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REPORT of the Commissioners of Inquiry at the Cape of Good Hope; dated 22d July 1825.

The Right honourable the Earl Bathurst, K. G. &c. &c. &c.

My Lord, Cape Town, 22 July 1825.

IN obedience to your Lordship's instructions, dated 30th January last, giving cover to two Memorials of Mr. Lancelot Cooke to the Lords Commissioners of His Majesty's Treasury, and which were received by us on the 29th April, we have proceeded to examine the complaints made by Mr. Cooke, of the conduct of Mr. Blair, the Collector of Customs, in the removal of one Prize Negro from his service, and the disposal of others; and we have also collected information respecting the nature of the proceedings instituted against Mr. Cooke, for writing and publishing a libel against the Collector.

The connexion of these circumstances with two leading subjects of inquiry pointed out to us in your Lordship's general instructions of the 18th January 1823, had induced us to obtain some general information, previous to our departure for the interior districts in November 1823, respecting the disposal and treatment of Prize Negroes in the colony; and the notoriety of the circumstances attending Mr. Cooke's prosecution had also drawn our attention to that subject. His acquittal by the court of justice from the charge of libel, and the appointment, by the Governor, of a committee to inquire into the conduct of the Collector, appeared to us to supersede the necessity of our making any special communication of these subjects to your Lordship, and we are not aware that Mr. Cooke ever addressed any complaint to us, or expressed a wish that either the proceedings instituted against him, or his complaint of the conduct of the Collector, should be taken up as matters of personal or public grievance. Documents, N° 14.

We have lately ascertained, indeed, that Mr. L. Cooke had made an application to the deputy Fiscal, for the institution of a criminal proceeding against Mr. Blair, and that he afterwards with drew it by the advice (as he said) of Mr. W^m Edwards, who recommended him to address his complaint by way of memorial to the Lords Commissioners of His Majesty's Treasury. Documents, N° 13.

The Committee appointed to inquire into the conduct of Mr. Blair, summoned Mr. Lancelot Cooke, to afford them information respecting the alleged abuses in the disposal of Prize Negroes, but Mr. Cooke having objected to come forward unless he was allowed to be assisted by counsel, and to cross-examine the witnesses, and, upon the court's overruling this objection, having again declined to bring forward witnesses before the Court of Inquiry, pending the discussion of an important question that had been raised by himself and Mr. Edwards, and which was then before the Court of Appeals, the members of this Court of Inquiry resolved to report to the Governor, that they were thus deprived of the means of strictly examining and inquiring into, or of recording in their proceedings any conclusive opinion respecting the several acts of corruption of which Mr. Blair stood accused in the Memorial of Mr. Cooke. Documents, N° 14. ibid.

As one of these transactions took place previous to our return from the country districts, and as we found upon our arrival in Cape Town that Mr. Lancelot Cooke had been acquitted of the libel, and had proceeded to England with an intention of submitting his statements to the Lords Commissioners of His Majesty's Treasury, we did not think it incumbent upon us to do more at that time than to insure the preservation of the evidence upon which we understood that it was Mr. Cooke's intention, and that of his advisers, to have proved the truth of the allegations of his Memorial, if the decision and acquittal of the Court of Justice had not prevented him from resorting to it.

With the impression that Mr. Cooke had not been mistaken in the course that he pursued, of presenting a Memorial to the Lords Commissioners of His Majesty's Treasury, respecting the conduct of the Collector of Customs in the disposal of Prize Negroes, and that it belonged to the colonial Government, in the first instance, to institute effectual inquiries into the truth of grave charges preferred against its officers for the abuse of the powers intrusted to them, we forbore to enter fully into the subject until we should have disposed of others that claimed our more immediate attention, or until we completed the general inquiry that we had already commenced into the state and treatment of the Prize Negroes, to our

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knowledge of which, the numerous complaints addressed to us by the Prize Negroes themselves were making some new, and frequently important, additions.

Having thus explained our reasons for not making an earlier communication to your Lordship of the nature of the charges preferred by Mr. Cooke against Mr. Blair, and of the judicial proceedings instituted against him, we proceed to lay before your Lordship our report upon the evidence that we have collected upon both these subjects.

We will first proceed to the examination of the case of Jean Ellé, who, it appears, was taken on board the French sloop " Le Victor," on its passage from the Isle of Bourbon to Mauritius, in the year 1810, and condemned as a Slave, to be forfeited to His Majesty, by a sentence of the court of Vice Admiralty in this colony, dated 23d January of the same year.

Documents, N° 10.

ibid.

Having observed in the Memorial of Mr. Cooke, a statement of the grounds upon which Jean Ellé asserted his claim to freedom, and that they had excited in his mind a greater degree of sympathy in his condition, we questioned Jean Ellé upon the subject. The account that he has given us accords with the notarial declaration that he made when Mr. Cooke was preparing his proofs for transmission to the Lords of Treasury; but it differs with that which he appears to have given to Mr. Thompson (the late partner of Mr. Cooke) and who took an equally kind interest in his fate; and it is entirely contradicted by the answers of the master and those of the mate of the ship in which he was taken. A copy of these answers, extracted from the proceedings of the court of Vice Admiralty, we have the honour to annex; and it is there sworn by the first of these two persons, that Jean Ellé, then named Jean Marie, with three other black people, were especially committed to the master's charge, for the purpose of being conveyed from the Isle of Bourbon to their masters, who resided at the Mauritius, and whom he named, and that they were known to be Slaves. The mate swore, that he belived the four people above named to have been Slaves, that they were treated as such on board the ship, although they were there only as passengers.

Document, N° 2.

Evidence of Mr. Thompson, page 129.

Document, N° 10.

Considering that the communication between this Colony and the Isle of Bourbon has been open since the year 1815, and that it was competent to Mr. Cooke to have ascertained the truth of Jean Ellé's claim to freedom, by referring to the books of a public establishment in the Island, in which he asserted that the freedom was recorded, we are disposed to doubt the truth of the assertion, more especially as Jean Ellé very lately acknowledged in our presence, that he had no other grounds for believing himself to be free, than that his father had told him so.

After his condemnation as a Slave by the sentence of the court of Vice Admiralty, he was apprenticed to a Dutch inhabitant, but, on account of the ill-treatment that he experienced, was taken by an Englishman, and a civil servant of the Government, and after passing from his service to that of two other individuals, came at length to that of Mr. Samuel Murray, of Cape Town, a merchant who had been unfortunate, and who appears, latterly, to have derived his principal support from the hire of several Prize Negroes, assigned to him by the Collector of the Customs.

Evidence, page 127.

The Prize Negro Jean Ellé was hired out in this manner by Mr. Samuel Murray, to Messrs. Knubley and Thompson, merchants of Cape Town, for the sum of thirty-five rix dollars per month, which at first was settled in account between them. Upon the retirement of Mr. Knubley, Mr. Cooke entered into partnership with Mr. Thompson, and they continued to account jointly for the hire of Jean Ellé to Mr. Samuel Murray, until the death of the latter in August 1823.

Evidence, page 154.

Upon an inspection, at the Custom-house, of the Prize Negroes that had been assigned to Mr. Samuel Murray, Jean Ellé was produced, and appears to have attracted the notice of Mr. Blair, who recognised him as a cook, and as living in the service of Messrs. Cooke and Thompson. In a short time afterwards inquiries were made after him, through the officers of the police, and at length orders were received by Messrs. Cooke and Thompson, from the Collector and Comptroller, to send Jean Ellé to the Custom-house. The reluctance of the man to leave their service, his good behaviour in it, and the short period that yet remained of his term of apprenticeship, (which expired in the month of March 1824,) induced them to make strong representations to Mr. Pigou, the intended assignee, of the services of Jean Ellé, accompanied with an offer to provide a substitute for him. Finding themselves unable to accomplish this object, a proposal was made to Mr. Pigou by Mr. Cooke, to receive a monthly payment of Jean Ellé's wages, in substitution of his

Evidence, page 162 & 156.

Documents, N° 15, page 58.

Evidence, page 154.

his services. With feelings of indignation at such a proposal, Mr. Pigou communicated it to Mr. Blair, and according to the notarial declaration of Mr. Cooke and the evidence of his confidential clerk before us, Mr. Blair, instead of listening to the explanation intended to have been offered by Mr. Cooke, for the delay that had taken place in complying with the orders for the appearance of Jean Ellé, addressed him in the very vehement and violent terms that are described in Mr. Cooke's Memorial.

Evidence, page 153, 154.

Evidence, page 154.

For this affront Mr. Cooke applied to the Deputy Fiscal for redress; and in consequence of the advice that he received from Mr. Edwards, and to which we have before adverted, he was induced to withdraw the prosecution, after Mr. Blair had already been summoned to answer in person. Upon these facts we beg leave to observe to your Lordship, that the complaint of Mr. Cooke against the Collector rests upon two grounds, first, that of personal affront and insult to him at a time in which he intended to offer explanation of an apparent inattention to the Collector's orders; and secondly, the removal of the Prize Negro from the service of himself and Mr. Thompson, in which he was happy and contented, to that of Mr. Pigou, a near connexion of the Comptroller of the Customs, for whose service he had manifested the greatest aversion, and at a period when he was perfectly competent to provide for his own support.

Documents, N° 15, page 57.

Documents, N° 15, page 59.

Upon the first point we shall submit our opinion when we consider the proceedings instituted against Mr. Cooke. The second point appears to us to depend upon the intention with which the power of apprenticing Prize Negroes has been conferred upon the Collector of the Customs, and to the effect that may be attributed to the sixth clause in the Order in Council, which confines the power of reapprenticing them to cases wherein, by reason of the death or absence of the master or any other cause, they may be thrown out of service before they had acquired knowledge enough to gain their own support.

See Copy of 6th Clause. Document, N° 12.

We apprehend that the general intention of the Order in Council dated 16 March 1808, making provision for the Negroes that should be taken and condemned as forfeited to the Crown under the Acts of Parliament passed for the Abolition of the Slave Trade, was to enable them to acquire such a degree of practical instruction from the masters to whom they were assigned, as would enable them at a future period to support themselves; with this view the extent and duration of the period of their service were to be regulated by a reference to their age, skill and strength, and in case of any contingency happening by which they should be thrown out of service or employment before they had acquired the means of their own support, a power was given to the Collector of the Customs to reapprentice them to some other master in the same trade or calling, for any term which, on being added to that part of the first indenture, should not exceed fourteen years.

It appears to us, therefore, that the power of apprenticing a Prize Negro in the first instance, or of reapprenticing him afterwards to another master, was intended to be conferred on the Collector of Customs for the benefit of the Negro alone. In the first instance it was to be guided by a reasonable calculation of the natural and physical powers of the Negro; in the second instance it was, as we conceive, strictly to be limited by the progress he had made in the useful application of them; if he was found to be competent to provide by his labour for his own support, the interference of the Collector was to cease, and the object of the Act of Parliament, in making him an apprentice, was satisfied.

In applying this reasoning to the facts of the case now under consideration, we beg leave to observe, that at the period of Mr. Samuel Murray's death, the Prize Negro Jean Ellé was and had long been perfectly competent to maintain himself, and that the Collector of the Customs had an opportunity of informing himself of this fact, by the personal inquiries that he made respecting his employment and condition when he was sent to the Custom-house to be inspected with the other Prize Negroes of Mr. Samuel Murray.

Evidence, page 127 and 162.

In considering the comparative advantage that would accrue in this instance to the Negro, by being allowed to remain in the service of masters to whom he was attached and by whom he had been so well treated, and that of being transferred to the services of an entire stranger, we do not think that any difficulty could exist, more especially as the remaining period of his apprenticeship expired in six months after the transfer, and as he availed himself of the first moment after its expiration to return to the service of his choice, and to quit that which he had been most reluctantly compelled to enter.

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In point of pecuniary advantage, the two services were nearly balanced, for we do not find that Messrs. Cooke and Thompson paid any hire for Jean Ellé after the death of Mr. Samuel Murray, his last master, nor that they made him a larger weekly allowance than that which was given him by Mr. Pigou, who in other respects treated him well.

Evidence, page 128.

Without insisting further on the superior advantages of a service, in which the relation of the master and servant is founded upon the basis of reciprocal attachment, and of one wherein it is supported only by coercion and counteracted by a strong sense of hardship and injustice, we cannot but observe, that according to the construction that we think ourselves warranted in giving to the 6th clause of the Order in Council, the Collector of the Customs was not justified in reapprenticing Jean Ellé to Mr. Pigou or to any other person, or in removing him from the service of Messrs. Cooke and Thompson, where, it is undeniable that if he had been a free agent, he would have been able to acquire the same ample means of supporting himself that he enjoys at present (together with his subsistence,) in the receipt of 35 rix dollars per month.

Evidence, page 129, 128.

Before we quit this part of the subject, we think it right to observe, that in his answer to the statement of Mr. Cooke that we submitted to the Collector of the Customs as well as to the Comptroller, the former declares that he has not considered himself authorized to remit, under any circumstances, the period of apprenticeship. Without entering into any remarks upon the motives that may have induced the Collector to exclude all consideration of the clause in the Order in Council that we have referred to, we will only add, that the instances are numerous and of daily occurrence, in which Prize Negroes, who are perfectly competent to support themselves, are reapprenticed by the Collector and Comptroller, and become a source of profit in the hands of poor masters, who derive considerable profit, if not their principal subsistence, from hiring out the Negroes to other persons.

Evidence, page 156.

We observe also, that the Collector claimed a right of recalling the services of Jean Ellé, in consequence of having been assigned to Messrs. Cooke and Thompson without his knowledge, and in violation of the prohibitory clause in the indenture of this person, in which, as in all other indentures of Prize Negroes, the masters are prohibited from transferring their apprentices to another, without the licence and consent of the Collector. The object of this provision is obviously intended to prevent the Prize Negroes from falling into the hands of improper or cruel masters. But we conceive that in the instance of Jean Ellé, the prohibition was perfectly inapplicable. Upon the death of Mr. Samuel Murray, the Collector ascertained in whose service he was, and as no objection was ever made by him to the character of Messrs. Cooke and Thompson, or to their treatment of Jean Ellé, he must have been satisfied, that for the short term of service that was yet unexpired, his situation with them was beneficial, and required no alteration. Upon this ground, therefore, we consider that the Collector ought to have abstained from removing Jean Ellé from the service of Messrs. Cooke and Thompson, and might, we think, with propriety have required them to deposit in the Savings Bank, for his benefit, the wages that were due from the death of Mr. Murray, and that might become due until the expiration of his term of apprenticeship.

Instances certainly have occurred, in which the Collector and Comptroller of the Customs, upon the death or departure of the masters of Prize Negroes, have consulted the wishes of the surviving or remaining members of the family; in the present instance, however, we are compelled to state, that no other motive appears to us to be assignable for the removal of Jean Ellé from the service of Messrs. Cooke and Thompson, than the desire of accommodating a near relation of the Comptroller with a good servant.

In pursuing the second subject of charge made by Mr. Cooke against the Collector of the Customs, we think it right to explain, that after the former had determined to relinquish the criminal action against the latter, he availed himself of the assistance of Mr. W. Edwards, a person who had been lately admitted a notary public, and procured the declarations upon oath of several persons to be taken, who professed to be acquainted with the Collector and Comptroller's practice of distributing and assigning the Prize Negroes. Copies of these declarations, taken from the protocol of Mr. Edwards, were delivered by him to us, before his embarkation for New South Wales; and we have also received information from other

Documents, N° 1 & 6.

other quarters upon the same subject, the substance of which we now proceed to lay before your Lordship.

It has been stated to us, that both the Collector and Comptroller of the Customs, in the sale of their estates, had availed themselves of the power they possessed in regulating the assignment of Prize Negroes, to transfer their interest in some of them to the purchasers, in consequence of express stipulations to that effect, and with a view to enhance the price.

Both these officers have thought proper from time to time to select Prize Negroes for their own service, or to retain such as they required upon the death or departure of the masters from the colony. Mr. Blair, it appears, has had 54 Prize Negroes, and Mr. W. Bird, 23. Documents, N° 11.

A difference of a somewhat technical nature has prevailed in their methods of accomplishing this object: The Collector has considered that the act of apprenticing a Prize Negro to himself was not consistent with reason; while the Comptroller has adopted a different practice, and relying upon a supposed analogy which he discovered in the Act of the 5th of Elizabeth, chapter 40, and in the permission there given to fathers to apprentice their children to themselves, he has considered himself and the Collector to stand in the same relation, or in that of guardian, towards the Prize Negroes, and has executed indentures of apprenticeship, and assignments of unexpired terms, in his own favour, taking care however in some of these cases to mark in explicit terms the individual and public capacities in which he gave and received at the same moment the services of the Prize Negroes. Documents, N° 20. Copy of Indenture, N° 28, page 125.

We do not at present think it necessary to detain your Lordship with considering the substitution which is thus assumed by the Comptroller, of the relation of trustee and guardian for that of parent, as the basis of this analogy, or the difference between the objects held in view by the framers of the Act of Elizabeth, and of the Order in Council in conformity to which the indentures of Prize Negroes are drawn. The object of the latter is to provide protection for those persons by the selection of good and humane masters; and we do not think that this object is attained, while it certainly may be risked, by the combination in one and the same person of the interest of a master and the duty of protector.

The sale of Mr. Blair's estate at Stellenberg near Cape Town was effected in the month of April 1820, being ineffectually tried both by auction and private contract in the latter end of the year 1819, and the person who had in the first instance offered the sum of 120,000 guilders, became the purchaser of it afterwards by private contract for 100,000 guilders. From the evidence of this person it would not appear that he was himself aware at the moment, of the value that would be given to the estate by the services of ten Prize Negroes, who had been employed and lived upon it when it was possessed by Mr. Blair, although it was suggested by others who were employed in negotiating the sale; and he has since been aware that their labour, after deducting the expenses of clothing and subsistence, was worth 1,440 rix dollars per annum, and that the aggregate value of it for five years has amounted to 7,200 rix dollars. Evidence, page 137. £. 3,000. £. 2,500. Evidence, page 137. £. 108. £. 540. Evidence, page 138.

From another witness who had bid for the estate we are informed, that although no express declaration was made at the sale, that the Prize Negroes were to be transferred with it, yet a belief prevailed that it would be so; and in a conversation that took place between this witness and Mr. Blair after the auction, in which the latter expressed his regret that he had not become the purchaser of his estate, Mr. Blair is stated to have pledged his word of honour, that if the estate should be sold, the Prize Negroes should not be withdrawn from it until their apprenticeships had expired. Evidence, page 135 & 136.

At the period in which the sale was effected, Mr. Blair was preparing to go to England, and could not have himself required the services of the Prize Negroes. On the other hand it may be doubted, whether the sale of the estate could have been effected without some further reduction of the price, if the Prize Negroes had not been allowed to remain upon it; and it is asserted by one of the witnesses (and we think with truth) that this circumstance alone would augment the value to a purchaser to the amount of twenty per cent. Evidence, page 136. Evidence, page 135.

As no indentures of the Prize Negroes had been executed in favour of Mr. Blair, he was under the necessity of causing new ones to be executed in favour of the purchaser, Captain Amber, which we observe are dated on the 1st April 1820, and are alleged to be for the "remaining term of apprenticeship," without any reference to the date of its commencement. A loose memorandum of the periods at Document, N° 9. ibid.

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which the terms would expire was given to Captain Amber, and one of the Prize Negroes was removed from his service upon an application that was made to the landdrost of the district; another was removed upon a complaint of misconduct; but we do not find that Captain Amber either claimed to receive other Prize Negroes in their places, or to make any deduction from the amount of the purchase money.

Evidence, page 138.

Although we conceive that the sale of the estate at the sum of 100,000 guilders was in a great degree facilitated by the permission to retain the Prize Negroes upon it, yet we do not find that the arrangement was injurious to them; and that in as far as it tended to keep them together at a place to which they had been for some time accustomed to reside, it might be considered as beneficial.

£. 2,500.

After giving Mr. Blair all the benefit of this observation, we will add, that it has not tended to alter the impression that his pledge, of not removing the Prize Negroes, given to a person then negotiating for the purchase of the estate, is so strongly calculated to create. We are satisfied in our own minds, that this pledge of the continuance of services so valuable could only be made with the view, and could only be attended with the effect, of promoting the sale of property of which Mr. Blair was so anxious to dispose previous to his departure to England. We have no reason to discredit the testimony of the person to whom the pledge was given; and we thus find great difficulty in acquitting Mr. Blair of an intention to combine the disposing power that he officially exercised over the Prize Negroes, with the interest that he felt as proprietor and seller of the estate. In this instance it appears that it only facilitated the sale, and that it did not augment the price, the sum of 110,000 guilders having been offered for it at a former period, and refused.

£. 2,750.

In the evidence that we have collected, a similar instance occurs of the transfer of an estate by the Comptroller of Customs, accompanied by a permission to the purchaser to retain three Prize Negroes that had previously been employed upon it.

Evidence, page 163.

If the evidence of Mr. Thomas Heatlie is to be relied upon, an express stipulation was made by him, that three Prize apprentices who had been assigned to the Comptroller should be transferred to him, and that their services formed part of the consideration of the purchase money, amounting to 28,000 guilders; to which however a condition was annexed, that in case Mr. Heatlie should sell the place, the Prize Negroes were not to be transferred without the consent of the Comptroller. It is stated that Mr. Dashwood, the Collector of the Customs of Simon's town, was present at the interview at which this negotiation took place; that a memorandum in writing was made of it, in which, at Mr. Wilberforce Bird the Comptroller's request, no mention was inserted of the three Prize Negroes who were allowed to remain upon the estate.

£. 700.

Evidence, page 163.

As Mr. Dashwood had unfortunately left the colony before this inquiry took place, we were deprived of his testimony, which would have relieved us from the doubts that we feel justified in entertaining with respect to that of Mr. Heatlie, in consequence of the inaccuracies that we have detected in his former statements.

Document, N° 18.

It is admitted by Mr. W. Bird that the estate was sold for 28,000 guilders, and that he agreed to leave upon it three of his Prize Negroes, as they had been accustomed to reside there, and as he was desirous of acceding to the wishes of Mr. Dashwood, who first negotiated the sale of the estate on behalf of Mr. Heatlie, and who stated him to be a young beginner, and to stand in need of assistance.

£. 700.

Document, N° 18.

In the present state of the evidence, the assertion of Mr. Heatlie, that the services of the Prize Negroes formed part of his inducement to pay the sum of 28,000 guilders for the estate, is not confirmed, and in that state we hesitate to ascribe to the transfer of the Prize Negroes the corrupt motive that Mr. Heatlie's evidence would establish against Mr. W. Bird, by allowing them to be considered as "part of the purchase money;" at the same time we feel it our duty to remark, that the Comptroller of the Customs has, with the view of meeting the wishes of his friend Mr. Dashwood, allowed three Prize Negroes to remain under the control of a person who, he says, has been reproved for his severe treatment of his Negroes, and to whom (as he observes in his letter to us of the 7th June last) he would never have given dominion, though merely temporary (without reserving strong checks and power of resumption) over any human creature.

Evidence, page 163.

Documents, N° 18, page 100.

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Now it is admitted by the Comptroller, that although the indentures of the Prize Negroes were not transferred to Mr. Heatlie, yet that he was allowed to have authority over them as long as he continued to be proprietor of the estate; and

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it was only in the event of a transfer of it to a stranger that he could claim the right of resuming them. In the attempts made by Mr. Heatlie to dispose of it, the right of resumption of the services of the Prize Negroes appears to have been partially exercised by the Comptroller of the Customs; and when they repaired to him for protection against Mr. Heatlie, who had left the estate and removed to Tulbagh, we do not find that the latter took any judicial steps to recover them, or to obtain a compensation for the loss of their services.

Document, N° 18.

In pursuing our inquiry into the disposal of the Prize Negroes by the Collector and Comptroller of the Customs, and with reference to the facts disclosed in the notarial evidence of Mr. Edwards, our attention has been much occupied by the assignment of several Prize Negroes to an individual named Charles Dixon, a livery-stable keeper in Cape Town, and by the alleged remission by him of a debt of considerable amount to the Collector of the Customs.

Documents, N°s 1 to 6.

It appears that at various periods, from the commencement of C. Dixon's setting up in business, Mr. Blair had been indebted to him in smaller sums, which had been discharged. Between the years 1810 and 1816, Mr. Dixon had received no less than 15 Prize Negroes from Mr. Blair, and had often and openly expressed the sense of the obligation that he had received, and the great assistance that their labour had afforded him.

Evidence, page 140.

Evidence, page 139 & 140.

Towards the end of the year 1819, when it was known that Mr. Blair was about to visit England, Dixon presented his bill to him, amounting to 1441 rix dollars 1 skilling, and, as he now swears, was induced to postpone the payment on a verbal promise of Mr. Blair to discharge the bill on his return to the colony. It is sworn by the person who acted as Dixon's clerk at the time, that he was desired by him to make out Mr. Blair's bill, that Dixon wrote the words, "Received payment," and signed it with his name. He further swears, that after Dixon had seen Mr. Blair, he desired him to make an entry in his books of the account having been paid, that he had not received any thing, but that he had made a present of the amount to Mr. Blair, in consideration of his kindness in having assigned so many Prize Negroes to him.

£. 108. 1. 8.

Evidence, page 131, 132, & 167.

Evidence, page 132.

This entry of payment to Mr. Blair's credit, dated 1st April 1820, of cash in full to the amount of 1441 rix dollars 1 skilling, was found by us in Dixon's ledger, and balances all antecedent items to his debit; and it is further corroborated by subsequent declarations of Dixon, who is stated to have declared in the presence of more than one person, that he had been anxious to evince his sense of Mr. Blair's kindness, and had presented him with his receipted bill. Whether this document was in the state described by the clerk, receipted and signed by Dixon, at the time that he presented it to Mr. Blair, there is some doubt; Mr. Blair has not been able to find or produce the bill, nor can he recollect whether it was receipted or not.

£. 108. 1. 8.

Document, N° 7, and Evid. p. 140. & 141.

Document, N° 7.

Evidence, page 134.

Documents, N° 20.

In explanation of the entry in his ledger, and also of another entry in his day-book in his own handwriting, dated 1 April 1820, stating that "he had received of C. Blair, Esq., in full of all demands to that date, 1441 rix dollars 1 skilling," C. Dixon has not been able to satisfy us that the first entry in the ledger was not made by the clerk at the time, in consequence of the direction that the latter has sworn he gave him.

£. 108. 1. 8.

In explanation of these entries, Dixon has denied that they were considered by him as true, that he always considered Mr. Blair to be indebted to him in the amount of the account that he tendered to him in April 1820, and continued to be satisfied with the assurances that he had given him, of discharging it at some future day; but he further swears, that under the influence of an apprehension that the inquiries which Mr. Cooke and Edwards were making in the year 1824, respecting the assignment of Prize Negroes, might occasion him some embarrassment, he applied to Mr. Blair at that period to give him a promissory note for the amount of his account, and that by his (Dixon's) desire, both the note and the entry of payment were antedated to the 1st April 1820, for the purpose of defeating Mr. Edwards's inquiries, or of removing any suspicion that might be entertained, as to the reality of an adjustment of Mr. Blair's bill at that period. The original note has been produced, and we find that it is wholly of Mr. Blair's handwriting.

Evidence, page 140 & 172.

Evidence, page 141.

Mr. Blair has stated in explanation, that when he quitted the colony to go to England in April 1820, he had the consent of his creditors to do so upon an understanding that the payment of their accounts was to be postponed until his return. It appears that Dixon, amongst others, applied for payment of his account

Documents, N° 20.

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account when Mr. Blair returned, and it is therefore justly asked by the latter, whether such a demand is consistent with the allegation of the voluntary tender of the account and receipt before his departure. His explanation of the date of the promissory note is not equally satisfactory; he says that it was given subsequently to his return to the colony, in consequence of an application made by Dixon for payment of his account. Mr. Blair did not return to the colony until 1821; it is therefore incontestibly proved that the note must have been antedated, and this proof is not weakened by the assertion of Mr. Blair, that he did not become acquainted with the fact until after the charges had been adduced against him.

Documents, N° 20.

Admitting however that the note was given for the purpose of meeting the inquiries that Mr. Edwards on behalf of Mr. Cooke was making into the disposal of the Prize Negroes in 1824, we do not see that it affects the question of the antecedent adjustment of the account by Dixon in consequence of his having been indulged with the services of so many of them. We have very little doubt that the sense of this obligation induced him to accede with readiness to a postponement of payment solicited by Mr. Blair previous to his departure for England in 1820; but we do not think that his casual declarations, although sworn to by a very respectable and disinterested witness, or even the entry of payment that he caused to be made in his ledger, afford conclusive proof that he considered the debt of Mr. Blair as finally cancelled. It appears in evidence that Mr. Dixon was very careless in the manner of keeping his accounts, and that errors were frequently detected in the entries of cash received in payment; it further appears that he was habitually incautious in his conversation, and not always correct in his relation of matter that affected his own interests.

Evidence, page 139.
Evidence, page 134.

In consideration of all these circumstances, we are induced to reject the imputation, that the debt of Mr. Blair to C. Dixon was cancelled in consideration of the assignment to him of Prize Negroes; but we think it our duty to add, that he appears to have been unworthy of such indulgence, on account of the severity with which he frequently treated them. Several complaints were preferred by them to the Fiscal, and were brought before the commissioners of the court of justice, and some of which, for want of sufficient proof, were dismissed; but upon one occasion it appears that Dixon was sentenced to pay a fine of 50 rix dollars.

Evidence, pages 132, 133, 139.

The next case to which we propose to call your Lordship's attention, is that of a tradesman named Durham, to whom fifteen Prize Negroes had from time to time been assigned, and in whose books we found that a debt of Mr. Blair's, for various articles of household furniture, had continued to accumulate in every successive year, from the 9th June 1814 to the 19th December 1821, when it amounted to the sum of 2,383 rix dollars 2 skillings, without any thing appearing to Mr. Blair's credit, or any thing having been paid by him, to the knowledge of the clerk and book-keeper, during that long period; although the same person declares that he had delivered the bills to him, and requested payment.

£. 178. 14. 10.
Evidence, page 142.

Upon an examination of Mr. Durham's books, it further appeared, that the balance before mentioned is not brought forward, but there exists an open account of the date of 28th March 1823, amounting to 929 rix dollars 5 skillings, augmented to the sum of 2,317 rix dollars 6 skillings in Decemder 1824; and it further appears that a bill had been delivered to Mr. Blair, amounting to 2,517 rix dollars 7 skillings.

£. 69. 14. 5.
£. 178. 16. 7.
£. 188. 16. 9.
Evidence, page 142.

In the absence of Mr. Durham, who left the colony to proceed to England in January 1825, we examined his chief clerk and book-keeper, who professes himself to be unable to account for the apparent relinquishment of the old balance of 2,383 rix dollars 2 skillings; but he produced a letter that he had lately received from Mr. Durham, dated Saint Helena, 11th February 1825 (on his voyage to England) in which he is requested by him to press Mr. Blair for the settlement of the old account by notes, leaving the new one to be paid by instalments, according to an expectation that he says he received before he quitted the colony.

Evidence of Mr. Heyward, page 142.
£. 178. 14. 10.
Evidence, page 142.

From the evidence of the clerk we do not find that the indulgence that Mr. Blair has experienced from Mr. Durham has been extended to his other customers; and although we do not question that the account was intended at some period to be discharged, we think ourselves justified in concluding, that even with the general forbearance observed by tradesmen towards the civil servants of Government in demanding payment of their debts, such great indulgence would not have been granted to Mr. Blair if Mr. Durham had not been accommodated with the services of so many Prize Negroes.

Evidence, page 171.

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In examining the lists of those that have been distributed by Mr. Blair since the year 1809, we found that the greatest number distributed in Cape Town had been assigned to respectable tradespeople, and who had been included in the list of witnesses to be summoned on the trial of Mr. Cooke, several of whom we thought it necessary to examine, and have found that, with one exception only, they consisted of persons to whom Mr. Blair was and had been indebted in sums of various but not very large amounts, and that although temporary remissions of their demands had been made by them in his favour, and that they were inconsistent with the ordinary terms of their dealing, yet we have not found one instance in which any thing had passed that would justify us in concluding that a total remission of the debt was intended, but that, on the contrary, in almost all, we have found at one period or another an application for payment made by the creditor, and an acknowledgment on the part of Mr. Blair, that negative the presumption of a final adjustment in consequence of the assignment of Prize Negroes. The value and importance of their services to these persons have been freely acknowledged; and with respect to this point we are well justified in concluding, that after the lapse of one year from the date of the abolition of the Slave trade, the competition for the assignment of Prize Negroes at the Cape has been pressing and constant. Without entering at present into the manner in which they have been distributed generally, we will take occasion to observe, that, according to the lists that are before us, and after the claims of the naval and military services and those of the colonial government had been attended to, the particular friends of Mr. Blair and Mr. Wilberforce Bird have appeared to have received the greatest number.

Evidence, page 144, 147, 150, 153, 158.

Amongst the former, we have observed that a Mr. Samuel Murray (now deceased) of whom we have already had occasion to speak in noticing the case of Jean Ellé, is the most distinguished. We do not find that this individual possessed any other claim to this indulgence than that of being unfortunate in his commercial concerns, from the consequences of which he certainly derived relief by hiring out the Prize Negroes that Mr. Blair had from time to time assigned to him.

Document, N° 8.

During the existence of his partnership with another merchant, an open account was kept with Mr. Blair, to whom wine had at different periods been delivered, and to the amount of 480 rix dollars.

Document, N° 21. £. 36.

The person charged with recovering payment of the debts due to the partnership has declared that he was informed by a friend of Mr. Blair, that this sum had been overpaid to Mr. Murray in a bill that Mr. Blair had given him for 1,000 rix dollars, and that upon giving this information to the late Mr. Samuel Murray, he promised to pay him the amount of Mr. Blair's account; and was more than once threatened with an action by his former partner, Mr. Horne, to compel the payment. From not having been able to gain access to any other books than the ledger of the late Mr. Murray, we cannot fully confirm the correctness of this statement; but after examining that book, we have found that no credit appears to have been given to Mr. Blair; but the irregularity with which the accounts appear to have been kept, would render it unsafe to draw any inference from such an omission.

Evidence, page 173, 174.
Evidence of Mr. Ley, *ibid.*
£. 75.
Document, N° 21.

In another instance, (that of Mr. Duckitt) a gentleman who had been sent to the Cape at an early period of its former occupation, to try experiments and introduce improvements in agriculture, we find that the possession of ten Prize Negroes, independent of the large number that he had received from himself and family, was coupled with a condition of appropriating to Mr. Blair the calculated quantity of produce raised by their labour on his farm, and that of subsisting and clothing them.

Documents, N° 23.
Evidence, page 159.

With these exceptions, we find that a large majority of the Prize Negroes apprenticed by the Collector and Comptroller of the Customs since the passing of the Abolition Act, and amounting nearly to 1490, have been distributed in numbers not exceeding, and generally less than three to each person; and although we have not been able to obtain from the Custom-house any accurate account of the numbers that have been reassigned, we observe that the Collector and Comptroller have exercised vigilance approaching to severity in asserting their claims to this questionable right, and that it has been exercised less with a view to the advantage of the Negro for whose benefit alone, as we have had the honour to contend, the right was conferred, than to the maintenance and augmentation of the Collector's and Comptroller's patronage. The case of Jean Ellé, which we have already detailed, is in support of this observation. The case of the Prize Negroes of an individual

Document, N° 11.

Documents, N° 22. named Corbitt, which was submitted to your Lordship by him before he returned to the colony from England, also corroborated our remarks.

It appears that he had obtained the permission of Mr. Blair to take to England one of the four Prize Negroes that had been assigned to him, who had lived in his family for seven years, and whose good qualities had greatly recommended him to his favour and protection. Not being able himself to return within twelve months, he sent the Prize Negro under proper care to a friend and agent in Cape Town, who neglected to apprize the Collector of the Customs of his return, but who, proceeding according to the directions of Mr. Corbitt, had placed the boy at school, and given employment to him in his own store. From this employment, which appears to have been suggested by a proper attention to the benevolent and kind views of Mr. Corbitt, the boy was taken by Mr. Blair and removed to his own service.

It was certainly the duty of Mr. Corbitt's agent to have apprized the Collector or Comptroller of the Customs of the boy's return to the colony; and we cannot help expressing our surprise that he should have been allowed to cancel the security that his principal had given in the office of the Colonial Secretary for the boy's return, without notice to the Collector or Comptroller of the Customs, or without any attempt to identify the boy's person.

Evidence, page 164. It is alleged by the agent, that upon Mr. Corbitt's departure, he had the permission of the Comptroller of the Customs to keep in his possession a Prize Negro, named "Present," and that a similar understanding prevailed respecting

ibid. the disposal of another, both of whom were left in the colony by Mr. Corbitt. Considering the loose and irregular manner in which the transfers of indentures and temporary arrangements respecting Prize Negroes appear to have been made, we think it most probable that the permission to retain these Prize Negroes had

ibid. been verbally given by the Comptroller of the Customs, in the absence of the Collector, and that the latter was not aware of it, until a complaint of one of the Negroes to him brought the matter to his notice.

Documents, N° 22. In a Report that he addressed to his Excellency the Governor, we find that the Collector represented that the situation and treatment of the Prize Negro "Tom" in the house of Mr. Corbitt's agent was disadvantageous to him and improper; that he was compelled to perform drudgery; and that with a view to improve his condition, he took him into his own family. Upon an inquiry into these circumstances we find that the boy was employed by the agent in the same way that he had been employed by Mr. Corbitt himself; that he was a house servant and shop-boy, and consequently was made to carry parcels and errands. His services in

£. 1. 2. 6. to £. 1. 10. Evidence, page 165. that situation are stated by Mr. Deane (the agent of Mr. Corbitt) to have been worth from 15 to 20 rix dollars per month, exclusive of his board and lodging; and that he was a boy of remarkably quiet disposition, and at the same time endued with intelligence and quickness.

ibid. Arrangements had been made by Mr. Deane for his attendance at a free school in Cape Town, in pursuance of Mr. Corbitt's directions; but notwithstanding these circumstances, which we consider to have been highly favourable to the progressive improvement of the Negro, he was removed to the domestic service of Mr. Blair, where he has received no instruction, and where it appears that he has had

Evidence, page 109. to complain of the violence of Mr. Blair, in the unauthorized punishments that he inflicts upon him in moments of irritation.

We have no reason to believe that (except on these occasions) Mr. Blair's treatment of his Prize Negroes has been objectionable; and we had reasons to observe that this Negro, who is employed in the house of Mr. Blair, is well clothed; but we cannot hesitate to express our opinion, that the situation of this Prize Negro, in the service of Mr. Corbitt, to whom he was attached by ties of gratitude and obligation, would have been infinitely more beneficial to him than that of Mr. Blair, in which he now remains, and is to continue until the expiration of the term of his apprenticeship.

Another case, of very recent occurrence, has impressed us with a belief that the personal accommodation of the Collector and Comptroller of the Customs is now become a prevailing principle in the distribution of Prize Negroes who are in a situation to be reassigned to new masters. Upon the departure of a gentleman from the colony who held a situation in the department of the Customs, and who expressed a wish to transfer the services of a valuable Prize Negro to a friend of his, who had lately succeeded to one of the highest appointments in the colony, and who experienced in common with every stranger the difficulty so much complained

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plained of at the Cape, of obtaining or hiring good domestic servants; this very reasonable request was denied by the Collector of the Customs, upon the sole allegation of his requiring the services of the Prize Negro for himself. In stating this occurrence, together with others that seemed to require explanation, to the Collector and Comptroller of the Customs, we observed that it had not received any answer or notice, but it has been explained to us by Mr. Blair, that, reserving to himself a contingent claim to the services of the Negro, he has allowed him to remain for the present in the service of Mr. Wilberforce Bird, but without any regular assignment.

Before we conclude this subject, we beg leave to notice the refusal of the Collector of the Customs to give a certificate of the expiration of a term of service to a Prize Negro who had lived with him as an apprenticed servant for some time, but, upon the expiration of whose term of apprenticeship, was unwilling to re-engage with him. The application was made to Mr. Blair by a person who has sworn that he refused to give the certificate, and made inquiries respecting the character of the individual who was desirous of having the Negro, saying, that he would call upon him. It appears, however, that the Negro was hired out without a certificate; and from a Government advertisement that had been published previously, notifying to the public the names of such Prize Negroes as had then become free, it appears that such a document from the Collector was unnecessary. The Landdrost of the district in which the Negro had served Mr. Blair, had sent for him, and in pursuance of the directions of the Government advertisement, informed him that his term of apprenticeship had expired, and intimated to him, and to others in the same situation, that they were at liberty to enter into contracts with other masters. As that in which the Negro was about to engage was in the Cape district, the application for contracting him should have been made to the Landdrost, and not the Fiscal, to whose office it is alleged that it was addressed.

Evidence, page 130.

Document, N° 26.

During the apprenticeship of the Prize Negro with Mr. Blair, his native name had been changed, although he was described by it in the Government advertisement; and to that circumstance may be attributed the mistake in the application. Mr. Blair has stated, that he treated this Negro, during a very long period of service, with particular favour; and that even after he obtained his freedom he returned to his service, and remained with him six months on wages at ten rix dollars per month. As the Negro had left the colony and gone to England, we had no opportunity of substantiating this fact; but the allegation of his having refused to re-engage in Mr. Blair's service on account of severe treatment, rests, in this instance, on such slight grounds, that we do not hesitate to reject it. In other respects, although Mr. Blair might have shown a greater degree of courtesy when the application was made to him for a certificate of the Negro's termination of service, yet it does not appear that in this instance it was a part of his duty to give such a document, or that it was even necessary to enable the Negro to engage in a new service.

From the observations that we have already offered upon the several circumstances detailed in the evidence that we have collected, we trust that we have enabled your Lordship to form a judgment of the motives by which the conduct of the chief officers of the Customs, in the distribution of Prize Negroes, has been guided; and of the truth of the representations that have been addressed by Mr. L. Cooke to the Lords Commissioners of His Majesty's Treasury.

Our inquiries upon these subjects have been guided in a great measure by the declarations of the witnesses whom Mr. Cooke, assisted by Mr. Edwards, had intended to call before the court of justice for the purpose of vindicating themselves, and proving the truth of the allegations of the Memorial; and we have no reason to think that any material information, of which they thus became possessed, has escaped us.

The vehemence and earnestness with which Mr. Edwards had entered into the cause of Mr. Cooke, had made a great impression upon the minds of the middling classes of the population of Cape Town; and to the intimidating effects of his tone and manner, we conceive that some parts of the acknowledgments contained in the evidence are to be attributed. We do not find, however, that their truth has been impeached in any material point; and although Mr. Cooke may have greatly exaggerated the grounds of his appeal to the Lords Commissioners of the Treasury, in the epithets that he has applied to various acts imputed to Mr. Blair, yet we have been disappointed in not receiving from the latter, and from Mr. W. Bird,

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Bird, a more satisfactory explanation of the facts that have been established by proof, and which would have enabled us to remove the doubts which have been raised upon the considerations of these facts.

See extract, Document, N° 12.

We certainly perceive that the Collector and Comptroller of the Customs have either misunderstood or overlooked the meaning of the sixth clause of the Instructions of His Majesty in Council, respecting the reassignment of Prize Negroes, and that they have thus unnecessarily increased their patronage or their own accommodation, without sufficiently keeping in view the advantage of the Negroes. We do not feel ourselves justified in declaring that their exercise of this patronage has been dictated by a corrupt motive, but we certainly observe that its effects, in several instances, have operated in relieving them from the pressure of pecuniary claims, which we believe to have been withheld from a sense of obligation, and which have continued subject to the same influence. It would not however be just to consider the Collector and Comptroller responsible for the existence of this influence on the minds of their creditors, where it has not been proved that they connived at it.

In observing upon the proceedings instituted against Mr. Cooke, we will shortly recapitulate the circumstances of their origin and progress.

The great reluctance felt by the Prize Negro Jean Ellé to be removed from the service of Messrs. Cooke and Thompson to that of Mr. Pigou, and the apprehension of the punishment to which his disobedience to the order for his removal might expose him, had induced Mr. Cooke to submit the circumstances that had caused his detention to the Deputy Fiscal. Upon receiving an intimation of that officer's opinion, that they had no right to detain him nor any claim to his services, and after some further hesitation, Mr. Cooke had an interview with Mr. Blair, the circumstances of which we have before explained, and that led to an immediate application to the Deputy Fiscal for protection and redress. This application was made by Mr. Cooke in a letter that he addressed to the Deputy Fiscal, dated 29 November 1823, in which he took occasion to request, in earnest language, his zealous exertions, and named the witness who was present at the interview with Mr. Blair, and whose evidence he offered in support of his own information.

Documents, N° 15, page 57.

The Deputy Fiscal having in vain endeavoured to terminate the dispute by amicable adjustment, according to the injunction and practice of the colonial law, was preparing to bring the case before one of the sitting commissioners of the court of justice, in pursuance of the reiterated request of Mr. Cooke, addressed to him on the 13th December 1823, when he received a notice from him, on the 12th January 1824, stating, that he begged to withdraw the complaint that he made to him on the 29th November preceding.

Document, N° 13.

On the 30th January 1824, a letter was addressed to His Majesty's Fiscal by the acting Secretary to Government, enclosing the Memorial of Mr. Cooke to the Lords of the Treasury, as well as a letter of Mr. Edwards, in which it was enclosed, and requesting "the Fiscal to refer to Mr. Blair, in order to obtain every information for prosecuting Mr. L. Cooke, for defamation of a public servant."

Document, N° 15, page 76.

It appears that this letter was conveyed by Mr. Blair himself to the Fiscal, who, after considering the statements in the Memorial, came to the determination of prosecuting Mr. Cooke, inasmuch as he saw reason for concluding that his object in writing and sending it was dictated rather by a spirit of revenge for the insult offered to him by Mr. Blair, and the loss of a servant, than by a desire to procure a reform of any abuses in the system of distributing the Prize Negroes.

The steps prescribed by the regulations for Crown trials were then adopted. Mr. Edwards and Mr. Hoffman were joined in the indictment, in which Mr. Cooke was charged with wilfully and maliciously composing publishing and signing a certain libellous writing in the shape or form of a Memorial to the Lords Commissioners of His Majesty's Treasury, in which, with the apparent intention of bringing to their notice his personal grievances against Mr. Blair, but actuated with a malicious intention of exposing him to the hatred and contempt of his superiors, and to the danger of being ignominiously discharged, Mr. Cooke had introduced some general remarks and alleged facts by which Mr. Blair was represented in a contemptible and criminal aspect. The indictment here particularly alluded to the alleged oppression committed by the officers of the Customs, their "ruthless cupidity," and their malicious abuse of their power in the reapprenticing of a Prize Negro after the decease of his master. Mr. Edwards was charged with the same offence, and J. B. Hoffman with writing and preparing the libel for publication.

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On the 16th February the trial commenced, and after the indictment had been read to the defendants, and when the officer of the court was about to address to them the interrogatories filed by the Fiscal, Edwards, the second defendant, offered to the court four exceptions; first, that the prosecution had not been commenced within the time prescribed by law, viz. eight days after the issue of the summons for personal appearance; secondly, that the Fiscal had not summoned the witnesses that he had named; thirdly, that the Fiscal had not religiously observed the truth in his indictment; and, fourthly, that the court was not competent.

In arguing these exceptions, Edwards was twice cautioned by the Commissioners of the court to abstain from uttering calumnies against the Fiscal; but as he persisted in this course, and as the Fiscal claimed the protection of the court, he was ordered to be confined in the town gaol for one month, for contempt of court.

On the 18th February, the hearing of the case was resumed, and Mr. Cooke proposed and pleaded an exception, in the commencement of which he fully acknowledged that he gave directions for drawing up the Memorial, and that he examined, approved and signed it, but contended, that it contained nothing that constituted a libel, and that he had not committed any offence.

After hearing the Fiscal in reply, the Commisioners rejected the exception of Mr. Cooke, who entered an appeal from their decision to the full court. The cause was ordered, notwithstanding, to proceed before the Commissioners, and Mr. Cooke having answered to the interrogatories, and prayed that his witnesses might be heard, Mr. Edwards was desired to proceed in his exceptions. The Fiscal having been heard in reply to them, they were rejected by the Commissioners, and the interrogatories filed by the Fiscal were put to Mr. Edwards, who, in answering them, acknowledged that he had written a part of the Memorial, but had not published it. The answers of the third defendant were then taken to the interrogatories, and the cause was adjourned, upon the production of a certificate by the Fiscal, that Mr. Blair, one of his witnesses, whom he proposed first to examine, was unable to attend from indisposition.

On the 20th February the court resumed, and the Fiscal moved for permission to amend his indictment against the second defendant Edwards, which was refused. The court then applied to the Fiscal, to the defendant Cooke, who now appeared by his advocate, and to the second and third defendants, to declare the nature of the points that their witnesses, whom they had wished to summons, were intended to prove.

They concurred in stating, that their witnesses were intended to disprove on the one side, and to establish on the other, the truth of the allegations; and the advocate of Mr. Cooke particularly requested that all the witnesses that had been previously named by Edwards on his behalf, amounting in number to 59, including the Governor, Lord Charles Somerset, should be summoned and heard. The court adjourned, and on the 20th February declared, that they could not receive the testimony of any witnesses that were intended to establish or contradict the facts set forth in the Memorial of Mr. Cooke; and that as to the question respecting the number of witnesses and the tendency of their testimony, it would be taken into consideration at a future stage of the proceedings.

The Fiscal, and the first and second defendants (Cooke and Edwards) noted appeals to the full Court against the first of these decisions, and the first and second defendants against both. The Commissioners having received some slight evidence upon the charge against the third defendant, he was, with consent of the Fiscal, released from further prosecution; and the proceedings were suspended until the two appeals made to the full Court had been decided.

This Court, with the exception of the President Sir John Truter, who was absent, assembled on the 26th of February, and having heard the arguments of the Fiscal, and the advocates of Messrs. Cooke and Edwards against the decrees appealed from, confirmed them both, and condemned Mr. Cooke in all the costs of his own proceedings. The Fiscal, and the second defendant Edwards, appealed against this decision to the Court of Appeals.

Report from the Court of Appeals, Document, N° 16.

Between the 1st and the 8th of March, the several Memorials and replies of the parties, who were now joined by Mr. Cooke in appeal against these decrees, were filed, and on the 9th the Court of Appeals made an order of reference to the President of the Court of Justice, who had been absent during the whole of the proceedings, for the purpose of requesting his opinion " as to the legal right of " the Memorialists, consistent with the laws of the colony, to have so many " witnesses

" witnesses summoned; and whether they are by law bound to specify the grounds " upon which they wish so many witnesses to be summoned."

Document, N° 16. On the 18th March, a decree was given by the Court of Appeals, in which, after declaring, " that it rejected the Memorials of the Fiscal, and the replies " thereto, the cause was remitted to the Court of Justice, to be proceeded in " according to the laws of the colony, with leave to the parties to make such " further appeal as they might be advised in any future stage of the pro- " ceeding."

This sentence of the Court of Appeals was considered to be in affirmation of the decrees of the full Court of the 18th and 26th February; by the first of which the exceptions of the defendants Cooke and Edwards had been rejected, and by the second the hearing of witnesses in confirmation or contradiction of the libellous allegations of the Memorial was rejected.

The incidental questions being thus decided, the hearing of the principal cause was resumed before two Commissioners of the Court of Justice on the 26th March, and after the Fiscal had unsuccessfully applied to them to admit the examination of two witnesses not included in his original list, the Commissioners

Document, N° 15. declared the investigation of the charge to be closed, and to relieve the defendants from personal appearance, and from all further prosecution of the accusations contained in the indictment.

As your Lordship will observe that His Majesty's Fiscal has principally relied upon the intentions and motives of Mr. Cooke, manifested in his first application to the Deputy Fiscal for redress, and in the subsequent appeal that he was induced to make to the Lords Commissioners of the Treasury, as the grounds of the proceedings that he instituted against him, we think it right briefly to notice them.

We think that we do not overstate or misapprehend Mr. Cooke's motives in the first application that he made to the Deputy Fiscal, when we adopt his own statement of his wish to obtain redress for the insulting language that had been addressed to him by Mr. Blair. That wish was repeated in the course of the proceedings adopted by the Deputy Fiscal, accompanied with an expression of the confidence that Mr. Cooke felt in his exertions.

Whatever may have been the advice that Mr. Cooke subsequently received, and

Document, N° 13. under which he appears to have acted in withdrawing his prosecution, we do not think that he was justified in resorting to another and more remote authority for protection against the insults of Mr. Blair, until he had found that the nearer, and what may be termed the natural tribunal, had shown itself unwilling, or had been proved incompetent to afford it.

From the preliminary measures that had been taken by the Deputy Fiscal, Mr. Cooke had no reason to conclude that the protection that he now seeks at the hands of the Lords Commissioners of the Treasury against the insults of Mr. Blair would not have been afforded him had he permitted the cause to proceed; and although Mr. Blair might have pleaded in extenuation of his violence the offensive offer that had been made by Mr. Cooke to Mr. Pigou, and which implied a corrupt connivance, in the payment to him of a pecuniary indemnity for the services of a Prize Negro, yet we feel ourselves justified in believing that if the expressions used by Mr. Blair had been proved to the satisfaction of the court, he would have been visited both with censure and punishment. It is not therefore without reason that the Fiscal was led to attribute the abandonment of that course, and the adoption of the other, for which Mr. Cooke was prosecuted, to a desire of revenging himself for a personal insult received from Mr. Blair, by exposing and denouncing in vehement language acts of corruption and oppressive conduct, rather than to the more laudable and disinterested motive that he professed, of affording impartial information to the Lord Commissioners of the Treasury of abuse of authority committed by one of their officers.

Evidence, page 166. It was this view of the subject, combined with the instructions that he received from the colonial government, that determined the Fiscal to institute a criminal prosecution against Mr. Cooke and the other persons concerned in the writing and publication of the Memorial; although the last of these acts consisted only in transmitting a duplicate copy of it to the Governor. The Fiscal seems to have been of opinion, that even under these circumstances Mr. Blair was entitled to the protection that the law of the colony affords against any act or writing by which the character of an individual is calumniated or disgraced, although he entertained doubts whether the libellous character of the Memorial in this case was

Evid. p. 167. of a nature to exclude all proof of its truth. The preparations indeed that he had made

made for disproving it, show that he had anticipated a contrary determination of this question; the communications that he had with Mr. Blair (who did not appear to shrink from an inquiry into the truth of the allegations, in the event of the Court permitting it,) were not of such a nature as to have furnished any well grounded expectation of a successful result; and considering the number and description of the witnesses that were summoned by the defendants, we do not think that it was altogether prudent to have committed the character of the Collector and Comptroller of the Customs in the event of a prosecution, wherein the punishment of the writers of the Memorial became very doubtful, and where, if it had been attained, their own vindication would not have been complete.

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Evidence, page 167.

A denunciation to the magistracy, of abuses that the interest of the state requires to be revealed, forms a well known exception in the Roman law to the general description of libel or calumnious writings. The right of Mr. Cooke to address the Lords of the Treasury upon the conduct of one of their officers was generally believed, for it was known only to a very few persons that Mr. Blair was accountable to the Governor of the Cape as well as to their Lordships, from the circumstance of his having received commissions from both, and for the express purpose of creating a local responsibility, which it certainly was open to the Governor in this instance to have claimed. Admitting even that the intention with which Mr. Cooke addressed his Memorial to the Lords of the Treasury was such as the Fiscal asserted, and in which we are also disposed to concur, we think that a prosecution founded upon a mere official interception of such a document could only have the effect of giving publicity to the imputations that it conveyed, without affording the means of establishing their truth or falsehood. It is precisely the light in which the question of Mr. Blair's conduct is now viewed. In justice to him we must add, that towards the close of the judicial proceedings against Mr. Cooke, he solicited a court of inquiry into his own conduct; and it certainly was not his fault that the result was not more satisfactory.

From the course that was adopted by the Fiscal in conducting the proceedings, we do not find that Mr. Cooke had any just cause of complaint. Three days beyond the term allowed by law from the date of the decree for personal appearance, had been suffered to elapse before the trial commenced; but we do not find that the delay was prejudicial to Mr. Cooke, or that he even relied upon it as a valid exception. In the appeal to the full Court he was assisted by an advocate, and joined with the second defendant in pleading the exception, of want of jurisdiction. From the terms of the clause in the regulations of the Crown Trial, we think that this exception is meant to apply only to the local incompetence of the court, and that the discussion that was raised upon the nature of the offence in question, before any proof or acknowledgement was received of the commission of it, under the specious pretence of an exception to the jurisdiction, was premature and irregular. It was argued however in this stage of the proceedings at some length on the part of Mr. Cooke, and, together with the rejection of the witnesses on either side as to the truth of the libel, and the Fiscal's objection to issue summonses to so many witnesses until the Court had decided upon the relevancy of their individual testimony, became the subject of appeal to the full Court and afterwards to the Court of Appeal. Without meaning any disrespect to the members of the courts by whom, in the absence of the president, these very important questions had been decided, we conceive that Mr. Cooke was justified in adopting any course that was likely to procure a further consideration of the case, even at the expense of some delay. The proceedings in the Court of Appeal appear to have been conducted with more than usual expedition; and although we cannot join in the reason assigned in a note of the Registrar and Secretary for passing by the constituted advisers of the Court of Appeal in criminal cases, and thus casting an implied though unintentional reflection on their competence, yet we concur in the expediency that existed of obtaining an opinion of the respectable person to whom reference was made, upon a point of such importance as the refusal of the Fiscal, to whom the duty is assigned in criminal cases, of summoning witnesses named by the defendant or prisoner to be present for examination on the day of trial, and of submitting to the judge, if required, the tendency of their testimony. It is stated by the Fiscal, upon the authority of the most respectable writers upon the Roman law, from which the restriction is derived, that if it shall appear to a prosecutor, that, from the number and character of witnesses summoned by the defendant, there is an intention of harassing the court and perplexing the proceedings, or of multiplying proofs unnecessarily, in such

See note at the end of Document, N° 16.

Document, N° 27.

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Report of Commissioners of Inquiry at the Cape of Good Hope.

Documents, N° 27.

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such case it is in the power of the court to make such preliminary inquiries respecting the facts they are called to prove, as may enable them reasonably to reduce the number.

This doctrine was confirmed by the opinion of the President of the Court of Justice, who also thought that in this instance no evidence whatever of the truth or falsehood of the libel was admissible, but, with a view to prevent any future inconvenience arising from a capricious application of it, a resolution was subsequently drawn up by the Court of Justice, on the application of the Fiscal, by which that officer was enjoined to notify his objection to the defendant's list of witnesses, as soon as they should be named, so as to admit of the consideration of it in time for the impending trial.

In the present case it cannot be denied that the description of the defendant's witnesses, as well as their number, was calculated to create a suspicion in the mind of the Fiscal, of the motive with which they had been named, and if he had not acted under that persuasion, some of them resided at too great a distance to have admitted of their being present on the day of trial. In consequence of the final decision of the Court, the examination of a very few witnesses was required on the part of the prosecution, and with the expectation that the Fiscal entertained of being able to prove the falsehood of the libel by the cross-examination of the defendant's witnesses, we are by no means disposed to think that his objection to summon them proceeded from any unjust or oppressive intention of excluding their testimony altogether.

We have thus detailed the nature and result of the proceedings instituted against Mr. Cooke before the Courts. They certainly were the cause of his detention in the colony from the date of the notice of prohibition to leave it, given to him by the Fiscal on the 3d February, until the 26th March 1825, the day of his acquittal by the Court of Justice. We do not find that this circumstance occasioned any prejudice to the concerns of the partnership in which he was engaged, but we have not been able to ascertain whether it was detrimental to the individual views of Mr. Cooke.

Evidence of Mr. Thompson, p. 173.

We have the honour to be,
My Lord,
Your Lordship's most obedient humble Servants,

(signed) *John Thomas Bigge.*
Will^m M. E. Colebrooke.