gentleman of the name of Le Geyt, and Mr. Le Geyt is here to-day, and I shall undoubtedly be under the necessity of calling him as a witness for Mr. Dawe, in doing which you will observe at once I call a gentleman, whom, if Sir Charles Hamilton wishes to have on his own behalf, I present Sir Charles Hamilton with a witness, of all others the one,—I should suppose the one,—he would most select for the purpose of bringing before you. I do not know of any other way, and therefore it is necessity that compels me to do it, and sure am I that although I call Mr. Le Geyt, for the purpose of proving certain papers, he being the secretary to Sir Charles Hamilton, sure am I that Mr. Le Geyt, who in his station is as honourable a man as Sir Charles Hamilton is in his; and although on such a point you would all expect to find from Mr. Le Geyt all that which is most favourable to Sir Charles Hamilton, yet I am equally sure of this, that we shall hear nothing from Mr. Le Geyt to-day, which is not strictly warranted by the truth: and although when I call him, I call him as my witness, in point of fact he will be the witness of Sir Charles Hamilton, still I fearlessly call him before you, as a witness in this case, knowing as I do

that he will state that which to-day he will be called on to prove under the sacred and solemn obligation, under which he will give his testimony; and feeling also that both as a gentleman and a man of honour, independent of that obligation, he cannot be permitted, in the slightest degree, to trespass or go beyond the strict line of every transaction to which he is called upon this day to depose.

Gentlemen, this is the letter which Mr. Dawe received at the time I have mentioned. It is dated Fort Townsend, Saint John's, the 14th of September, 1818; it is addressed to Mr. William Dawe in the corner, and is written by the secretary: " Sir, in consequence of a complaint made " to the governor by Lieutenant-Colonel Man- " ners of your very reprehensible conduct to " him on the night of the 27th ult., during the " fire, his excellency holds it to be his duty to " forbid you acting any more as a notary public " in the government." There is no charge against him on the ground of impropriety, or of his being an unsafe person to be trusted in that line;— there is no charge against him in any way of his having misbehaved as a notary-public; but it is simply from the governor that his conduct has been reprehensible in respect of this gentleman, Lieutenant-Colonel Manners; and he speaks of it as if it was conduct, in regard to Colonel Manners, very reprehensible as to him person-

ally; as if he had said something to Colonel Manners which Mr. Dawe ought not to have said, or as if he deported himself to Colonel Manners in a way which was offensive to Colonel Manners as a military man; or, indeed, as if Colonel Manners had made a representation of some description, or nature, or other, to Sir Charles Hamilton, the consequence of which was, that Sir Charles Hamilton thought fit to send this letter to Mr. Dawe. Then he goes on and says, this is written by the secretary—he says "that "he has not given you earlier notice of this his "determination, arose from a possibility that "something might appear from the evidence on "your action," (the action alluded to) "against "Serjeant Connell and Captain Faddy in the "supreme court, to have palliated such inter-"ference with Colonel Manners in the execution "of his duty; but having carefully read over "the minutes of that trial, and perceiving that "this was previous to the scuffle which took "place between you and Serjeant Connell, he is "quite at a loss to impute your conduct to any "disinterested motive." Now it appears from the letter,—a part of the letter,—that, according to the notion Sir Charles Hamilton had entertained, Mr. Dawe, you observe, had interfered with Colonel Manners in the execution of his duty;—undoubtedly a most serious offence; and, unquestionably, if there is a foundation for this

imputation, his Excellency Sir Charles Hamilton would have done wrong, and have been answerable to his own government, if he had not, upon finding such a thing to have been proved, interfered and reprehended, and, if necessary, have actually removed from his government any man that dared to interfere with His Majesty's Government, or any branch of it, while in the discharge of a legitimate duty; and Sir Charles Hamilton, give me leave to say, will find in the kingdom no man, from one end of it to the other, who can be a more zealous and disinterested supporter of the due exercise of lawful authority, than the humble individual who now presents himself before you. But it is one thing to charge a man with conduct of this description, and it is another thing to prove it against him. If Sir Charles Hamilton can have the opportunity, according to the rules upon these occasions; and I can assure Sir Charles Hamilton, I would not myself willingly interfere upon this occasion, and avail myself of any technical advantage, in order to prevent him from shewing it—if it can be shewn what took place upon that occasion, and if it can be shewn that this be so, it would go a great way, indeed, to justify Sir Charles Hamilton in every thing he did, even with reference to the consequences of this action; and it would be of still greater importance to him, in having the satisfaction of knowing, that if he erred in point of

law, yet he did, to the best of his power, discharge that great duty which he owed to his sovereign Lord and Master; and I shall be happy that Sir Charles Hamilton could, upon this occasion, remove himself from that which, I am bound now to say, on the part of Sir Charles Hamilton, has been a very great mistake; for I do, in the most pointed manner,—I do, in the most unequivocal terms,—challenge, in any way, Sir Charles Hamilton, either now or at any other time in which it can be done, to bring the matter forward publicly and explicitly, and to declare whether Mr. Dawe ever did interfere with Colonel Manners in the discharge of his duty that night.

Gentlemen, this, as you may suppose, led to much uneasiness on the part of Mr. Dawe; for, give me leave to tell several of you gentlemen that I now see before me,—I do not say all,—but I am addressing those who know the nature of colonial government;—there may be some who may have yet to learn, that if the hand of justice is stretched forth with the greatest effect, it is to save those who are at a distance, and have not the power of receiving that protection which lays at our own doors at home, and which any man can, at any time, have. And perhaps there is no part of the office of government of a more delicate description, than taking care to steer that just and prudent course; first, to support the authority of our colonies abroad,

with reference to those gentlemen, whether civil or military, who are intrusted with that great power which they possess, and which they exercise far at a distance beyond the reach of any immediate observation; and, on the other hand, to throw around those persons who have no protection there, but that protection which they are entitled to from absolute and unlimited authority, and to take care that these high officers should be watched with the most sedulous and jealous attention, that we who live at home, under the influence of a mitigated form of government, perhaps the best adapted for the happiness of man that ever was arranged by man;—that we who, at any time, and even without going out of the village in which we live, can resort to the protection which, through the medium of that admirable administration of justice,—I mean with reference to those gentlemen who undertake the whole some office of magistrates,—can almost at once receive, can have no idea of. But how is it with reference to those abroad, who have no friends to protect them, and no arm to be stretched forth for them, and there they are within the reach of absolute power, for that is the situation in which they are too frequently placed. Therefore, I say, it is that you will feel with me, that if there can be considered one point of government more important than another, it is taking the middle course of a per-

fect authority, supported on the one hand, and taking care on the other, that that authority is never exercised in a way to tend to oppress instead of leading to support. Thus are we placed when it may happen, (and when will it not happen?) in the plenitude of power, and in the wildness of prosperity, that even the best of us are led beyond that line within which we ought to keep; and when it is found that this did happen which gave rise to this well-grounded complaint abroad, nothing can be done and we must look alone where we can look for relief—we must look at home,—and we must look to you, for if that support is not furnished by a British Jury, it is to be found no where; and then wretched indeed is the condition of him who lives abroad; abroad he may be oppressed, and at home he finds no relief. That is not so. This day affords an instance that that is not so; this day affords me another opportunity of saying that here again the excellence and wisdom of our constitution is seen. Let a man be oppressed any where, whether it is abroad or at home, the day shall arrive when, if he is an oppressed man, he shall meet with relief, and if he is injured, he shall be able to turn round upon the proudest man and say to that man "There was a time "when I was under the control of your autho-"rity—there was a time when there were none "to help or assist me—here you are every thing;

" but when we meet in England in a court of
" justice it is not so, for justice makes all men
" equal with reference to the maintenance of
" their rights. If I have been wronged by you,
" make your answer through the medium of that
" alone, where I can expect to find redress, and
" where I shall receive the justice of my country,
" when I bring before a jury of my country the
" complaint I have to make against you."

Here then, gentlemen, we are for the purpose of stating our complaint. After this letter which was galling enough; which was sufficient I think to render any man unhappy, and which was calculated to make his situation at Newfoundland by no means pleasant to him, would you believe it possible, that in the month of January, in the following year, four months after this first letter was written, this letter was forwarded by Sir Charles Hamilton to the committee at Lloyds?

Gentlemen, it is necessary for me, in order that all of you may understand the office of a notary public, it is necessary for me to inform you that in the colonial possessions, and particularly those of a maritime description, the office of notary public is of the highest importance. Cases are constantly occurring where it is necessary for salvors and persons engaged in maritime transactions to appear before these officers—notaries public—for the purpose of making those statements which may be necessary with reference to any

of the great variety of circumstances which belong to a shipping country; and it became, therefore, an object with Mr. Dawe, in his capacity of notary public, to stand clear, to keep upon good terms with, and to be thought well of, by the committee at Lloyd's. This letter is a letter sent to the committee at Lloyd's, and it is addressed to the committee of the subscribers from Vice-Admiral Sir Charles Hamilton. It has the Bristol post-mark on it, and it is written by Sir Charles Hamilton himself. The first letter you will observe is written by the secretary; this letter Sir Charles Hamilton has himself written, and which I will read to you; and I am sure it is not necessary to say how it bears upon this occasion, that Sir Charles Hamilton does not call in the assistance of his secretary Mr. Le Geyt, but writes that letter himself. " Saint John's, Newfound-" land, 3rd January, 1819. Gentlemen, I beg " leave to inform you, that in consequence of " several complaints"—the first letter was a complaint resting upon Colonel Manners's situation in Newfoundland,—" in consequence of several " complaints against William Dawe, I have been " under the necessity of cancelling his appoint-" ment as notary public in this island, and I " have to request you will not consider any act " of his in that capacity as authorized by me." Of course you will easily conceive this was calculated at once to put Mr. Dawe out of his

situation, with reference to all those connected or concerned at Lloyd's Coffee-house, and unquestionably calculated to injure him very much in the opinion of every person who saw this letter; for it is a general charge that it is in consequence of several complaints, and no man can tell what the nature of those complaints are. The thing is so general, that one man may fancy a complaint of one description, and another may fancy a complaint of another description. This letter goes far beyond the letter to Mr. Dawe himself, which confined the charge of misconduct to one particular instance, and misconduct of a particular description. But this was calculated to do much more mischief, because it is of a much more general nature. Then on the very next day after this letter was sent to the committee at Lloyd's, you will find in the Gazette, or Newfoundland Advertiser, which I understand is the paper published at that colony, an advertisement to this effect, and this is an official notice, and here it is that I am under the necessity of calling Mr. Le Geyt to make out this part of the case. It is in these terms: "Fort Town-
"shend, St. John's, 4th of January, 1819. Whereas
"I have deemed it proper, in consequence of
"several complaints against William Dawe, to
"forbid his acting any longer as a notary-public
"in this island, I hereby give notice that I have
"communicated the same not only to the court

" here, but to the committee at Lloyd's, as a cau-
" tion against any person employing him in that
" capacity." Now this is published as an official notification, and published in the only paper in the island, and calculated as you see;—if it was not the government paper, it was the Gazette rather of the government—I am told it is not the only paper, but at all events it is the paper in which is to be found all the official communications made by the government to the colony at Newfoundland. Now can any thing in the world, independent of the personal feelings of Mr. Dawe, can any thing on earth be more calculated to injure a man than such an advertisement as this, connected with the letter transmitted to Lloyd's, and following the letter to Mr. Dawe as far back as the month of September? Mr. Dawe was removed from his situation; he could no longer live there; at least if he did he was subject, of course, to the reprehension of the governor. At once as you may suppose his business declined; his profits were taken from him; the place itself was no longer an object of consideration to him; and all that which had been the means of affording to this gentleman a subsistence for himself and family was at once swept away, as I may say, by the rude hand of power! He is obliged to wait till an opportunity presents itself in England of bringing forward his com-

plaint:—he does avail himself of that opportunity as soon as it presents itself, for I have no hesitation in saying, and I really only mention it, that I may not be supposed to want to keep the thing out of your view at all:—this is not the first time in which this subject matter of complaint has been brought into a court of justice *. I shall say no more of it than that, because whatever has taken place at any other time or elsewhere, the case that I have to lay before you this day, is of a nature dissimilar altogether with reference to the hinge upon which alone the right to recover by your verdict will turn.

Gentlemen, these are the particular papers; two of them are a letter to Lloyd's and an advertisement in the Gazette which are set forth in the record. The first letter which was transmitted to Mr. Dawe is not placed upon the record as a subject matter of legal complaint, but is offered to you as evidence in the cause for the purpose of bringing you acquainted with the earlier part of the transaction. For this he brings his action—for this accumulated course as

* In the commencement of 1823, an action was brought by Mr. Dawe against Sir Charles Hamilton for a libel in publishing the advertisement of the revocation of the appointment of Mr. Dawe as a notary, and the letter to Lloyd's. Damages were laid at 5000*l.* On the trial before Lord Chief Justice Dallas and a special jury at Guildhall, London, a verdict was found for the defendant. A second action was commenced immediately afterwards, but abandoned.

he considers it of injurious treatment; and he brings it because he has been held forth to the world as one living at Newfoundland, that no person could transact business with as a notary public. He brings it as a person injured with reference to London where public notice is given of him, that his conduct is of that description that the committee of Lloyd's are cautioned against him; and he asks you, whether supposing these facts are made out, it can be supposed for a moment that he will not be entitled to serious damages at your hands?

Gentlemen, how must it be made out? The record charges that this was done maliciously. Doubts and difficulties before have been felt with reference to making out that, which, upon this point, is the principal point of the cause—has, or has not this been done, of which Mr. Dawe this day complains in the fair discharge of Sir Charles Hamilton's duty as governor at Newfoundland, or has it been done from any personal motive of ill-will on the part of the governor against Mr. Dawe? It may be made out in two ways;—it may be made out by the production of the papers themselves, because, upon the papers themselves I apprehend there is enough to shew, that if Sir Charles Hamilton had wished quietly to remove him from a situation which Sir Charles Hamilton thought he was not fit to hold in the colony of Newfoundland, it could have been

done in a different way from the manner in which it has been done, and from the very circumstance of the way in which it has been done, it will be for you to say, whether malice may not fairly be imputed to the act. But I shall carry the case much further, for I shall call before you two gentlemen, one of the name of Westcott, and another of the name of Ansell—the one an officer in the army, and the other a gentleman who held the office I think of attorney-general of the island, who will tell you of conversations and expressions on the part of Sir Charles Hamilton which too clearly demonstrate, that Sir Charles Hamilton had an ill-will towards Mr. Dawe ; and that I may not commit any error here and overstate what I believe will be proved, I will not trouble you at present with the particular expressions, for you shall hear them first from the witnesses themselves, and then I think nobody can complain of me that I have exercised the power I now have in making an inflamed statement of conversations, which conversations are not at last proved to have taken place ; but they amount beyond all question, they amount to more than enough to shew that which is stated on the record—namely, that this publication, and that this conduct on the part of Sir Charles Hamilton proceeded from malicious motives, and proceeded on the part of Sir Charles Hamilton, not in the due discharge of his duty, but from personal ill-will

and hostility to this gentleman; and then, when I have proved the publication of the paper and the transmission of the letter, and when I have added to them also the circumstances that I have mentioned to you of personal ill-will as proved by Sir Charles Hamilton's own conduct, then I have done all that which will put me in a course to obtain your verdict. If I receive no answer, then the only question will be what damages you shall give; and with respect to the damages I have stated to you, the sort of evidence I have, and what I shall be able to prove before you, I shall call before you one witness certainly, who will shew you the nature of the office and the fair profit supposed to result from it. Indeed, you will find by the witness, that from the nature of the office the profit must have been very considerable, and he will sufficiently explain to you that which will lead your minds to form a judgment with reference to the loss, for the purpose of furnishing you with the due means of making a just estimate of what the damages ought to be.

Gentlemen, if I am asked why the action was brought here, I will tell you why. Mr. Dawe, I understand, is an Exeter man, and it is Mr. Dawe's intention to settle here as he gives me to believe, and therefore he wishes to bring his action precisely upon that spot where his conduct must be most discussed, and where those who afterwards do him the honour of employ-

ing him may best know whether he be a person that ought to be employed. But it requires no apology to bring an action in Devonshire, and strange would it be if I thought it necessary to say a word upon the subject, considering the gentlemen I have the honour of addressing. The courts in the kingdom from one end to the other were open to him, and he has selected this court because he thinks that in this court he is most likely to meet with justice. That is it, and I hope I shall never have reason to say, that in selecting the court at Exeter for the purpose of trying this cause, his conduct has been in the slightest degree wrong.

Now, gentlemen, this is the nature of the case you will have to try. How will this be answered? I do not know. I do assure you most sincerely I have not the slightest notion or apprehension whether Sir Charles Hamilton through the medium of my friend who conducts his case, will bring any witness before you to-day or not. I protest to you with reference to any personal knowledge I have upon that subject, I have not the slightest notion either one way or the other, and it is very indifferent to me whether he does or does not. If he does I shall have the opportunity of addressing you again. I do not wish that power. I do not want it. If he does not, then the case will stand upon the witnesses we shall call, and such proof as we shall give fol-

lowed by my learned friend who conducts this case on the part of the defendant, with such observations as he may think fit to make, and your judgment if you should judge erroneously upon any part of the case, will receive every assistance from the learned judge with reference to the question of law. There can be no doubt at all with reference to the question of fact, and you are the tribunal who are to determine the question of fact, and most happy am I that I know enough of many of the gentlemen I am now addressing, that I am quite sure of this—that as on the one hand, the case on the part of Mr. Dawe will receive an attentive consideration, so am I equally sure it will receive an equally just consideration on the part of Sir Charles Hamilton, and that he will have the same benefit too; for I know perfectly well at this moment of time, knowing who you are, and that nothing will divert you as it ought not to do from the pursuit of the steady and plain path of justice, that if my case entitles me to damages at your hands, I shall have damages at your hands, and if my case entitles me simply to a verdict with small or merely nominal damages, be it so; but Sir Charles Hamilton feels this also, that I am addressing those, who, if I make out my case, as I firmly believe I shall make out my case, Sir Charles Hamilton knows that I am speaking before gentlemen who will consider it a case if it exists in the manner

I have stated, and if it be unanswered by proof on his part, as a case of injustice and a case of oppression, and although there is no difference perhaps from what quarter oppression comes somehow or other, I should feel an act of oppression more from a military man of high authority at a distance from my own country, than I should feel a similar act of oppression if it took place at home. I am not singular in this,—this has been the language of feeling from the earliest history of man down to the present moment. It has been the subject of constant complaint in the history of the most civilized nations. The complaints against foreign governors have formed the topics of discussion on the part of the greatest orators of Greece and Rome. They have expatiated on that species of oppression with the greatest warmth and in the most galling manner. They are gone—there are none such left, but liberty remains, and England is her chosen seat. You are the legal administrators of that justice which we require at your hands—shall I make my appeal in vain? No; I know I shall not. It would be improper to waste more of your time; it would affront your understanding; it would be doing injustice to your feelings; it would amount to a censure upon the character of Englishmen,—and I am addressing none but Englishmen,—if I supposed for one moment when a case of this description is brought before you,

that you did not give to a suffering party the fullest and amplest compensation for the injury which he has sustained.

Gentlemen, this is the nature of the case. I know perfectly well it will receive your best and kindest consideration. I wish not to press any thing against that gentleman, of whom in the conclusion of my speech I will say as I did in the beginning, that I firmly believe Sir Charles Hamilton is a meritorious officer, a gallant soldier—I beg your pardon, a sailor, for he is an admiral, I believe. I was thinking he was in the military service, and I am glad to be corrected and set right upon that subject, because, although I know perfectly well that with reference to services performed in this country there is no difference between the army and the navy, and that we are equally indebted to both and ever shall be so for that which at this present moment we hold in England most dear, yet still the navy somehow or other presents itself to our mind at once as that quarter from which, as I have been from the earliest taught, we have received the best protection, so I shall continue to think; and holding as high the army as I do the navy, for I think the officers of both are equally our protectors and guardians of almost all that is valuable to us, yet I never can think of a naval officer or of the navy of England without feeling my heart warmed; as it were it would respond at once with the sensa-

tions of gratitude for all the services they have performed.

Therefore, Gentlemen, I shall call witnesses to prove my case, and I hope I shall not have the opportunity of addressing you again; and I trust and hope that Sir Charles Hamilton will be able to lay before you some circumstance or other to mitigate this case, which, as it stands at present, I say again, is a case of oppression and a case of injustice. It will be for you to say whether my instructions are correct, and whether I shall be able to make out that case which I have stated. If I do not, all that I have said upon this occasion falls to the ground; and Sir Charles Hamilton, with reference to his government at Newfoundland, will at all events be free from uneasiness with reference to the conduct he has adopted towards Mr. Dawe. On the other hand, if it is not so, Sir Charles Hamilton must excuse me if I say Mr. Dawe has done that which is right in bringing the case before you for your consideration, in the hope of obtaining your verdict, as I have stated.

P. C. Le Geyt sworn; examined by Mr. Adam.

Q. Mr. Le Geyt, in the year 1819 was Sir Charles Hamilton the Governor of Newfoundland?

A. Yes he was.

Q. In 1818?

A. Yes.

Q. And in 1819?

A. Also, Sir.

Q. Were you his secretary?

A. I was his secretary.

Q. During the whole time?

A. During the whole time.

Q. Do you know the plaintiff, Mr. Dawe?

A. Yes.

Q. Did he reside at Newfoundland in the years 1818 and 1819?

A. He did.

Q. In what capacity—what business?

A. That of an Attorney, I believe.

Q. Do you know whether he acted as any thing else?

A. I do not.

Q. Have the goodness to look at this paper, and tell me if your name is to be found as an attesting witness? *(Handing a paper to the witness.)*

A. It is.

Q. Did you see it executed by Sir Charles Hamilton?

A. I did.

Q. I believe it has the seal of the government annexed to it?

A. It has the seal of the Governor.

Mr. Serjeant Pell.—I think we had better have the papers read as we go on in evidence; my Lord and the gentlemen of the jury will have a more connected view of it.

Mr Wilde.—Certainly.

The appointment of William Dawe to act as a notary public was read by the Associate and afterwards handed up to the learned judge.

Mr. Justice Burrough.—There is an oath, I see.

Mr. Carter.—What is the date of the appointment?

The Associate.—The 4th of August, 1818.

Q. Who filled the office of chief justice at Newfoundland in the year 1818?

A. Mr. Forbes.

Q. Was his Christian name Francis?

A. Yes.

Q. Is it the duty of the chief justice to administer the oath to persons appointed to situations in that country?

A. The chief justice or the magistrate.

Q. Have the goodness to look at this, and tell me if the name of Francis Forbes is in the handwriting of the late chief justice of Newfoundland?

(Handing a paper to the witness.)

A. Yes, it is.

Mr. Adam.—It is the oath of allegiance and supremacy, and for the due execution of the office.

The oath taken by the plaintiff before the chief justice was read by the Associate.

Q. Do you know, Mr. Le Geyt, whether Mr. Dawe, upon that appointment, entered into any bond to the government: is it the custom or usage

of the colony for a person appointed to enter into a bond upon receiving the appointment to act from the governor?

A. It is.

Q. Where are those bonds deposited?

A. In the government office, at St. John's, Newfoundland.

Q. Now upon this occasion did Mr. Dawe enter into any bond?

No answer.

Mr. Wilde.—I object to that. The notice given to produce it was much too late to send to Newfoundland where this was deposited, and therefore it amounts to nothing.

Mr. Adam.—There was no possibility of getting it within the time within which the action was to be brought.

Mr. Justice Burrough.—If it was a material thing, you might have given notice and waited.

Mr. Serjeant Pell.—I apprehend it is not necessary, not even to call for the bond.

Mr. Justice Burrough.—No, certainly not.

Mr. Wilde.—I object to their asking whether a bond was executed, but I have no objection to their asking whether it was usual for such a bond to be given.

Q. Will you look at this letter. In the month of August, 1818, do you recollect whether any fire took place in the town of St. John's?

A. Yes.

Q. Was it of great extent, Mr. Le Geyt?

A. It was of considerable extent.

Q. After that, in the month of September, 1818, did you send this letter to the plaintiff, Mr. Dawe? Take the trouble to look at it.

(The letter to the plaintiff was handed to the witness).

A. I did, Sir.

Q. By whose authority?

A. By the direction of the governor.

Q. Sir Charles Hamilton?

A. Sir Charles Hamilton.

Mr. Adam.—Return it, if you please.

The letter was then handed down by the witness, and given to the Associate. It was read by him as follows, and afterwards handed back to the witness:

"Fort Townshend, St. John's, 14th September, 1818. Sir, in consequence of a complaint made to the governor by Lieutenant-Colonel Manners, of your very reprehensible conduct to him on the night of the 27th ultimo, during the fire, his excellency holds it to be his duty to forbid your acting any more as a notary public in this government. That he has not given you earlier notice of this his determination arose from a possibility that something might appear from the evidence on your action of assault against Serjeant Connell and Captain Taddy in the Supreme Court, to have palliated such interference with Colonel Manners in the execution of his duty; but having

carefully read the minutes of that trial, and perceiving that this was previous to the scuffle which took place between you and Serjeant Connell, he is quite at a loss to impute your conduct to any just or disinterested motive. I am, Sir, P. C. Le Geyt.—To Mr. William Dawe, St. John's."

Q. Have the goodness to look at that letter, and tell me in whose hand-writing that is?

A. It is in the hand-writing of Sir Charles Hamilton.

It was handed to the associate.

The Associate.—"Saint John's, Newfoundland, 3rd January, 1819; Gentlemen, I beg leave to inform you that in consequence of several complaints against William Dawe, I have been under the necessity of cancelling his appointment as Notary Public in this island. And I have to request that you will not consider any act of his in that capacity as authorized by me.—I have the honour to be, *&c.* C. Hamilton:—To the committee at Lloyd's."

Q. Did you happen to see that letter after it was written, and before it left the colony of Newfoundland?

A. I did, Sir.

Q. Have you any recollection whether you did or not?

A. I can certainly say I did.

Q. Before it was sent?

A. Yes.

Q. Do you know by what conveyance it was sent?

A. I do not, it must have been by a merchant vessel.

Q. Do you recollect whether you yourself despatched it?

A. I should think I did, I was in the habit of despatching all letters.

Q. In the year 1819, Mr. Le Geyt, was there a newspaper published in Newfoundland called the Royal Gazette?

A. There was.

Q. Was there any newspaper in which the acts of government were published in that year?

A. It was in the Royal Gazette.

Q. Did you at any time by the direction of the governor publish any thing in the Royal Gazette with reference to Mr. Dawe the Plaintiff, look at that, and perhaps it may call it to your recollection? (A newspaper was handed to the witness.)

A. I sent the notice to the Royal Gazette for insertion.

Q. Such as that you hold in your hand?

A. Yes.

Q. And that by the direction of the governor?

A. Yes.

Mr. Wilde.—I do not consider it to be evidence, but, however, it may be read at this moment.

It was handed to the Associate.

The Associate.—" Fort Townshend, St. John's, Newfoundland, 4th January, 1819. Whereas I have deemed it proper in consequence of several complaints against William Dawe, to forbid his acting any longer as a notary public in this island ; I hereby give notice, that I have communicated the same not only to the court here, but to the committee at Lloyd's, as a caution against any person employing him in that capacity.—C. Hamilton, Governor."

Q. Is it the usage of the government of Newfoundland to publish their public acts in the Royal Gazette ?

A. It is.

Q. That is the mode they take in publishing the acts of government ?

A. It is, many of them, I do not say all.

Q. At any rate, that was put in by the direction of Sir Charles Hamilton ?

A. Yes.

Q. In your capacity of secretary to the governor, did you ever know of any one complaint of Mr. Dawe's conduct as a notary public preferred to the governor ?

A. Not any.

Cross-examined by Mr. Wilde.

Q. You have not stated, Mr. Le Geyt, when Sir Charles Hamilton went out—when he arrived ?

A. He arrived the 19th of July, in the year 1818.

Q. That was the first time he took possession of his government there?

A. It was.

Q. As far as you know was he at that time a stranger to Mr. Dawe?

A. As far as I know.

Q. How long had you been in the colony, Mr. Le Geyt?

A. Prior to that?

Q. Yes.

A. Six years, not resident all the time, but I had been serving there.

Q. Who was the former governor?

A. Admiral Pickmore.

Q. Do you happen to know whether Mr. Dawe applied to Admiral Pickmore to act as notary?

A. I do*.

Q. (By Mr. Adam.)—Was the application in writing?

A. Yes, it was.

Q Did you know Mr. Dawe before Sir Charles Hamilton's arrival.

A. I did.

Q. Did you fill any office under the former governor, Admiral Pickmore?

* An application was made by Mr. Dawe to Admiral Pickmore, to be allowed to act as a notary in the island, which was refused.

A. I was secretary.

Q. In the course of the duty of secretary, and knowing Mr. Dawe, do you know whether any application had been made by Mr. Dawe to Admiral Pickmore to be appointed a notary?

(No answer.)

Mr. Adam.—Do you mean any application not made in writing? You have found one application.

Mr. Wilde.—I will alter the question.

Q. Did you ever see Mr. Dawe personally upon the subject of any application to be appointed a notary before Sir Charles Hamilton's arrival?

A. In Admiral Pickmore's time?

Q. Yes.

A. I do not recollect that I did.

Q. You do not recollect whether you ever saw Mr. Dawe respecting any application to be appointed a notary?

A. I do not recollect it; I might have seen him, but I do not recollect.

Q. Now, Sir, how soon after the governor arrived did Mr. Dawe make any application to the defendant Sir Charles Hamilton, to be appointed a notary?

A. I think it was very shortly within ten days or a fortnight. I cannot speak accurately.

Q. That application was granted?

A. It was granted.

Q. You have said, Sir, that you despatched that letter by some merchant ship, that which was directed to the committee at Lloyd's?

A. I did.

Q. Did you also send the letter to the plaintiff that has been put in?

A. I did.

Q. At the time you received from Sir Charles Hamilton directions to send that letter to the plaintiff, did he communicate to you any complaint that had been made of, and concerning Mr. Dawe?

(No answer.)

Mr. Adam.—I object to any conversation.

Mr. Serjeant Pell.—It is necessary for both of us to take his lordship's opinion upon this very important question.—The letter expressly refers to complaints, and on the terms of it your lordship will find this is precisely of this description; it is in consequence of a complaint,—that is the terms of the letter which is proved to have been sent, at least, as I now read the copy in my brief, and if I am in error, I shall be glad to be set right by your lordship. 'It is, Sir, in consequence of a complaint made to the governor by Lieutenant Colonel Manners,' and so on;—now Mr. Wilde asks this gentleman whether at the time, or just previous to that letter being sent, he had any conversation with the governor with reference to any complaint or any supposed complaint made

to the governor with regard to Mr. Dawe. I do not give the precise form of the question, but that is the substance, and I apprehend that as evidence cannot be gone into.

Mr. Justice Burrough.—He may ask as to the fact of a complaint.

Mr. Serjeant Pell.—It is necessary, and it will save your lordship trouble, that we should understand the point at once. I apprehend that it is not competent for Mr. Wilde to shew through the medium of this gentleman, that the governor had had any complaints made, and proving those complaints through the medium of a declaration of Sir Charles Hamilton.

Mr. Justice Burrough.—No; certainly not.

Mr. Serjeant Pell.—It would be attended with the greatest possible danger, and would break into the first principle of the law of evidence if that was permitted to be done.

Mr. Justice Burrough.—In my opinion it cannot be done.

Mr. Wilde.—My lord, I conceive I have a clear right to put this question, and that in so doing I am not breaking in upon the first principle of the law of evidence, or upon any law of evidence. But that if the question be not permitted to be put, it will be in opposition to every principle of the law of evidence. My lord, this is a letter written, not by Sir Charles Hamilton, it is a letter which the witness says was written by the direction of

Sir Charles Hamilton, by him, the witness, and the question which I put to the witness was what Sir Charles Hamilton said at the time he gave that direction; what was permitted to my learned friend to ask in the gross, I say ought to have been asked in detail, namely, what he had said, and if my learned friend had examined accurately, and had put the question as to what was said by Sir Charles Hamilton respecting that; in that case it would have been unnecessary for me to put the question. But my learned friend Mr. Adam, I think it was, by putting the question whether Sir Charles Hamilton had not given directions that this letter should be sent, passed by all that which ought to have been produced by the witness when under his examination in chief, in order to ascertain whether in point of fact, what was said did amount to a direction, or whether there was any thing of the sort, or what was said accompanying that direction. I apprehend that no principle is more clear, than that if I seek to affect a man by a direction given for a particular act, he is entitled at least, to have it stated what he said accompanying that direction. Whether what he said accompanying that direction is to be taken as true or not, or what effect it may have in the cause, is a totally different question; but it would be extraordinary indeed, if the witness could be asked whether Sir Charles Hamilton told him to send some

letter or other, and yet that the conversation which took place at that time, should be excluded.

Mr. Justice Burrough.—No, you may ask that.

Mr. Wilde.—That is the question I have asked.

Mr. Justice Burrough.—I do not assent to that, you did not ask any thing connected with the letter at all.

Mr. Wilde.—I confined the question to that point intentionally,—to about the time.

Mr. Serjeant Pell.—I am still in his lordship's judgment upon the subject, and, therefore, you will have the goodness to put the question again.

Q. You have stated, Mr. Le Geyt, that you wrote that letter by the direction of Sir Charles Hamilton; I wish you would state all that Sir Charles Hamilton said to you, when he directed you to write that letter?

(No answer.)

Mr. Serjeant Pell.—I object to that; I will not repeat what I said originally, because it will take up time unnecessarily, and therefore if Mr. Wilde or Mr. Carter wish to make any observation—

Mr. Justice Burrough.—It appears to me at present, that this is evidence; you had better say what you have to say upon it.

Mr. Serjeant Pell.—Then I will take your lordship's opinion, even upon that. The question that was put by my learned friend Mr. Adam in

substance was this, Was that latter sent by you under the direction?

Mr. Justice Burrough.—He sent the letter to the plaintiff, Mr. Dawe, by the direction of the governor, and I must know what was said at the same time.

Mr. Serjeant Pell.—I have no objection to what he said.

Mr. Justice Burrough.—Now, that is the question.

Mr. Serjeant Pell.—No, my lord, it goes further in the question put down by Mr. Wilde.

Mr. Wilde.—I meant to go on, and ask—Did he communicate the nature of the complaints?

Mr. Justice Burrough.—What was said, did he say more, if you mean to affect Sir Charles Hamilton?

Mr. Serjeant Pell.—That letter could not be received in evidence.

Mr. Wilde.—I will put it in a different form, and will waive the argument, although I may well contend for that question, but I will waive it, in order that it may not be supposed I have any object in it.

Mr. Serjeant Pell.—Tell me how you put it. Put the question as you have now put it, and desire the witness to tell all that passed at that time.

Mr. Justice Burrough.—What was said at the time he gave you that direction?

Mr. Serjeant Pell.—Does your lordship mean to consider by that, what passed precisely at the moment of time when Sir Charles Hamilton authorized this gentleman to send that letter,—at the very time, or the moment after the letter was written.

Mr. Justice Burrough.—I mean accompanying this very transaction.

Mr. Serjeant Pell.—It may have been a conversation half an hour preceding.

Mr. Justice Burrough.—We must hear how that is,—now go on.

Mr. Serjeant Pell.—Does your lordship mean him to confine the witness to the precise time or to embrace all the conversation that took place previous to that time?

Mr. Justice Burrough.—I mean relating to the same transaction of sending the letter;—I mean that whatever passed at that time is to be said, and nothing more.

Mr. Serjeant Pell.—If it is to be confined within that, I have no objection, if it is only limited to directions on sending the letter; but the question extended much further, as I understood it, and as we all understood it here.

Q. You have stated you wrote the letter by the direction of Sir Charles Hamilton, and that you sent it by the direction of Sir Charles Hamilton. Now, Sir, I wish to ask you, whether at the time

Sir Charles Hamilton directed you to write that letter, he did not state to you that complaints had been made to him of the conduct of Mr. Dawe?

A. I cannot recollect that he made use of those precise words.

Q. I ask you, whether in substance Sir Charles Hamilton told you at the time he gave you directions to write that letter, that he had received complaints of the conduct of Mr. Dawe?

A. I cannot say that he did—not at that precise time.

Q. At the time he directed you to write that letter—what did Sir Charles Hamilton say to you when he gave you directions to write that letter?

A. Really at this distance of time I cannot recollect, but I am not certain whether there was not a draft of a letter given to me.

Q. (By Mr. Justice Burrough,) To whom?

A. To me, my Lord.

Q. I wish you would recollect whether that letter was of your composition or not?

A. It certainly was not.

Q. Then a paper—some paper was given to you, of which you suppose that to be a copy?

A. Yes.

Q. Where is that original paper?

A. It is destroyed.

Q. That is destroyed?

A. That is destroyed.

Q. Did you destroy it?

A. I should think I did. All rough draughts are destroyed after they are entered upon the records.

Q. Had you any communication with Sir Charles Hamilton at the time you wrote that letter?

A. I certainly had.

Q. Now I ask you, whether at that time or not, you learnt from him that complaints had been made respecting the plaintiff?

A. I certainly understood from Sir Charles Hamilton that complaints had been made.

Q. Did you understand they were complaints relating to his interference with the military at the fire?

A. I did.

Mr. Serjeant Pell:—I must, in justice to my client, desire the witness to say, at least, that this conversation so supposed to have taken place, took place at the time the directions for the letter were given.

Q. I am asking you now about the communication between you and Sir Charles Hamilton, at the time you received either from him or any other person, directions to write the letter, or at the time you sent it?

A. Yes, I understood—at the time of this letter.

Q. I ask you, as you say you understood complaints had been made, whether they did not relate to his interfering with the military?

A. I did.

Q. Do you know a gentleman of the name of Manners—Colonel Manners?

A. Yes.

Q. And Mr. Carter, a magistrate?

A. Yes.

Q. Did you not, at the time we are inquiring into, learn that both those gentlemen had made complaints to the defendant, Sir Charles Hamilton?

A. Yes, both.

Q. Mr. Carter is a justice of the peace?

A. Yes.

Q. Did you not also learn that that interference, which was alleged (no matter whether true or false,) to have been made by Mr. Dawe, had interfered with the military, in their endeavours to extinguish the fire?

A. I had understood so, previously to that.

Q. (By Mr. Adam,) At the time of the directions?

A. I understood it related to his interference with those gentlemen at the fire.

Q. (By Mr. Justice Burrough.) Did he at that

time tell you what the nature of the interference was; did Sir Charles Hamilton state that?

A. No, he did not.

Q. Now, Sir, you also sent a second letter to the committee at Lloyd's Coffee-house?

A. Yes.

Q. I am coming to ask you about that: now, Sir, when you received directions to despatch that letter, did you not learn that Sir Charles Hamilton had written it in consequence of Mr. Dawe's persisting to act, notwithstanding the former letter of the governor?

A. No, I understood it was in consequence of a notice.

Mr. Serjeant Pell. — I beg to have your Lordship's judgment. I contend that it must be confined properly to what passed between Sir Charles Hamilton and this gentleman, when the letter was sent to Lloyd's; and I object therefore to this gentleman being permitted to say what he understood.

Mr. Justice Burrough.—It will not do.

Mr. Serjeant Pell. —What I require upon this occasion, if I am not wrong, is, that this gentleman should state either what did pass—I do not mean words of course——

Mr. Justice Burrough.—You must not state what you understood.

Mr. Wilde.—It is merely his manner of expressing it.

Mr. Justice Burrough. — When you were directed to send the letter what did Sir Charles Hamilton say? That is the proper question.

Q. What communication was made by Sir Charles Hamilton, when he gave you directions to send that letter?

A. He told me it was in consequence of observing repeated advertisements by Mr. Dawe as a notary public.

Q. Now, Sir, at the time that the advertisement was inserted in the gazette, to which you have referred, did you not also learn that that advertisement was inserted, because Mr. Dawe persisted in inserting advertisements as a notary public?

A. I did.

Q. Now, Sir, did you not learn from Sir Charles Hamilton, either at the time when the first letter was written, which was signed by you, as secretary, or at the time the second letter was forwarded, or when this notice was directed to be inserted——

Mr. Serjeant Pell.—We ought to know which.

Mr. Wilde.—My friend has broken in upon me in a most unusual way throughout the whole course of the cross-examination.

Mr. Serjeant Pell.—And I must still; I am fearless of any thing of that kind.

Mr. Wilde:—You need have no fear of any kind.

Mr. Serjeant Pell. — The question put was this; did not this gentleman, either when the first letter was sent, or the second, or the putting the advertisement in the Gazette—did he not learn so and so? I apprehend that is an irregular question, and that Mr. Wilde must ask, did you learn when the first letter was written so and so, and then as to the second, and so on. It is too general.

Mr. Justice Burrough.—Ask to the third.

Mr. Serjeant Pell.— I beg it may be done, because I have reason to think there is a misapprehension on the part of this gentleman.

Mr. Wilde. — I conceive I have a right in cross-examination to put it, whether, on either of those three occasions that we have been speaking of, something was not said to him.

Mr. Justice Burrough: — You may as well ask at once as to the third.

Mr. Wilde.—I can only say it is allowed by the rules of evidence, and unless they are special reasons, I have a right to put the question; that is quite clear.

Mr. Serjeant Pell.—My lord ———

Mr. Wilde.—I have not done. If this first objection that has been made is passed over, and I take no notice of it, it becomes material, as to whether I am to be allowed to pursue my cross-examination, or to have my attention repeatedly called away from it.

Mr. Justice Burrough.—I think the form of the question is not quite correct.

Mr. Wilde.—I will alter it. I should have thought it had been so.

Mr. Adam.—We are correct; that is all.

Q. You have spoken of three occasions, when you received directions from Sir Charles Hamilton. Now, I ask you, whether on the last of those three, the advertisement, Sir Charles Hamilton did not tell you it had been represented to him, that Mr. Dawe had called the army an armed brigand, or a banditti?

A. The last?

Q. Yes; I ask you as to the last!

A. No; I do not think he did.

Q. Did he tell you any thing at the time you forwarded the letter to Lloyd's?

A. No; I do not think he did.

Q. Did you learn any thing from him at the time he gave you directions to send the first letter?

A. I think, at the time he gave me directions to send the first letter, he mentioned it.

Q. That it was represented to him, that Mr. Dawe had spoken of the army as an armed brigand, or banditti?

A. As an armed banditti.

Q. At the time, Mr. Le Geyt, that the advertisement; that you received directions to insert the advertisement, did not Sir Charles Ha-

milton state to you, that his reason for inserting the advertisement was, that the public might know that Mr. Dawe was not acting with his authority?

A. He did.

Q. Did he not also tell you, that his reason for inserting that advertisement was, for fear Mr. Dawe might do some notarial act which would be illegal, and the public led into an error?

A. He did, or words to that purport.

Q. Do you know, Sir, whether, after the complaints were made to Sir Charles Hamilton—Do you know, Mr. Le Geyt, whether any complaint had been made to Sir Charles Hamilton by Colonel Manners and Mr. Carter?

A. Not of my own knowledge.

Q. Did it come to your knowledge in the course of your official duty?

A. Sir Charles informed me.

Mr. Serjeant Pell.—I object to that.

Q. Do you know, Sir, whether—as to Mr. Carter: do you know whether Mr. Carter made any complaints?

A. Not of my own knowledge. Mr. Carter told me ——

Mr. Serjeant Pell.—I object to it.

Q. You were secretary to the governor. Did Mr. Carter make any complaint to you of Mr.

Dawe as secretary to the governor. Did he ever state any complaint?

A. Not in my official capacity of secretary. I do not conceive that he did.

Q. Do you know, Sir, whether——Pray who was the chief magistrate in the colony?

A. Mr. Coote.

Q. Do you know, Sir, whether, after the fire, he was directed to make any inquiry into the complaint regarding Mr. Dawe by the governor?

A. He was.

Q. (By Mr. Adam.) How do you know that?

A. It was by a letter written by me.

Mr. Adam.—We cannot hear that.

Q. Did you communicate with Mr. Coote at all, respecting any proceeding relating to the complaint against Mr. Dawe?

A. No.

Q. You had no communication with Mr. Coote at all?

A. No.

Q. Do you know whether, in point of fact, any investigation was made by Mr. Coote, the chief magistrate?

A. He transmitted the depositions ——

Mr. Serjeant Pell.—I object to it.

Q. Do you know whether any documents—— I do not ask you what they were: of any documents transmitted by Mr. Coote, the chief magis-

trate, to the governor, purporting to relate to the complaints?

(No answer.)

Mr. Serjeant Pell.—My Lord, I object to that, and I will state my reasons if Mr. Wilde wishes me.

Mr. Justice Burrough.—You must not ask as to the contents.

Mr. Wilde.—I do not ask as to the contents, but what it purported to be.

Mr. Justice Burrough.—That is doing the same thing.

Mr. Wilde.—Your Lordship will have the goodness to take a note of the question.

Mr. Justice Burrough.—Certainly.

Mr. Serjeant Pell.—Purporting to relate to the complaints.

Mr. Justice Burrough.—Relating to the complaint made by Mr. Coote to the governor.

Q. Did you——Shortly after the fire, did you send any letter by the direction of the governor to the chief magistrate?

A. I did.

Q. Do you know whether any letter or papers had been received from the chief magistrate before the writing of the first letter to Mr. Dawe?

A. Not on that subject.

Q. Had any letter been received from him before the writing of that letter. I think, the first letter you wrote, by the direction of Sir

Charles Hamilton, is dated the 14th of September?

A. It is.

Q. The fire was the 27th of August?

A. Yes.

Q. My question was, whether, before the 14th of September, and after the fire, if you know whether any papers had been transmitted by Mr. Coote to the governor?

A. There were.

Q. And were those papers received after you sent the letter, after the fire, to Mr. Coote?

A. Yes.

Q. Some papers were received from Coote subsequent to the fire, and before the 14th of September?

A. Yes.

Q. At the time you received directions to send the letter to the committee of Lloyd's, or insert that advertisement: At that time did you learn from Sir Charles Hamilton what the papers were he had received from Mr. Coote?

(No answer.)

Mr. Adams.—I object to that question.

Mr. Serjeant Pell.—Put the question again, so that we may not mistake it in arguing.

Q. At the time you received directions from Sir Charles Hamilton, as to the letter you wrote to Mr. Dawe on the 14th of September, did you not learn from the governor at that time, that he

had received depositions from the chief magistrate relating to Mr. Dawe's conduct?

A. Not at that precise time. No; I did not.

Q. My question applies to either the time when you received directions to write the letter, when you wrote the letter, or when you received directions to send the letter; whether, at that time, you learnt that the governor had received depositions relating to Mr. Dawe's conduct?

A. Not at those precise times.

Q. Not at either of those times?

A. Not at those precise times.

Q. What do you mean by precise times: my question applies to any communication respecting the writing of the letter, or the sending of the letter. Did you not learn, Sir, that that letter was written, or at the time when directions for sending it were given, that Sir Charles Hamilton desired you to write that letter in consequence of certain depositions he had received from the chief magistrate?

A. I do not recollect that he communicated to me at that time, that he had received depositions.

Q. I am not asking you whether at that precise time, but whether on the 14th of September, or whenever he communicated with you respecting writing the letter of that date, or the sending of it; did you not at that time learn, or before

that time, that he had received depositions from the chief magistrate relating to Mr. Dawe's conduct?

A. I learnt that Sir Charles Hamilton had received them.

Q. When?

A. Not at that precise time—I think not.

Q. Have you any doubt whether you learnt in the course of his communicating with you about sending the letter before you sent it?

A. At that precise time?

Q. Had you any communication with Sir Charles Hamilton at the time you received directions to write that letter?

A. I dare say I had.

Q. Did not that relate to the complaint made regarding Mr. Dawe?

A. I cannot recollect the exact purport.

Q. Did the conversation relate to that?

A. Certainly.

Q. Now, I wish you to endeavour to recollect, and I will not press you too far: but endeavour to recollect whether in the course of that conversation you did, or did not learn that Sir Charles Hamilton had received depositions relating to Mr. Dawe's conduct?

A. I do not think I did.

Q. I understand you, that you do not recollect either that you received any such communication

from him when you inserted the advertisement, or when you sent the letter to the committee of Lloyds?

A. I think not.

Q. Between the times when the application of Mr. Dawe to be appointed a notary had been granted by Sir Charles Hamilton, and the time when this letter of the 14th of September was written: do you know whether Sir Charles Hamilton and Mr. Dawe had had any personal communication with each other at all; whether they had had any transactions together?

A. In what way?

Q. I want to know whether between the time when Mr. Dawe was appointed a notary and the time you wrote the letter of the 14th of September, Sir Charles Hamilton had had any personal communication with Mr. Dawe?

A. I do not know that he had.

Re-examined by Mr. Adam.

Q. The letter of the 14th of September, then was brought to you in draft by Sir Charles Hamilton?

A. It was given to me in a draft.

Q. By Sir Charles Hamilton?

A. By Sir Charles Hamilton.

Q. Was that draft in his own hand-writing?

A. It was.

Q. Do you recollect whether there were any corrections in the draft?

(No answer.)

Mr. Wilde.—I might have objected to this letter, but I have not done that. I did not discuss it further than that, because I did not wish to interpose unnecessarily, and therefore permitted you to read the copy when I might have insisted on the original. When the letter was produced in evidence, I took it, but there had not one word appeared of any previous draft at all. It was taken that this was the letter written by the direction of Sir Charles Hamilton, and it turned out afterwards that Sir Charles Hamilton's direction was to make a copy of a certain other paper which was not produced, and this letter was read before it even appeared, that it was not an original, but a copy, and therefore it has been irregularly received, and it is now proposed to ask something with respect to a letter of which I apprehend they should have given some more satisfactory evidence respecting the destruction.

Mr. Serjeant Pell.—The question objected to, is whether there were any alterations in that draft: that is the question objected to.

Mr. Justice Burrough.—That would best appear by the draft itself.

Mr. Serjeant Pell.—It is destroyed; the witness has proved that it is not in existence.

Q. (By Mr. Justice Burrough.) Are you certain it was destroyed?

A. Certainly.

Q. I wish to know whether your memory will serve you to tell me whether there were any alterations or corrections in the draft which Sir Charles Hamilton produced to you?

A. I do not recollect.

Q. You say Sir Charles Hamilton told you that he had heard complaints made respecting Mr. Dawe's conduct at the fire?

A. That I heard.

Q. That Sir Charles Hamilton had had complaints made to him respecting Mr. Dawe's conduct at the fire?

A. Yes.

Q. Whether the complaints were true or false, of course you know nothing?

A. I do not.

Q. The army. I think Sir Charles Hamilton told you he had been informed that Mr. Dawe had called the army a banditti?

A. I understood that as to the military stationed there.

Q. It did not apply to the army in general?

(No answer.)

Mr. Wilde.—That is not the way to examine your own witness.

Q. What, Sir Charles Hamilton told you that

he heard Mr. Dawe had said, was respecting the army which was employed at the fire?

A. I understood it so.

Q. Did you understand it to apply to any thing but the army: the detachment at the fire?

A. I did not.

Q. It was confined to the conduct of certain soldiers employed there?

Mr. Wilde.—I object to that, or that he has ever said that which Mr. Adam unintentionally assumed.

Mr. Justice Burrough.—He is your own witness you know.

Mr. Wilde.—I submit that the question put by my friend Mr. Adam is altogether irregular.

Mr. Adam.—What I want to ascertain is, whether this story was confined to those on duty employed at the fire, or whether it extended to the others.

Mr. Wilde.—I apprehend you must ask him what he said, and not ask him what it was confined to.

Mr. Serjeant Pell.—I am anxious as soon as it is known not unnecessarily to raise an objection. If we do put an irrelevant and improper question, Mr. Wilde has a full right and ought to object, and it is for your Lordship to decide. The rule is, that a question, as we know perfectly well, may be put in a variety of ways of the same de-

scription, and I am anxious that it may be understood whether we are right or wrong.

Mr. Adam.—Your Lordship will recollect whether he did not at once say that he was told that the complaint was of the soldiers at the fire, and that he did not understand it to extend to any body but those there.

Mr. Justice Burrough.—It seems obvious it was so.

Mr. Wilde.—The witness states a complaint relating to persons stationed at the fire, and then my friend Mr. Adam has unintentionally said that this relates to certain soldiers.

Mr. Adam.—He further stated, that he did not understand it to extend to the army generally.

Q. Did you say Sir Charles Hamilton said that the complaint had been of certain persons that had used Mr. Dawe personally ill: that this complaint you have been talking of referred to certain persons who had used Mr. Dawe personally ill?

(No answer.)

Mr. Wilde.—I do object to that question. My Lord, I do not know what is an objectionable question if that is not. My friend Mr. Adam, in examining his own witness, has put it to the witness whether he did not understand that it related to certain persons who had done something to Mr. Dawe, about which the witness has said not one syllable.

Mr. Justice Burrough.—The question was improperly put: it should have been what did Sir Charles say at the time. You are leading him.

Mr. Adam,—We must have every thing that passed, from the beginning to the end, I apprehend.

Mr. Justice Burrough.—So you must. You must not put the thing into his mouth at every point.

Mr. Adam.—I am simply asking him—

Mr. Justice Burrough.—You are directly leading him,—did he not understand so and so? It is directly leading him.

Q. To what person in particular did you understand Sir Charles Hamilton to say this complaint had extended to?

A. Against Mr. Dawe?

Q. Yes?

A. Colonel Manners and Mr. Carter.

Q. They were the persons who had complained?

A. Yes.

Q. And nobody else?

A. Not any body else, that I recollect.

Q. (By Mr. Justice Burrough). Did Colonel Manners command the detachment at the fire?

A. He commanded the troops in the island.

Q. (By Mr. Justice Burrough.) He was commander of all the troops?

A. Yes.

Mr. Adam.—There is a question, but I do not know that it seems a very important one—whether Mr. Le Geyt knows that Mr. Carter had indicted Mr. Dawe for what took place at the fire on that occasion?

Mr. Wilde.—That is not the way to prove an indictment.

Mr. Adam.—If Sir Charles Hamilton said any thing to him about it?

Mr. Justice Burrough.—I cannot ask that; that must appear.

Q. At the time of this conversation did you learn from Sir Charles Hamilton that Mr. Carter had indicted Mr. Dawe?

A. I did not.

Q. (By Mr. Justice Burrough.) Not at all?

A. Not at that time.

Q. (By Mr. Justice Burrough.) Did you at any time learn from Sir Charles Hamilton that Mr. Carter had indicted Mr. Dawe?

(No answer.)

Mr. Serjeant Pell.—We do not put that question, my Lord.

Mr. Justice Burrough.—Very well.

Q. Is Mr. Coote in England, do you know?

A. He is.

Q. Is he in Exeter?

A. He is in court.

Richard Weeks Steer *sworn; examined by* Mr. Williams.

Q. What trade or profession do you follow, Mr. Steer?

A. I am commander and part owner of a ship.

Q. At the time Mr. Dawe was in Newfoundland, were you part owner of a vessel?

A. Not at that time.

Q. Were you part owner of a vessel at any time he was there?

A. I was commander of a vessel; master.

Q. Did any thing at that time happen to your vessel; did something happen to your vessel?

A. We met with considerable damage on the passage out.

Q. (By Mr. Justice Burrough.) Did you put in there on account of the damage?

A. No, my Lord; we were bound there. It happened on the voyage from England to Newfoundland, my Lord.

Q. (By Mr. Justice Burrough.) You put into Newfoundland, having sustained damage?

A. No, we were bound there.

Q. Was Mr. Dawe at that time a notary public?

A. He was, Sir.

Q. Did you go to him upon that occasion; or why did you not?

A. I did not.

Q. Why did you not?

A. It was in consequence of being informed that the governor——

Q. (By Mr. Carter). By whom?

A. Had deprived him of the office,

Mr. Justice Burrough.—That is the right way; he was informed by having heard. I cannot see why you are so tender.

The Witness.—He had been deprived of his situation as a notary.

Q. You say that was your reason?

A. That was my reason.

Q. In consequence of what you heard respecting him, did you go to any other person?

A. I did.

Q. Did that person transact the business for you?

A. He did.

Q. What was the payment you made to him for such business so transacted?

A. It was either ten pounds or ten guineas. I won't be positive but I believe it was ten guineas.

Cross examined by Mr. Carter.

Q. When was it your vessel met with this accident?

A. It was in 1819. I think it was.

Q. Can you tell me whether it was or not?

A. I believe it was.

Q. What time of 1819?

A. In the middle of the summer.

Thomas Pottinger Westcott *sworn; examined by* Mr. Serjeant Pell.

Q. Mr. Westcott, I am informed that you were attorney-general at Newfoundland?

A. I was.

Q. When did you first, Sir, take upon you that office?

A. I arrived in the island on the 19th of October, 1821, and waited upon the governor the following day, the 20th.

Q. How long did you continue to be upon the island?

A. I continued in the island about two years.

Q. Be so good as to inform me whether the office of notary public is an office of much business in that island?

A. I have heard from a notary public that he has made——

Q. I am not permitted to ask you that, or what any body informed you upon the subject; but you having been attorney-general of the island, can tell us whether the situation of a notary public is a situation which might lead to much business as a notary public?

A. I have heard it to be a very lucrative one.

Q. Without informing me what any body told you upon the subject, from your situation as attorney-general in the island, can you form any

notion of what might be the profits of a man carrying on that business as to foreign vessels?

A. I am not competent to give any judgment repecting it.

Q. What is the principal nature of the business about which they are concerned?

A. In drawing protests, and noting and transmitting examinations to Lloyd's, for the benefit of the under-writers, to ascertain what damage vessels had undergone.

Q. You have stated, Mr. Westcott, that soon after your arrival you saw His Excellency?

A. On the day following my arrival.

Q. I do not now ask you what you heard; but previous to your seeing Sir Charles Hamilton, had you learned any thing relating to the state of the colony?

A. I understood there was a person particularly objectionable to His Excellency the governor.

Q. Had you, before you saw Sir Charles Hamilton, had an opportunity of seeing any body. I do not ask what they told you, but had you an opportunity of seeing any body or any person that could give you information about the nature and situation of the colony?

A. I had.

Q. Did you, before you saw the governor, hear of the name of Mr. Dawe?

A. I had.

Q. Allow me to ask you if you had known any

thing of that gentleman's name before you arrived at Newfoundland?

A. I never had.

Q. Did you see Sir Charles Hamilton?

A. Yes.

Q. What did Sir Charles Hamilton tell you in the course of the conversation?

(No answer.)

Mr. Wilde.—I object to his examination; he was a public officer, and it was therefore a privileged examination.

Q. (By Mr. Justice Burrough.) What did you go to the governor for?

A. To identify myself as attorney-general, in consequence of a letter I received from Sir Charles Hamilton, inviting me to call upon him as early as possible.

Q. You told my lord that you went to Sir Charles Hamilton, to identify yourself?

A. Certainly.

Q. Having told me that, before I ask as to what passed, allow me to ask whether what did pass between you and Sir Charles Hamilton was in the nature of a confidential communication, or a communication which he made as governor of the island?

A. There were a number of questions of course.

Q. Was it the ordinary conversation which takes place between a gentleman in his high situation, and one in yours, or did you wait upon

him to let him know you were come, or was it a conversation relating to your duties as attorney-general that the communication was made by him to you as governor, or only an ordinary one between gentleman and gentleman?

A. Relating to my situation.

Q. (By Mr. Justice Burrough.) Was he consulting you as attorney-general, or not?

A. Certainly not.

Q. Was it an official conversation?

A. No; certainly not.

Q. Was it about the public business of the colony, or did you only announce yourself?

A. I went only to announce myself.

Q. You were not sworn in?

A. I was not sworn in.

Q. (By Mr. Wilde.) I ask you whether you did not wait upon the governor by his direction?

A. Yes.

Q. (By Mr. Wilde.) Did you not receive that direction in the character of attorney-general?

A. A letter was directed to me—to John Pottinger Westcott, attorney-general.

Q. (By Mr. Wilde.) Was the communication between you and Sir Charles Hamilton, which you are now about to state—did that take place at the interview that occurred after he had directed you to wait upon him?

A. Certainly.

Q. (By Mr. Wilde.) Did that interview relate to the affairs of the colony?

A. Nothing particular.

Q. Did it relate to the affairs of the colony—the state of the colony—did that conversation you are now about to state, relate to the state of the colony, or any individual in it?

A. To an individual in it, among others.

Q. (By Mr. Serjeant Pell.) At that time you were not sworn in attorney-general?

A. Not for more than a week afterwards; I had the appointment.

Q. You were not acting as attorney-general at that time?

A. Certainly not.

Q. You have already told us that there was nothing official in the conversation in the slightest degree?

A. Certainly not.

Q. I ask you whether or not it was a conversation that might have taken place with reference to the substance of it, as well as with any body else, on the part of Sir Charles Hamilton, as with you that were to be sworn in attorney-general?

A. It might have taken place.

Q. You have told Mr. Wilde that it was upon the state of the colony—allow me to ask, without going into the particular conversation, what do you mean by the state of the colony?

A. It was generally as to what was to be done.

Q. When you entered into the office?

A. When I entered upon my office.

Q. Was the conversation, which of course I

mean to confine to the gentlemen concerned in this action and the plaintiff; had Mr. Dawe any thing to do with any duty you had to discharge as attorney-general at the time you mention?

A. It was not particularly alluding to Mr. Dawe, but to another person.

Mr. Wilde.—On his arrival at the colony he received directions from the governor to wait upon him, they having no matter, except matter respecting the official situation of this gentleman as attorney-general; and it appears by the last answer, that they were speaking of the future duties and the nature of the office of attorney-general, and of the state of the colony and individuals in it; and that the governor made some communication to the witness. Now, my Lord, it is not for the witness to decide what was the character of that communication; and it is quite obvious, from the parties having been strangers before, from the occasion of the introduction, and from the characters which they filled; it is quite obvious that the communication related to their respective duties; and, if the governor of a colony cannot safely communicate with an individual sent out as attorney-general, in the course of which it must be his duty to make many statements regarding matters affecting the colony, which cannot be the subject of legal proof, and which ought not to be the subject either of public discussion. I apprehend that, if it ap-

pears that Sir Charles Hamilton was communicating with this gentlemen as attorney-general, which it sufficiently appears he was, no question that has been asked can be evidence; and the question is, whether Sir Charles Hamilton was speaking to him under the protection which a governor is clothed with, in communicating with the legal officer of the place. The fact of his not being sworn is perfectly immaterial, for he may have died before he was sworn, and then the question is, whether communications with this person in that character can be received here; and not whether he was to take certain oaths of allegiance and supremacy, or any thing else. The question, I say, is, whether he was acting in that character, and it plainly appears he was so, by the fact of his having gone out only in that character, and having been desired to wait upon the governor, and his so doing. It does not appear that any subject whatever was broached between them, except what related to a communication as to the state of the colony, and which must be received as a privileged communication between the governor and his law officer, and as a confidential communication; for if not, the mischief must be obvious. One knows how many things affecting the character of individuals there are, which a governor is compelled to lay before an officer of that description; for, if he were not able to receive his advice and opinion upon reports, how-

ever vague, which it may necessary for the law officer to act upon, what incalculable evils would arise? A governor's mouth would be closed, or an attorney-general might, at any time, be called upon to give evidence of a conversation between them. Having, therefore, in the examination on the *voir dire*, shewn that there was no prior acquaintance; and having shewn that the witness went out in that particular character, it seems to me to fall clearly within the rule.

Mr. Carter.—My Lord, it appears from the very circumstances, that they are as strong circumstances as ever can be presented in a court, when an objection of this kind is taken. Here we have a person coming from England with an appointment, and received there as attorney-general of the island, who has been, on account of his arriving in that island, and informing the governor that the person, with whom he was in future to act as attorney-general, has arrived, and the governor notifies to him a wish to see him. He goes to the governor, and what does he say? That there was a considerable deal of conversation between him and me, relative to the office of attorney-general; that, is his own account which he gives my learned friend of counsel for the plaintiff, when this objection is started, and he begins to examine him further; and the witness, adopting the words put into his mouth, (although I do not complain of that), says, that what did pass might

have been said to another person, and therefore you are to appeal to this person, to judge whether some part of the conversation was not capable of being uttered to another person, although he goes avowedly there, on his first arrival in the colony, to identify himself, in the first place, as the person who is to have the confidence of the governor; and having identified himself as the person who is to have that confidence, he receives the first proof of it, in hearing from the governor an account of the state of the colony, and information with respect to certain individuals in the colony. I cannot conceive but that, upon the presumption of time and place, that, if that alone was presented to your Lordship, you must say that this conversation was a communication protected for the general purpose of all good government. I say, that that circumstance alone leads most strongly to the presumption that, when the governor gave some account of the colony, he did it in a way which renders the objection by no means inconsistent with the sound principles of evidence as laid down; and therefore, that your Lordship will admit the objection, and not allow my learned friend to pick and choose what he will have out of the conversation;—what he will call private, or what he will say ought not to have been uttered, but in a general conversation.

Mr. Serjeant Pell.—I should ask no such thing, as to pick and choose, nor do I want or wish it.

So far from it, I wish to have the whole. So far from wishing to select any part, as Mr. Carter supposes, my complaint is, that they are trying to prevent me from having the whole. That is the ground of my complaint. They fancy I want to select a part; I want no such thing; I want all, and if I cannot get all, I want none. Now, my friends will permit to say, that it by no means follows, that because Sir Charles Hamilton was governor at this time, and this gentleman was appointed as attorney-general, although he was not sworn in, that, therefore, it necessarily follows, that all that passed between the governor and him is not evidence. It has never been laid down to that extent. As far as I have any recollection of it, it has never gone further than this: was, or was not the conversation which took place between these gentlemen, in these relative situations, a conversation which, from the nature of it, must have arisen from the relative situations in which they stood. That is, did, or did not the superior, in the communications which he made upon that occasion, make the communications as a superior, and in regard, and in respect to his official situation? This is the case, to the best of my recollection, for there are not many cases upon the subject;—this is the distinction that always has been taken; and my learned friends will permit me to say, that I cannot apprehend, nor have they furnished your

Lordship with a case in which that which they contend for has been decided as the law of the land. So that, I have here an instance in which I seek to shew what I say is a material conversation for my client, the plaintiff; a conversation on the part of Sir Charles Hamilton, the defendant, and all they have for it, is this: that Sir Charles Hamilton was, at that time, governor, and you, Mr. Westcott, at that time, was the attorney-general appointed, although not sworn in, and therefore nothing that ever passes from the governor to you the attorney-general, shall be received in evidence, because it shall be assumed, that every thing which did pass from the governor, was in consequence of your official situation as attorney-general. Let them find a case to prove this. I am not to be told upon this subject, that the law is so. I complain of no air of levity, and I am sure, neither of my learned friends will, in the slightest degree, offend me; it will not touch or disturb me in the slightest degree; I hope neither of them intended to give me offence, and I can assure both of them, that nothing which passes from them will have that effect. Now, my Lord, what I ask for, is this—and it is a case for your Lordship's decision—that when a witness upon the *voir dire*, has said that what did pass, did not relate in any way to any official duty that he had to discharge, or which the superior had to dis-

charge, when it had nothing to do with it, when that which has taken place, might have taken place between any ordinary individual at Newfoundland, and himself; I ask now, if that case which proves that fact, be a case or not, within the rule. Now, your Lordship will allow me to argue this case, first upon principle, and upon analogy. If their rule be a right one, it must be an universal rule, or no rule at all; according to their mode of reasoning, then it amounts to this, that in no instance—in no case can any attorney-general ever be permitted to say one single word of what the governor of a colony has said. That is odd.

Mr. Justice Burrough.—As a general proposition it cannot be.

Mr. Serjeant Pell.—Then I have your Lordship's authority, that the rule is not applicable to this particular case.

Mr. Justice Burrough.—As a general proposition he cannot communicate any thing that passed between him and the governor, as governor.

Mr. Serjeant Pell.—Then it comes round to this. We must take it as an excepted case, in whatever point of view you mean to consider it. Why is Mr. Westcott not to be permitted to say that which the governor has told him, and which might have been told to any indifferent person upon the island? There is the point of distinc-

tion, and it is there I put my finger. I want all that passed upon this occasion, which may have been said as well by any individual of the island as Sir Charles Hamilton.

Mr. Justice Burrough.—You do not mean that.

Mr. Serjeant Pell.—I know what he has said, and can only understand the meaning of English words according as they are used in most parts of England, and according to the ordinary acceptation which they bear, and when I find this gentleman—and your Lordship will please to recollect, that Mr. Westcott is no ordinary person—he is a person, at least, esteemed qualified to hold that very high office of trust—that of attorney-general, and therefore I must be permitted to observe, that when a person of Mr. Westcott's particular character in the colony, states to your Lordship, that this which was said by Sir Charles Hamilton was of this description——

Mr. Justice Burrough.—I cannot allow the witness to be the judge.

Mr. Serjeant Pell.—How are we to draw the line and say, there is any case in which an attorney-general may be permitted to disclose what has fallen from the lips of a governor?

Mr. Justice Burrough.—It must be an extraordinary case. It would put an end to all confidence in the office. It would be dangerous.

Mr. Serjeant Pell.—The question in this case which certainly——

Mr. Justice Burrough.—I will tell you what strikes me so strongly; suppose attorney-general A, or any other letter of the alphabet, had been written to, to go to the governor, he might never have known the governor, but he must have known from the nature of the thing, unless it be shewn to the contrary, that the communication must have been confidential.

Mr. Serjeant Pell.—So I should assume myself from the relative situation of the parties, but when a gentleman swears that it was not, and that there was nothing of a confidential description in it——

Mr. Justice Burrough.—The very nature of it is such. Suppose he had attended to this very same transaction, or something of the kind, had occasionally occurred, what he says upon that subject, was when he was acting as governor, in consequence of something being said against an individual. That relates to the affairs of the island.

Mr. Serjeant Pell. — As I understand your Lordship, to lay down the rule, it is that it is not capable of an exception, or that this is not an excepted case, as it stands at present, so as to enable me to give proof of what the governor said?

Mr. Justice Burrough.—I really think that

what was written to the attorney-general was meant to be from the governor to him in the character of attorney-general, and that what passed, must be a confidential communication. He says, I went to identify myself.

Mr. Serjeant Pell.—I was about to add a little as to the analogy.

Mr. Justice Burrough.—It could not be otherwise than confidential.

Mr. Serjeant Pell.—But, my Lord, assuming that the relative situations of both parties were so, I deny that relative situation as it now stands, for I shew that it evidently was not so.

Mr. Justice Burrough.—The very case we are now trying, shews that it was matter relative to the government.

Mr. Serjeant Pell.—There is a point which has not yet been touched upon. What I mean to say shortly, is, that upon general principles I contend, with great deference to your Lordship, that this is an excepted case, and therefore not within the general rule; and I say upon analogy —suppose the case of attorney and client, which happens over and over again, the general rule, that what was said between them, should not be communicated in a court of justice, because it is communicated with a view to the situation in which one stands to the other; but it frequently happens, that things are said from the one to the other, totally distinct and independent from the

business that one was transacting with the other, but which opens a door to communications that otherwise would not have taken place.

Mr. Justice Burrough.—Try the case in question, as matter touching the government of the island. The governor is invested with the power of removing persons, and the very question is, whether he has done this properly or maliciously. The whole of it relates to what might have been touched upon by the governor of an island. He was likely to talk confidentially upon such a subject as this.

Mr. Serjeant Pell.—The question I proposed to put, and which his Lordship thinks cannot be put, was a general one:—I do not ask to what the conversation immediately referred, but I ask this gentleman as to a certain conversation between Sir Charles Hamilton and him—I do not ask at all what it was, or to what it alluded, and your Lordship thinks in the relative situations of governor and attorney-general, that cannot be done.

Mr. Justice Borough.—You propose to ask him, and you appeal to him as judge.

Mr. Serjeant Pell.—I propose to ask the question as to what took place between the governor and him, during that interview.

Mr. Justice Burrough.—Touching the matter in question.

Mr. Serjeant Pell.—I do certainly think it material in every point of view.

Mr. Justice Burrough.—Suppose it is relative to the point in question, I say it has to do with the government of the island.

Mr. Adam.—I will not occupy much time, but take up the view which your Lordship has alluded to. Suppose in the course of the examination matters dropped from a witness in the box, which shewed that Sir Charles Hamilton had personal ill-will towards the plaintiff, not connected with the particular circumstances of his removal, would it not be matter for the consideration of the jury, if there appeared a pre-disposition to injure this gentleman, by availing himself of circumstances that had occurred, and which afford occasion to indulge in the resentment he felt against him? The question then is, whether every matter of that sort is to be excluded? I apprehend not; upon a matter totally unconnected with official business, it might appear that Sir Charles Hamilton did entertain ill-will against the present plaintiff, and that would lay a foundation to induce the jury to believe that he took advantage of the circumstances that occurred, in order to gratify that ill-will. I say, therefore, that it is sufficiently relevant, to entitle the jury to take it into their consideration, even if it was not matter that bore upon the particular subject. So that I

apprehend I have met the objection, and that this is not within the rule which your Lordship desires us to confine ourselves to.

Mr. Justice Burrough.—This gentleman had no earthly business with the governor, but as governor of the island.

Mr. Adam.—With respect to the general rule I take it that the principle is perfectly plain,—that no private party can disclose that which is injurious to the public interest, and consequently the governor is protected in any official communications he may hold with the officer with whom it is necessary he should communicate, as governor of the colony for the public safety; but then it is open to us to ascertain whether a particular conversation had reference to his official situation, or whether it falls from him in the character of a private individual. The question is, as to the character, and that is the only question which your Lordship has to determine.

Mr. Justice Burrough.—I say this man had no possible business there, but as attorney general.

Mr. Adam.—Unless we shew it was not public, but general, we cannot ask him about it certainly. If it was not confidential, then on the other hand, we are entitled to his evidence.

Mr. Justice Burrough.—If it was a conversation with him as governor, that is a conversation protected.

Mr. Adam.—Not because he was the governor.

That would not make it a confidential communication.

Mr. Justice Burrough.—It is an official communication. What he says does not signify a farthing. Besides, he says the conversation was touching the state of the island, and touching the conduct adopted by the governor, in the government of that island.

Mr. Adam.—There is no doubt as to the removal of this gentleman.

Mr. Justice Burrough. I think you cannot get at the conversation.

Q. Do you remember seeing the governor last October?

A. October, 1823.

Q. Had you resigned your situation as attorney-general?

A. I had the 28th of July.

Q. When had you ceased to act as attorney-general?

A. On the 28th of July, just before the governor quitted the island.

Q. In the course of your communication with him, did he say any thing of Mr. Dawe.

A. Yes, he did.

Q. Be so good as to state what he said?

A. I applied to the governor.

Q. About Mr. Dawe?

A. He said that I had been flying in his face, by having employed Mr. Dawe to apply to the

high sheriff for fees, which I conceived to be due to me.

Q. For fees due to you, I understand?

A. That I had been flying in his face, by having employed Mr. Dawe to make an application to the sheriff for fees which I conceived to be due to me.

Cross-examined by Mr. Wilde.

Q. You say this was in October?

A. The latter end of October.

Q. How lately before that had Sir Charles Hamilton arrived from England.

A. About three months before that.

Q. How lately before your resignation had Sir Charles Hamilton arrived from England?

A. About two or three days.

Q. Did Sir Charles Hamilton bring out letters to you?

A. He brought one letter*.

Q. How long before your resignation did you receive that letter?

A. Two or three days.

Q. Did you see him after that interview?

A. I saw him afterwards.

Q. Have you seen him in England?

A. Never to speak to him.

* The letter alluded to by the witness, was from the Secretary of State for the Colonial Department.

Captain Francis Ansell *sworn; examined by* Mr. Adam.

Q. Are you in the 74th regiment?

A. I am.

Q. Were you stationed at Newfoundland in the year 1819?

A. Yes.

Q. Were you acquainted with the governor, Sir Charles Hamilton?

A. I was.

Q. Do you remember at any time in 1819 having any conversation with him with reference to Mr. Dawe, the present plaintiff?

(No answer)

Q. (By Mr. Carter). Where was it the conversation took place?

A. Just at the entrance of the Fort.

Q. When was it?

A. Some time after the fire.

Q. Can you tell me how long after the fire: you were there on duty?

A. I was.

Q. Your regiment was serving in the island?

A. Yes.

Q. Can you tell how long it was after the fire that this conversation took place?

A. I think about a month after.

Q. You say it was near the Fort?

A. Yes.

Q. Was that the place or the chief guard of the garrison?

A. The main guard.

Q. Were you on duty at the time?

A. No, Sir.

Q. Not on guard at the time?

A. No, Sir.

Q. Did it relate to any thing that had taken place when you were on duty? Did the conversation which the governor then had with you relate to any thing which had taken place when you were on duty any where?

A. It related to the conduct of the plaintiff in this cause.

Q. When you were on duty?

A. When I was on duty.

Q. At the fire?

A. At the fire.

Q. The question I then asked and then addressed to you was in respect of what had taken place when you were commanding any part of the detachment at the fire?

A. I beg your pardon.

Q. Did the conversation relate to your duty as to what took place?

A. No, it did not relate to my duty.

Q. Did it relate to what had taken place under your conusance?

A. It did.

Mr. Wilde.—My Lord, I submit that this is pro-

tected also. Here is the governor of an island who meets with a military officer, and who appears dissatisfied with the conduct of the plaintiff, and addresses himself to him upon that conduct; and, I apprehend, that the same protection is to be afforded to the communications between the governor and this military officer, and although he is a subordinate, it is as much to be protected as that which took place between the governor and the attorney-general. It would be extraordinary indeed if the governor could not communicate to an officer on duty his view and opinion upon reports which he had heard, upon any circumstance connected with that which had taken place at the time this gentleman was on duty, when it might be most material for the governor to make this communication to this individual witness regarding that transaction. It might be necessary to enable this gentleman to act, inasmuch as it appears that this communication related to a matter when this gentleman was under duty, and that the communication itself took place while the relation existed between them as commander-in-chief and of subordinate officer.

Mr. Carter.—My Lord, the witness has said that this was a month after the fire, and the way I wish to fortify the objection which my learned friend has just stated to your Lordship is, that the fact as it now appears before you here, is that the governor meets with an officer, which officer was

in command of a party of the detachment at the fire, of which your Lordship has before heard. He says he had a command.

Mr. Justice Burrough.—That does not appear.

Mr. Carter.—Yes, my Lord, it does.

Mr. Serjeant Pell.—He has said he was on duty at the fire.

Q. (By Mr. Justice Burrough.) Had you any command there?

A. I was under the command of Colonel Manners.

Q. (By Mr. Carter.) You were on duty?

A. I was.

Mr. Carter.—Here is an officer on duty with a detachment of the military at the fire, and your Lordship has heard in other parts of the case that complaints had been made respecting the conduct of this individual at that fire; now the governor is introduced here as meeting one of the commissioned officers under the colonel commanding the military, and there asking him certain questions respecting the conduct of that individual which fell within his conusance when he was on duty at the fire.

Mr. Justice Burrough.—You do not know what the conversation was. We have not got at that.

Mr. Carter.—My objection is not to the question itself, but to the way in which it is asked. Therefore we think it time to interfere and to ask of your Lordship whether that is not protected.

Mr. Justice Burrough.—When the question is put, I will tell you what I think of it.

Mr. Adam.—The question is whether he had any conversation with Sir Charles Hamilton about Mr. Dawe.

Q. (By Mr. Justice Burrough.) Did he come to consult you as to any fact he wanted to get at, or was it only general conversation?

A. It was observations.

Q. (By Mr. Justice Burrough.) Do you know whether Mr. Dawe was removed at that time or not?

A. I did.

Q. (By Mr. Justice Burrough.) Did he come to consult with you as governor of the island?

A. No, my Lord.

Q. (By Mr. Adam.) What passed from Sir Charles Hamilton to you upon this occasion? Did you address yourself to him, or did he first speak to you?

A. Sir Charles Hamilton expressed himself very much displeased at the conduct of Dawe—exceedingly displeased with his conduct on that occasion.

Q, Upon his expressing his displeasure, did you make any communication in reply to Sir Charles?

A. I do not immediately recollect that I did. I agreed with him that I thought Mr. Dawe had behaved extremely ill.

Q. Did he say any thing about the plaintiff's continuing—upon Dawe's continuing in the island?

A. He made an observation to the best of my recollection, that he wished he was out of the island, as he was a troublesome man—I beg pardon, his express words I cannot recollect; but the impression upon my mind, for it is a long while ago, is that it was what I have just now said, he wished that he was out of the island, or to that effect.

Q. To the best of your recollection, that was the effect of it?

A. Yes.

Mr. Wilde.—I have nothing to ask him.

John Boaden *sworn; examined by* Mr. Williams.

Q. Were you in any way connected with the Brig Bell?

A. Yes Sir, I was.

Q. In the year 1818?

A. Yes.

Q. Did any thing happen to her at sea?

A. Nothing to the brig Bell; she was fishing, and fell in with a vessel in distress, and she rendered her assistance on the 20th of August.

Q. In consequence of what happened, did you apply to Mr. Dawe?

A. Afterwards, I did.

Q. In consequence of that application, did he transact any business on board that vessel for you?

A. He did, after she arrived back again.

Q. What did he do?

A. He noted the protest in the first instance.

Mr. Wilde.—I object to any evidence of the protest, unless it is produced.

Q. In what capacity was Mr. Dawe employed?

A. As notary public, and my attorney as well.

Q. Do you know any thing of Mr. ———, the agent at Lloyds?

A. Yes.

Q. Was it for him this was transacted?

A. Yes, afterwards it was.

Q. Do you happen to know what emolument that business produced, was it considerable?

A. It was considerable, I know there were five or six surveys on the vessel.

Q. (By Mr. Justice Burrough.) Was it before the fire?

A. After the fire, the brig arrived on the fifth day of September.

Q. Do you happen to remember whether you made the application on the night of the fire?

A. It was on the night of the fire.

Mr. Serjeant Pell.—That is my case, my Lord.

Mr. Wilde then proceeded to address the court and jury on the part of the defendant, as follows:

May it please your Lordship, Gentlemen of the Jury,—In the importance of this case I am perfectly agreed with my friend Mr. Serjeant Pell. I no less adopt his view of the fitness of the tri-

bunal by which it is to be decided, and I believe also that there is no difference between us with regard to the principle by which your decision should be governed. Agreeing therefore with him that we are before the proper tribunal, and adopting his view (if I understand it correctly) of the principle upon which the case should be decided, I only differ with him when he comes to speak regarding the excitement which this cause is calculated to create. I do not mean regarding the excitement which it is calculated to create, but I mean the effect of it, because few questions are decided correctly that are decided under a state of excitement. If a man has justice on his side, excitement is unnecessary ;—if a man wishes for justice he will avoid it. Before a jury and a very intelligent jury, no man who seeks for a verdict from their justice will seek first to put them in a state of excitement, and you will, I know, when you come to consider the question you have to decide under his Lordship's directions, if excitement has been produced, endeavour to allay it before you bring your minds to a decision. My friend has said that he counted it an honour that he should be counsel and have to advocate the cause of a man who complains of being oppressed, and whether the charge be well or ill founded, at least, the advocate should feel that he has a case in which he ought to be ex-

cited, and my friend's excitement was just and honourable so far as it enabled him the better to discharge his duty; but with you it is the very reverse.

But, gentlemen, I have to day to defend not merely the pecuniary interest of Sir Charles Hamilton; I have to defend his integrity and his honour, and I thank God I feel little idea of fear, that I have much more than enough for the purpose, and when I adopted my friend's view of the importance of the question, I could not do otherwise, feeling that which I have stated to you; feeling that which my friend has said, that the charge does affect the honour of Sir Charles Hamilton, for the question is brought before you by my friend, whether Sir Charles Hamilton the governor of Newfoundland has in regard to a man who was an entire stranger to him—with regard to a man with whom he had had no transactions; whether from some unknown and unimaginable offence he has prostituted his high authority to oppress and injure him. My friend has said that Sir Charles Hamilton is an honourable man, he could not say otherwise, himself being an honourable man. What then do you say to my friend's having left the case with nothing but a speech to justify the idea, that he who he admits to be an honourable man, having confided to him by the government of this country, a place of high trust

and confidence has abused it towards an inferior individual, and has injured that person, and that without any cause.

Gentlemen, if honour is of any value when I pray, should it operate? When shall a man's honour protect itself? Why, when a charge is made without evidence that he has done something inconsistent with his duty and character. Never in my life did I witness a case like this! my friend says that the question is, whether Sir Charles Hamilton has acted upon the present occasion upon a public ground; whether he has acted with a view to the public service, and in the view that the case called for; or from motives of private and personal spleen to Mr. Dawe? I admit that to be the question, and I meet that question. I ask where is the evidence of spleen; where is the evidence of malice? I watched most anxiously—not because I was afraid evidence could be produced, for I knew that consistent with truth and honour it could not. I knew that the character given by my friend of Sir Charles Hamilton, protected him from any fear of that sort: but I was anxious to see what little shred of colour or pretence could be assigned for imputing, as my friend admits a second time malice to Sir Charles Hamilton in this instance. When I come to look over the case before you, I shall allude to those things. It was all in communications; it was by letter stating that complaints

had been made (but it does not state the particulars) and in sending a letter to Lloyd's coffee-house, and in inserting an advertisement—these are the acts complained of, and which are to be shewn to have been done maliciously. It is admitted that the acts were done, and the question is whether they were done maliciously. There are but two facts stated: and one as to the supposed delay between the 27th of August, and the 14th of September, and the other is, that the letter does not state the precise nature of these complaints.

I am quite sure, gentlemen, that if I left the case without an observation, I am addressing myself to men, who, when they called themselves to consider the nature of the evidence, they would feel there was no evidence whatever of malice; and I verily believe if I was to call for his Lordship's judgment, whether there is enough even for consideration, I very much doubt whether his Lordship would not decide that there is not. My friend says that you are the proper tribunal, but I feel satisfied that I shall be in the judgment of his Lordship, as I must be on any other occasion: all I wish is to meet the case, and that I am ready to do.

I have then, gentlemen, to meet the case in two points of view. I have to meet the case as between Sir Charles Hamilton and the public, and I have to meet Mr. Dawe the plaintiff. With regard to Mr.

Dawe, the plaintiff, if I though fit, I could dismiss his case very soon; but I feel I owe it to Sir Charles Hamilton, when it is stated that he has departed from his duty, and has been acting from private and personal feeling; I owe it to him, to remove any such stain upon his honour, and not merely to get a verdict for him upon some point of law. My Lord, I have no doubt, will feel himself obliged to tell you, that Mr. Dawe has not proved that he is a notary at all. It is very true that at that time the governor of Newfoundland, did appoint him a notary, but the fact is not so; notaries can only be appointed by the proper faculties in the court at Doctor's Commons, and Mr. Dawe never has been a notary. I own there is evidence of the fact of his appointment, and the expression of Sir Charles Hamilton's sanction as far as that was concerned, to enable him to practise; but a notary to be enabled to practise, although he may have had Sir Charles Hamilton's authority, must of necessity, have been also a notary public, and nothing is more clear, and I say it not on my own authority, but I say it upon the highest authority, that Sir Charles Hamilton could not have appointed him a notary, and never did; and Mr. Dawe never was a notary. How is it attempted to be made out? By one solitary instance, for there is only one between the 27th of August, the date of the appointment, I think, or rather earlier, and the 14th of September!

For the last witness is the only witness, and the only person who proved that he ever called upon Mr. Dawe at all—the only one; and you will observe that this injury talked of, when you come to see the real definition of it, is this:—Mr. Dawe was an attorney, living and supporting his family, not as the Serjeant represents by his profits as a notary, for up to the time of Sir Charles Hamilton's arrival, it is not pretended that he was supporting himself as a notary. He was carrying on the business of an attorney, and there is no complaint whatever, that his business as an attorney was ever injured. He was appointed in the month of August, and his appointment was revoked in September, so that little more than a month only was this man acting as a notary. Then my friend speaks of the great loss he has sustained by the deprivation of all the means of support which he had before: but what I have said to you with regard to this gentleman, being a notary, I am satisfied, disposes of this action at once. But I choose to dispose of it upon the question, whether Sir Charles Hamilton has acted maliciously, and I would not have mentioned it to the attention of my Lord, except that I apprehend an advocate owes a duty to the court, if not to his client, to state any legal objection which appears to him to exist to the maintenance of an action.

Proceeding then, gentlemen, to the main busi-

ness in the case, let me examine upon what ground Sir Charles Hamilton has acted. One fact of the case appears to be this,—Sir Charles Hamilton arrives at Newfoundland, in the month of July, 1818, a stranger to Mr. Dawe, and he immediately receives an application from Mr. Dawe, to receive his sanction to practice as a notary, and how does he act? He instantly grants his sanction, and there is no difficulty, and no delay. What is the next step? Was there any transaction between Sir Charles Hamilton and Mr. Dawe, which could have engendered spleen or ill humour? Sir Charles Hamilton was attending to his duty, and I prove by his secretary, who perfectly knew it, he never had the slightest communication with Mr. Dawe between the time of the appointment, and the time when the letter appears and what then? A fire takes place in a part of the government stores, and I have the concession of my learned friend Mr. Serjeant Pell, that if Mr. Dawe's conduct upon that occasion was such as interfered in any way with the military, and he had done any thing calculated to impede that assistance, which under such a calamity every honourable man would wish to afford, the governor was perfectly right, and would not have discharged his duty, if he had not acted as he did. But when my friend says that if the charge be true, Sir Charles Hamilton was not right; my friend does not state the question accurately, for I say, if Sir

Charles Hamilton thought it was true, he was right. Mr. Dawe is not upon his trial; it is Sir Charles Hamilton to whom it is said you have acted maliciously. The question is whether he thought he was right, or whether he acted from motives of malice, that is the question—you are not going to try whether Mr. Dawe did, or did not, call the military an armed banditti, at the moment they were assisting to extinguish a fire like that you have heard of,—we are not examining whether Mr. Dawe did so far forget his duty as a member of society, in the manner in which he is said to have interfered. The question here for his Lordship and you, is this,—did Sir Charles Hamilton believe that Mr. Dawe had so done? That is the question; and you can only decide that by his conduct. But it is said that Sir Charles Hamilton takes no steps whatever from that hour, until the 14th of September, and what did he do then? If I do not satisfy your minds that from the beginning to the end, Sir Charles Hamilton's conduct is marked with the most perfect honour—with the greatest temperance, and with the most satisfactory principles of propriety, I will give up the case. What is the first letter which takes place on the 14th of September? My friend says that the fire took place on the 27th of August, but that no complaint was made until the 14th of September. Now what would my friend have said if the governor had acted before he had an

opportunity of making inquiries, and if he had acted without due deliberation, if he had suffered no interval to have elapsed, or have given Mr. Dawe no opportunity of justifying himself? Why, he would have said this man has acted promptly, and with a decision evidently arising out of his feelings. But did ever any man hear before that, because a governor hearing of a complaint on the 27th of August, and who waits a few weeks until the matter is inquired into,—who does not act until a reasonable interval has occurred, to give Mr. Dawe the opportunity of rebutting any representations which had been, made—did ever any man hear of such an objection? The path which the governor pursued was of an opposite nature, for the interval which elapsed was just about the time that would be required to afford those means of making such an inquiry that every honest and honourable governor would suppose it to require, so as to satisfy himself. But let Sir Charles Hamilton take his own reasoning, which is better than any thing I can urge for him. The letter is this, and allow me to call your attention to it. It is imputed to Sir Charles Hamilton, that he had given publicity to this unnecessarily; did he? Allow me to ask what was the first communication,—a private letter to Mr. Dawe—no advertisement—no letter to Lloyd's Coffee House—nothing was done to shew that the governor had any spleen to gratify; but

having a necessary and painful duty to discharge, he communicated to this individual a letter through his secretary, without the slightest degree of publicity, and, looking at the time and manner, nothing could be more correct. Now, let us look at the letter:—" Sir, in consequence of a complaint made to the governor by Lieutenant-Colonel Manners, of your very reprehensible conduct to him on the night of 27th ultimo, during the fire, His Excellency holds it to be his duty to forbid your acting any more as a notary public in this government. That he has not given you earlier notice of this his determination, arose from a possibility that something might appear from the evidence on your action of assault against Serjeant Connell and Captain Faddy in the supreme court, to have palliated such interference with Colonel Manners in the execution of his duty, but having carefully read the minutes of that trial, and perceiving that this was previous to the scuffle which took place between you and Serjeant Connell, he is quite at a loss to impute your conduct to any just or disinterested motive."—Allow me to ask you, if you had desired not to injure a man to whom you had granted an appointment; if you had acted without any ill-will upon an honest and conscientious discharge of your duty as governor, could you have done better than have waited for the determination of certain legal proceedings in-

stituted by Mr. Dawe? It appears, by this letter, that the governor waited until these proceedings were decided, in order to see whether there was any thing to justify what Mr. Dawe had done: but, he says, that, having carefully read over the minutes of the trial, he does not perceive any thing to place Mr. Dawe's conduct in a justifiable light. Now, what will justify a governor; what course of conduct marks an honourable man in the discharge of a painful duty, if this does not? He waits—the proceedings are communicated to him, when they close, and Mr. Dawe; and if Mr. Dawe was disposed so to do, might have made a communication to him? But allow one to ask, where is there a tittle of evidence that Mr. Dawe ever applied for a regular investigation, or that the governor should re-hear him? Where is there any suggestion that the charge is not true? Where is the statement that Mr. Dawe ever attempted to set the matter right in the governor's view? Why, when the governor communicates to him—"Sir, I am told you have acted improperly towards the colonel commanding the detachment attending the fire; you appear to have used expressions at all times improper, and much more at the moment when they appear to have been uttered."—Is it not extraordinary, if it was not true (although I have nothing to do with the truth); but is it not extraordinary, if it was true, that Mr. Dawe should have tendered no explanation to

the governor, but that he should have preferred waiting his coming to England, and to Exeter, because he intended to settle there, before he shews that one word of the charge is not true? I say, the governor acted in the most open and honourable manner; that he acted as you would expect a governor to act, seeing that he was right; and I, therefore, ask of the jury to put a good and honourable construction upon the action. He says, " I have received a complaint from Colonel Manners, and that complaint related to your interference with him in the discharge of his duty. I have waited to see whether you could justify yourself upon an investigation; and having carefully attended to what did pass, from all that I can see, I cannot ascribe your conduct to any just or disinterested motive, and therefore I forbid you to use my sanction to continue to act in the office of notary, for which I had before given you my sanction."

Gentlemen, I do say that the presumption is, that it was true; and, if it did admit of doubt, I say that the circumstance of Mr. Dawe's never having called for an investigation, proves it to be true; and that I have nothing to do but to ask, as regarding this letter, whether, at least, Sir Charles Hamilton has not acted, as a governor acting *bona fide* and honestly, upon the impression, that the complaint made to him was well founded.

Gentlemen, such is the first letter. After a

fair time given for consideration; and after considering whether Mr. Dawe had justified himself upon the investigation which had taken place; and after having privately communicated to Mr. Dawe, he does not take one further step until the month of January 1819; and what does he do then? In the month of January, 1819, a letter is written to Lloyd's Coffee-house, stating, that Sir Charles Hamilton had thought it right to dismiss this gentleman from his office, and therefore he considers it his duty to inform the committee of Lloyd's of it. Was that done wantonly? Was there no reason for that? Why, if Sir Charles Hamilton had a power to prevent this gentleman from acting, and, notwithstanding this letter, instead of calling for an investigation; instead of offering explanation, he persisted in acting; allow me to ask, whether it was fit he should go on in defiance of the governor; and, knowing the complaints under which he stood at that time, that he should go on doing those important acts which belong to a notary, when he was not authorized so to do? The governor, by the evidence of Mr. Le Geyt, sent this letter, because Mr. Dawe thought fit to go on when he was not authorized. I contend it was a public duty on the part of the governor. My friend says, the office of notary is very important; I admit it to be most important; and more important in foreign countries than here, for more

credit is given to them. In England the acts of a notary are treated with considerable respect; they have great authority; and what then, if a man assumes to act when he is not entitled to do so, who has been dismissed, and against whom there were serious complaints? I say, it did become necessary that Lloyd's Coffee-house should be informed, that the acts and protests, and other documents of Mr. Dawe, were not authorized: I say it was highly proper. I say that, if Sir Charles Hamilton was authorized to do that first act of dismissing him, if he chose at any time to disregard that dismissal, and to go on to act as a notary, it was the duty of Sir Charles Hamilton to make that communication. To whom is that made? I say it is made in such a channel as would best answer the purpose. Did Sir Charles Hamilton do it with a view of injuring him with this man's private connexion? Did he give the many intimation; or did he apply to the great public body so deeply interested in the communication which he had to make? Is there a doubt of that? Can any man pretend to say, that, if Sir Charles Hamilton found that Mr. Dawe continued to act, that, therefore, there must be malice, because he sought to prevent his doing so, and because he sought to prevent persons from falling into an error upon the facts and documents authenticated by him, when, in truth, he did not fill that character! I say it was his duty.

Gentlemen, I care not whether it was his duty or not. All that I have to do is that you may see that Sir Charles Hamilton at least thought he was acting right. I care not whether any other individual would have acted in the same way; if any say the act was wrong, that is another question. Did Sir Charles Hamilton believe he was acting in an honest sense in the discharge of a public duty, or did he, as my friend says, act upon motives of public duty, in order to gratify private spleen! My friend is deceived by his instructions, or he could never have ventured to appeal to you upon the question as to whether Sir Charles Hamilton was actuated by malice or not.

Gentlemen, that is the second step, and what is the third? The advertisement, to give notice to the people of the island, that his appointment had been revoked, and for the same reason; because the letter to Lloyd's might not be seen, and that persons who came there might not be deceived, and fancy that they had acquired a protection which the acts of a notary ought to afford them, when in truth there was no such. I feel that it would be going out of the way to ask, whether the governor was communicating with individuals unnecessarily, or whether he was walking, from the beginning to the end, in the path of duty, and doing an act which he fairly and reasonably believed to be his duty;

for I beg to impress it on your minds, gentlemen, inasmuch as I have the sanction of his Lordship, that the question is simply, whether Sir Charles Hamilton thought he was acting properly, and not whether you may be of opinion that you yourselves, or any other individual, would not have acted the same; although I should not fear that test either.

Gentlemen, Mr. Dawe having been an attorney at Newfoundland, continues to reside there. He acted in one instance as a notary; he was dismissed by Sir Charles Hamilton, who remained there for a considerable period as governor, and we are still without any evidence whatever of Mr. Dawe ever having called for an investigation or explanation; and he brings this action, and asks you to believe that Sir Charles Hamilton has acted maliciously, You have had to-day exhibited a scene which I hope does not often occur, and I shall hope will not often occur—the attorney-general of a foreign colony is found communicating to individuals what the governor said respecting them! I hope the attorney-general, who had remained a few days after the governor brought letters out—it is to be hoped that attorney-generals are not very numerous who would have been so far forgetful of their duty, and who, although they might not be sworn in at the moment those communications were made to them—it is to be hoped that very

few men filling that high office could be found to go to tattle and communicate to individuals what the governor, in the course of his duty, thought fit to intrust to him, as attorney-general. It would have been most unbecoming to an individual, and cannot but be much more so to a gentleman clothed in an official character, to whom it became the duty of the governor to hint any suspicions he might entertain. If the governor was of opinion that inquiry was necessary, to whom was such conduct on the part of an individual as that complained of be more properly communicated than to the minister of justice? If he thought that the attorney-general of the island should know that an individual member of the law had so acted, it was a communication that ought to have been made, and which, so far from committing any error, he was bound to make.

But you see, gentlemen, what has been done to get up this case. If an attorney-general is found to have broken his confidence, in order to to support his case, we have to thank the law, and we have to thank his Lordship, that we have not to-day produced in evidence the breach of that confidence which took place between the governor and his legal adviser. We owe it to the law and to the learned judge that it has not been done, and not either to Mr. Dawe or to the attorney-general. You see that no means have been spared to

discover evidence, but never has the governor dropped one word to the disparagement of the plaintiff, except to a captain under his command and to the attorney-general. After such a lapse of time, could no individual be scraped from one corner of the place to the other, to whom Sir Charles Hamilton, in an unguarded hour, had expressed his displeasure; It is only to the military officer who was upon duty on the occasion, and to the attorney-general, and I say, that those communications were confidential, at least if they are not protected, and then there is an end of malice. What would it have been if Sir Charles Hamilton had taken the opportunity in private companies, where his public duty did not call upon him—if he had communicated with those who were not connected with him officially? Then something might have been said, but as the case at present stands, it is perfectly destitute of any foundation. Here are two officers closely connected with the governor, and with regard to what was stated to the one, that does not appear; and what you have heard, is from the other, a military officer upon duty at the time, and he has been called upon to tell you what was said. This latter gentleman seems to have made out something that was expressed by Sir Charles Hamilton, before the dismissal, but it should have been before the fire; it should have been at the time when it would have shewn

that Sir Charles Hamilton had some displeasure against Mr. Dawe, not connected with the occasion we are speaking of. To shew Sir Charles Hamilton's displeasure after, is to shew nothing. I admit he was displeased; I admit that he thought Mr. Dawe an improper person; I admit that he thought him a dangerous person, for, if not, he has acted unjustly. If it was before the time of his dismissal, my defence is, that he thought him so, and I say, honestly thought him so. But I say, although he thought honestly, and I think, properly, he never expressed his opinion but when his duty called for it. Where my friend has looked for this part of the oppression I do not know. I find the governor acts as if prompted by a sense of duty, and I say his manner of doing it marks his conduct as an honest and upright man; as a man in the discharge of the duty intrusted to him, and which he had sworn faithfully to perform. Was it fit that Mr. Dawe should remain an officer and have the sanction of the governor, if he used such expressions as you have heard? If Mr. Dawe was a man content to lay under such a stigma, was the governor to be negligent in so important a duty? If he was content to remain where few would remain so long, under such a stigma, he was not very likely to come forward with any complaint. As Mr. Carter suggests

it is not pretended that he did not use the language imputed to him; that he called the military by opprobrious epithets, and not only that, but the complaint went beyond that, as my friend suggests—the complaint was for interference. My friend says, I am to prove that:—I deny it. Sir Charles Hamilton professed to act upon public grounds, and if any man says it was otherwise, he must negative it. Sir Charles Hamilton says, that Colonel Manners complained to him—that Mr. Carter complained to him—as a magistrate that he complained of him. I examined Mr. Le Geyt, as to whether Sir Charles Hamilton did not refer certain matters to Mr. Coote, the chief magistrate—that whether certain papers were not received from him, which were stated to relate to that transaction. My friend Mr. Adam, got from the witness, that Mr. Coote was in court, and why did they not call him? I am here to answer a charge of malice when it is made out, and if my friends mean to act *bona fide*, let them shew that no such complaint was made, or existed. Let them shew that Mr. Coote, the magistrate, was not authorized to inquire. Let them shew the falsehood of all those grounds upon which Sir Charles Hamilton defends and protects his conduct. That would make out something like a case of malice. But at present, my friends perfectly well know,

that Sir Charles Hamilton acted as if the charge was true, and if so, he did right in dismissing Mr. Dawe.

Gentlemen, allow me to ask, whether Sir Charles Hamilton might not satisfy himself of the truth of this charge, in a manner that would not admit of legal proof—is the governor not to be allowed to act in dismissing an officer, upon a charge which cannot afford of fair and legal proof in a court of justice? There is no such rule: it is enough that he has sufficient to satisfy his own mind. It is abundantly enough to act upon, that he had a honest motive. My friends here, know that an actual inquiry took place in 1818, and yet with all the industry, and all the knowledge which my friends possess as against Sir Charles Hamilton, not one statement is proved. Then I say, that my friends have made out no case of malice, and I say that the contrary conduct, marks the case of an honest, upright, and honourable man in the conscientious discharge of his duty.

Gentlemen, Captain Ansell has said, that the governor said to him, that he thought Mr. Dawe a troublesome man, and wished he was out of the island. Was he not so, if he pursued the conduct imputed to him at the fire? The statement to my friend was, that Sir Charles expressed great displeasure at Mr. Dawe's conduct at the fire, and " I" says Captain Ansell, " said

I agreed with him, that I thought he had behaved extremely ill?" What! has my friend been good enough to call a witness who was at the fire, and who thought his conduct extremely ill? why my friend has shewn the nature of the charge! But as I said before, it is no part of my present case, to deny that Sir Charles Hamilton, after the imputation at the fire, thought ill of Mr. Dawe, or that he thought him a troublesome person, and an unfit person to fill the office of notary. That is no part of my defence. My defence is, that he did so think, and that he thought so honestly, and that he acted upon an honest impression. My friend says, and very truly says, that you will protect persons from oppression who are abroad; ay and you will support the exercise of a wholesome and upright authority abroad. My friend says, that individuals abroad require support when justice is not so near home as in England; and I say, that governors require support abroad, where aid is not so near them. I say, if the jury find when a colony is threatened with an alarming fire, and the governor should be informed of an individual who improperly interferes with the military at that moment; I say, that the conduct of the governor, with regard to such an act, should not be looked at with too much nicety; his acts are not to be scanned on such an occasion, with a view to detect whether his motives were honest or not, as if you were

inquiring what course and what manner in England would be justifiable by law. The attorney-general unquestionably would have been the proper person to communicate with: but there is no evidence of an attorney-general being there. There is no evidence of any legal adviser to Sir Charles Hamilton; he is left to his own responsibility and doubt at a distance from home, and he has a man of the law interfering with the military upon the occasion so often referred to. I say, it was a wholesome authority which the governor assumed, and not more authority than any individual would have acted under, nearer home. If my friend had made out a case of oppression, the observation would have applied: but if he has made out a case which called for the prompt and strong exercise of authority, and if you find the governor acting in the conscientious discharge of his duty, it is not whether my friend or any other individual would have acted precisely as he did; it is enough that he was called upon to act in a situation of high responsibility upon an important occasion, and that his steps are marked with a due deliberation, and marked by the manner of taking them with the absence of every thing like personal vindictive or hostile feelings in such a case. I agree that you must take into account my friend's observations; I have gone elaborately and candidly over them, and I know you will condemn the wrecks of

evidence produced in order to shew malice. But malice I am sure you will not infer against an honourable officer filling a high station; you will require a moderate share of facts in this case. Of one thing, however, you must be perfectly satisfied, that this gentleman of the law is determined to have enough of it in one way. Better would it have been for him if he could have justified himself, and not have availed himself of an occasional visit of Sir Charles Hamilton to bring this action, and to bring it down from London to Exeter. Better would it have been for him to have said to Sir Charles, "I was a stranger to you, and, as a stranger, you favoured me with a situation; you granted it to me without difficulty: I have given you no offence, although I have reason to suppose you entertain an hostile feeling towards me. I find, in consequence of certain complaints, that you have dismissed me, and I beg of you to state to me the cause?" No; not one word! Mr. Dawe prefers to bring his action, and if he could, to get your verdict against the governor of Newfoundland. He prefers placing the colony in an embarrassing situation, which must, of necessity follow, if you are of opinion that this act of dismissing Mr. Dawe was influenced by a malicious disposition, for that is the charge I have referred to.

Now that is the question for your consideration, and not whether Mr. Dawe was guilty of all

that was reported of him to the governor, for that is not the question. A governor is entitled to act upon his belief of a fact which cannot be made out by legal proof. A governor is entitled to act upon the report of those officers to whose statements he thinks credit is due, Captain Ansell is one person—he is my opponent's witness, and he has stated that he thought Mr. Dawe's conduct very improper at the fire. Therefore if it appears to you that other persons besides Sir Charles Hamilton entertained an idea that this gentleman had acted improperly, and you know that other persons would have a better opportunity than Sir Charles Hamilton, for the governor can only act upon the reports of others, and those reports are confirmed by Captain Ansell, who entertained the same opinion. I say, if you find him acting fairly and honestly upon a belief that the complaint was well-founded ; if, after waiting so long as he did wait before he took these steps, and that Mr. Dawe neither before had any communication from him, nor after ever courts an investigation or ever denies the charge, or ever takes the slightest means of setting himself right with Sir Charles Hamilton, but in the year 1824 brings an action; I say, the case being a question not of Mr. Dawe's guilt, (for that is not the question, I again repeat,) but of Sir Charles Hamilton's integrity in the conduct which he pursued, I say, that this case is without any evidence at all; I say, even if there is enough for your consideration,

you will bear in mind the character belonging to Sir Charles Hamilton, and the extremely important occasion out of which the complaint arises, namely, a fire at the colony; taking all these circumstances into consideration, you must be satisfied that Sir Charles Hamilton has acted honestly and properly in what he did.

Gentlemen, as I said before, I wish the case to be decided upon the footing of the motives under which Sir Charles Hamilton acted; and I say that my friends who knew we were to be challenged with malice, I say they have made out a case of integrity. Captain Ansell has proved that the complaint was not unfounded; he has proved that Sir Charles Hamilton was not deceived, but that there was that improper conduct which had been imputed to Mr. Dawe. He it is who presents to you Captain Ansell, and what is his evidence? Captain Ansell is brought as a witness for the plaintiff, and what is his statement, I again ask? He says that Mr. Dawe's conduct was most improper!

I therefore feel perfectly satisfied, Gentlemen, that I shall receive your verdict, and as my friend has hinted, the same kind of verdict which Sir Charles Hamilton received before. I am satisfied that Sir Charles Hamilton will return to his government with the sanction of your verdict upon the honesty and integrity of the motives under which he acted; and that you will at the same

time afford that safe and proper protection which men in authority are entitled to have when at a distance from home, when they are found to act honestly, and without any evidence of their having had the least personal contention with, or the slightest ill will against, a party. I know that a fair and liberal construction will be put upon the act. I feel that by your verdict you will let every man know who complains of malice that it is necessary to make out malice; and I also feel that it will give you the greatest satisfaction to meet the justice of the case by affording to my client a full and perfect acquital.

Mr. Justice Burrough in summing up:—Gentlemen of the Jury, it is perfectly clear on the part of the plaintiff that he was appointed a notary public. Upon this there is no doubt; and it is quite clear that he was suspended by the act of the governor of the island, and this action is brought against the governor for this act of his in suspending the plaintiff from his situation and depriving him of the considerable profits of his office. Now it is certainly true, that in order to maintain this action, it must be shewn that the act done by the defendant was maliciously done; and it is also true that malice in these cases may be made out in one of two ways, either by shewing express malice, or by shewing that the thing done was without any probable cause, and if done without any probable cause, it would be a ground

for a jury to infer it was malicious. It lays upon the plaintiff in this cause to make out malice, and the plaintiff's case in this particular labours very much, as some of the witnesses whom he calls to support his case shew the ground upon which Sir Charles Hamilton acted, and therefore you are to look at the whole in order to see whether he did act in a *bona fide* way in the discharge of the duties of his office, or whether he acted with a malicious intent towards the present plaintiff. Now that he knew nothing of this man, is perfectly clear; there had been no interview between them and he does not appear to have had the least knowledge of him, unless when he applied for the governor's authority to become a notary public. Thus, therefore, upon the face of it, one would rather suppose that he could have had no ill will towards him; but as something has been done, and as must have been the case, some act done by the defendant, we must look and see whether or no there is, in the course of this case, evidence sufficient to induce you to believe any thing has been done through malice.

The case begins first of all with proof of the appointment of notary public, and I shall not take any further notice of that. Then there are two letters produced, upon which this case mainly turns. The first letter is dated the 14th of September, 1818, and is dated Fort Townsend, St. John's, Newfoundland, and is addressed to Mr.

William Dawe——

(The learned judge was proceeding to read the letter, when he was interrupted by)

Mr. Serjeant Praed, the foreman of the jury, who said—My Lord, I am desired by the gentlemen of the jury to inform your Lordship, that they are unanimously of the same opinion, and that they do not apprehend that any malice has been established, and therefore unless your Lordship wishes us to hear any thing we can save your Lordship any further trouble.

Mr. Justice Burrough.—If you are of opinion that there was no malice, and that the defendant acted *bona fide* in what it is admitted he has done, to be sure there is no occasion for me to go on.

The Foreman of the Jury.—We are all unanimously of that opinion.

Mr. Justice Burrough.—I think so certainly, gentlemen ; I think there was no malice.

The jury immediately returned a verdict for the defendant.

Mr. Wilde.—I trust your Lordship will think that this is a fit case for a special jury ?

Mr. Justice Burrough.—Certainly.

THE END.

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