

683. Trial of VALENTINE JONES, Esq., sometime Commissary General in the West Indies, for a Misdemeanor; before the Right Hon. Edward Lord Ellenborough and a Special Jury, at Westminster, May 26th: 49 GEORGE III. A. D. 1809.*

THE following is an abstract of the Indictment.

1st Count—Charges—That the defendant held the office of commissary-general of stores, provisions, and forage, to the king's forces serving in the king's Leeward Caribbee Islands, and the several other islands and countries in the king's possession in the West Indies to the windward of St. Domingo.

And also, the office of superintendent and director of forage, provisions, necessaries, and extraordinaries of the said forces (to wit), at Westminster, in the county of Middlesex.

That the said offices were offices of great trust and confidence, concerning the providing vessels, stores, provisions, liquors, and other things for the use of the forces.

That in respect of the execution thereof, certain reasonable salaries and pay were payable, and paid to the defendant by the king.

That it was the defendant's duty to provide such vessels, stores, &c., in the most economical manner, and at the least expense to the king, and not to have or receive to himself any part or share of any gains or profits made by any person employed by him as such commissary, superintendent, and director, to furnish or supply such vessels, stores, &c., by or by means of the furnishing or supplying thereof (to wit) at Westminster, in the county of Middlesex.

That the defendant, disregarding the duties of his said offices, and unlawfully and corruptly intending to cheat and defraud the king, and to make an undue and unlawful profit and advantage to himself in the execution and exercise of his said offices, did in the execution and exercise of his said office, heretofore (to wit) on the first of May, 1796, at Westminster, in the county of Middlesex; unlawfully and corruptly bargain and agree with Matthew Higgins, that he (Higgins) should pay and allow to him a certain part and share of the profits and gains, to be made by him, by means of his furnishing and supplying under the defendant's authority, as such commissary, and superintendent, and director, divers vessels, stores, provisions, liquors, and other things, to be provided by the defendant, as such commissary, superintendent, and director, in the execution of the duties of his said offices (that

is to say) that he (Higgins) should pay and allow to defendant one moiety of the said gains and profits.

And that defendant, as such commissary, superintendent, and director, did afterwards (to wit) on the day and year last, aforesaid, and on divers other days and times, after the said bargain, employ the said Matthew Higgins to furnish and supply, and said Matthew Higgins did actually furnish and supply under such employment, and under the defendant's authority, as such commissary, superintendent, and director, divers such vessels, stores, provisions, liquors, and other things as aforesaid (to wit), at Westminster, in the county of Middlesex, and did thereby, then and there, make divers large gains and profits.

And that in pursuance of the said unlawful and corrupt bargain, the defendant further disregarding his said duties, and unlawfully and corruptly intending as aforesaid, did in the execution and exercise of his said offices, afterwards (that is to say) on the 31st March, 1797 (to wit), at Westminster, in the county of Middlesex, unlawfully and corruptly have and receive to his own use of and from the said Matthew Higgins, a certain large sum of money of a certain foreign currency (to wit), Leeward Island currency (to wit), the sum of 153,273*l.* 17*s.* 10*d.* of such money being of the value of a large sum of money (to wit) of the sum of 87,179*l.* 5*s.* of lawful money of Great Britain, on account of his (the defendant's) said part and share of the said gains and profits.

That in further pursuance of said unlawful and corrupt bargain, the defendant further disregarding his said duties, and unlawfully and corruptly intending as aforesaid, did in the execution and exercise of his said offices, afterwards (to wit) on the said 31st March, 1797 (to wit), at Westminster, in the county of Middlesex, unlawfully and corruptly keep and retain to his own use, out of divers sums of money, then and there payable by him, the defendant, to said Matthew Higgins, a large sum of money of a foreign currency (to wit), Leeward Island currency (to wit) the sum of 153,273*l.* 17*s.* 10*d.* of such money being of the value of a large sum of money (to wit) of the sum of 87,179*l.* 5*s.* of lawful money of Great Britain, on account of his (defendant's) said part and share of the said gains and profits.

Contrary to his duty as such commissary, and superintendent, and director, as aforesaid. To the great damage and deceit of the king.

* Now first published from Mr. Gurney's short-hand notes. Some preliminary proceedings in this case are reported in 6 East 31.

In contempt, &c. To the evil example, &c. And against the peace, &c.

2nd Count—That defendant employed Higgins to furnish, and that he did furnish vessels, stores, &c., and thereby made great gains and profits. That defendant, in pursuance of an unlawful and corrupt agreement in that behalf, theretofore made between him and Higgins, did receive to his own use from Higgins a moiety of the said gains and profits (to wit) 87,179*l.* 5*s.*

3rd Count—That defendant in pursuance of a like agreement, did keep and retain to his own use out of monies payable by him to Higgins 87,179*l.* 5*s.* As a share of the said gains and profits.

4th Count—That defendant bargained with Higgins, that he should be permitted to furnish &c. And that in consideration thereof, Higgins should pay and allow to him a moiety of the gains and profits; that Higgins did furnish, &c.; and made great gains and profits. That defendant received 87,179*l.* 5*s.* on account of his share and retained same out of money payable by him to Higgins, in pursuance of such bargain.

5th Count—Similar to the first, including other mercantile transactions.

6th Count—Similar to the 4th, only that the defendant should share the profits to be made by Higgins, as well by furnishing ships and vessels, as by furnishing any stores, provisions, or other things for the use of the forces, that he might be employed by defendant to furnish, and by other mercantile transactions.

7th Count—Similar to the 6th, only omitting other mercantile transactions, and not charging that his moiety of the profits was in consideration of being employed to furnish the vessels.

8th Count—That Higgins had been employed to furnish ships and vessels, and was desirous of continuing so to do, under the permission of the defendant. That defendant corruptly asked and demanded for his own use, of Higgins, a moiety of the profits to be made by his being permitted so to do, as a consideration and reward for his permission.

All the above 8 counts charge the defendant as holding the offices of commissary, and superintendent, and director.

The second set of 8 counts, viz. the 9th 10th 11th 12th 13th 14th 15th and 16th, also charge him as holding both offices, differing from the first 8 only by charging the offences to have been committed under colour of his offices. Whereas the first 8 charge them to have been committed in the execution and exercise of his offices.

The third set of counts, viz. 17th 18th 19th 20th 21st 22nd 23rd and 24th, charge the defendant as superintendant only. And the offences to have been committed in the execution and exercise of that office.

The fourth set of counts, viz. 25th 26th 27th 28th 29th 30th 31st and 32nd, the like, under colour, &c.

The fifth set of counts, viz. 33rd 34th 35th 36th 37th 38th 39th and 40th, charge the defendant as commissary only—in execution and exercise.

The sixth set of counts, viz. 41st 42nd 43rd 44th 45th 46th 47th and 48th, the like, under colour, &c.

The Indictment was opened by Mr. Richardson.

Mr. Attorney-General [sir Vicary Gibbs, afterwards lord chief justice of the Common Pleas.]

May it please your lordship.—Gentlemen of the Jury;—It is now my duty to state to you somewhat more in detail the nature of the charge which is brought against Mr. Valentine Jones, who formerly filled a public office in the West Indies. It is impossible that you can be ignorant of the complaints which are in every one's mouth, of the abuses that have been practised in that part of the world; I do not refer to them for the purpose of raising any prejudice in your minds against Mr. Jones, but rather to guard you against the effects of any such prejudice. You are to try this cause by the facts which I shall prove; and if I did not think, without taking advantage of such preconceived opinions in the minds of men—if I did not think, that by evidence pointing directly at him, I should be able to bring this charge directly home to him, I should never have filed the present information. I desire you will try this cause by the evidence I shall adduce against him, and not by any loose reports you may have heard elsewhere. I hope my learned friends who are of counsel for the defendant, will agree that I do Mr. Jones ample justice in the manner in which I desire you to consider his case.

Gentlemen, this arises from the very nature of such transactions as those for which Mr. Jones is impeached; that taking place at a distance from the eye of those who have an immediate interest in preventing any improper practices, frauds are easily committed; and it is very difficult when they have been committed to detect them, and I am afraid it is in human nature, more readily to engage in fraudulent transactions which have this ease in their commission and this difficulty in their discovery. That I fear you will find to have been the case with Mr. Jones.

Now, I will shortly state what his duties were—how he published and how he abused them. In the year 1795, he was sent out with a very large trust reposed in him. The expenditure of this country in providing for our army in the West Indies is, and must be enormous—the vessels that are to be provided for conveying the troops from one place to another, and the provisions which are supplied to those troops must be procured at a very considerable expense; the whole of this expenditure was entrusted to the superintendance of Mr. Jones. In his character of com-

missary and superintendent, it was his duty to hire such vessels as should be wanted for the troops; it was his duty to supply them with such provisions as they should have occasion for; and it was his duty to render to government an account of the manner in which he performed this trust. He had a certain compensation allowed to him by government, and beyond that he could legally be entitled to no profit or advantage whatever. He was well aware of what his duties were—they were not only pointed out to him by the two commissions which he received; the commission of commissary-general, and of superintendent; but the instructions that accompanied these commissions, pointed them out more specifically; and besides this, a letter which he received from a right honourable gentleman then in office, and who I now see sitting on the bench, ought at least to have guarded him more especially against the commission of these frauds which this day I shall most surely fix upon him by the most incontrovertible evidence.

After he had received his commissions in the year 1765, and the general instructions which accompanied them, Mr. Rose, who was then secretary to the treasury, wrote to him in the following terms:—"Sir, I am commanded by the lords commissioners of his majesty's treasury to acquaint you that his majesty has been pleased to grant pay to you and to the deputies and assistants under you, according to the following establishment." Commissary-general, from the treasury 2*l*. The war-office 3*l*., total 5*l*.—Mr. Valentine Jones." The allowance to Mr. Valentine Jones was 5*l*. a day. Then follow the allowances to the deputy commissary and assistants. The letter proceeds thus, "And their lordships expect neither you or they" (that is the assistants) "shall derive the smallest advantage, in any shape or mode whatever, from your situation beyond the pay above stated, except the regular allowances of provisions and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general.

"My lords are fully persuaded from your past conduct, which recommended you to their notice for your present appointment, that you will scrupulously conform yourself to this regulation; but they think it necessary on their part, it should be distinctly understood by every person in your department, that if any one shall be found to have profited in any manner, directly or indirectly, contrary to the strict injunction hereby communicated to you, instant dismissal will be the consequence, without the possibility of the offending party being afterwards employed in any public situation. If in the course of the service, a necessity shall arise for your making any disbursement for office rent, travelling charges or other unforeseen expences, it is their lordships pleasure that you should communicate the same to the commander-in-chief, and re-

ceive his authority and approbation of the amount of the expence, in order to your charging the same in your accounts."—Then the mode is pointed out by which this pay is to be drawn.

These instructions made a very deep impression upon the mind of the defendant. He was sensible that it was of importance to the public, that those instructions should be observed; he noted that part of them which enjoins him to take care, that those who were under him did not make any profit from their employments, beyond that of the regular pay, allowed to them by their commissions, and this he communicated to them in a letter which I am now about to read to you, which he addressed to Mr. Michael Sutton, who was his assistant commissary. Having given him some directions upon the duties which he was to perform, he adds, "on the scale of improvement, however, of regulation or of reform, economy must not be forgotten, and you can in no wise better recommend yourself for approbation, than by the proper application of the funds, entrusted at any time to you, and the frugal expenditure of public money." "I am charged with one very particular and private instruction, relative to my department which it is necessary to communicate, and I think it right to close this letter therewith, in order to take this, the first opportunity I have had of imparting the same to you, as one of the assistant commissaries—it runs in the following terms.—"The lords commissioners of his majesty's treasury expect that neither you nor the deputies, and assistants under you, shall derive the smallest advantage in any shape or mode whatever, from your situations, beyond the stated pay, except the regular allowances of provisions, and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general.—My lords think it necessary on their part it should be distinctly understood, by every person in your department, that if any one shall be found to have profited in any manner, directly or indirectly, contrary to the strict injunctions hereby communicated to you, immediate dismissal will be the consequence, without a possibility of the offending party being ever afterwards employed in any public situation."

It was the duty of Mr. Jones to have conducted himself in the manner that is recommended to him by these instructions; those whose duty it was in this country to see that the services of Mr. Jones were properly performed, did not feel themselves justified in trusting to the general impression which he might entertain, as to the duties connected with the service committed to him; they sent him those instructions which he, receiving, felt the importance of, and he felt the importance of communicating them in the strongest terms and with the strongest recommendation of observance to those who acted under him.

I now proceed to state to you—and it is a

painful part of my duty—how immediately—how grossly—how scandalously—when he had an interest in breaking through them himself, he either lost sight of them, or openly and professedly violated them.

Before Mr. Jones arrived, invested with this authority, in the West Indies, the orders for supplying the troops with what they wanted, had fallen upon the commander in chief, brigadier-general Knox. And Mr. Matthew Higgins, of whom you will hear a great deal in this cause, and who will be called as a witness, had been employed by brigadier-general Knox, in supplying such vessels as were wanted by the troops in the West Indies. When Mr. Higgins found, that Mr. Valentine Jones was coming out in the character of commissary general, he apprehended that this contract might be taken from him. There was in the West Indies another gentleman, Mr. Hugh Rose, who acted in the character of deputy paymaster, and who was supposed to be connected in some way with Mr. Jones.—Mr. Higgins made application to Mr. Rose, desiring he would use his influence with Mr. Jones, to prevent him (Mr. Higgins) from being removed from the employment of supplying vessels for the use of the army.—Mr. Rose promised Mr. Higgins his good offices upon that subject.—I believe, after that time, Mr. Higgins and Mr. Rose went to Demerara; on their return, Mr. Higgins saw Mr. Rose on board a vessel, in which Mr. Jones also was; he saw Mr. Rose alone; he conversed with him again upon this subject, Mr. Rose told him that he had made the application which he desired to Mr. Jones, that he had added to it a request, that he (Higgins) might have a preference in supplying the troops with provisions (for his contract under general Knox went only to hiring vessels for them); and he told him likewise that he had come to this agreement with Mr. Jones, *that he (Higgins) should be continued in his former employment of supplying vessels, and that he should likewise have a preference in supplying the troops with rum, flour, beef, and such other provisions, as they might want; and that he, and Higgins, should divide the profits, which he made upon the whole of these adventures in the following way, that Mr. Jones should derive one half of the full profits, and that Mr. Higgins should divide the other half between himself and Mr. Hugh Rose: so that you see, upon this agreement, the full profits of the whole adventure were first to be divided in half, and Mr. Jones the commissary, was to take one half, and then the remaining half was to be again divided between Mr. Higgins the merchant, and Mr. Hugh Rose, who was the go-between between him and Mr. Jones, the commissary.*

Gentlemen, it would, indeed, be mis-spending your time to enlarge upon the profligacy of such a contract on the part of Mr. Jones. Mr. Jones is sent out to establish a system of economy in the West Indies, to correct abuses that had before existed there; he was placed

in a situation, in which it was his peculiar, and only business, to see that government in all those transactions, which fell under his care, was provided on the most economical terms. It needs, I think, no explanation to convince you, that where the person who is to supply government, shares his profits by giving three fourths of them to others, if that division were not made, he would furnish government at a price less than that at which he did furnish them, by the deduction of this three fourths, which he does thus make over to others. For he is, at last, himself content with one fourth of the profits that are made; and if these harpies did not interpose and carry off the remaining three fourths, government would have had the benefit of them, by the supplies being charged at so much less.

But that is not all, that is not the great grievance of which I complain on behalf of government; it is not that Mr. Jones intercepts those profits, which the merchant would otherwise make, but that being sent out with a pay of 5*l.* a day for the purpose of correcting abuses, for the purpose of seeing that government is provided on the most economical terms, he creates to himself a personal interest to defraud government; and, taking to himself the profit that is made by those provisions supplied to the troops, he gives to himself a direct interest to admit of the highest charges that can be made, for supplying those troops; because the higher the charge, the greater the profit which he is at last to share with the contractor who furnishes the provisions. You see in every way this injures the public, who are unprotected, and undefended from his fraud. In the first place he takes this sum from the public.—In the next place, he divests himself of all possibility of correcting abuses, creating in himself an interest to raise these charges to the highest possible amount, in order that his profits may be raised in proportion.

And now, gentlemen, let me in few words state the result of this. From May or June, 1796, to the 31st of March, 1797, this traffic was carried on; accounts were then settled between Mr. Higgins and Mr. Jones; and Mr. Jones was to have credit for the moiety of Mr. Higgins's profit. The whole adventure was not now wound up; there was a small part remaining; but upon that which was then wound up, and settled between them, (I am giving it to you now in West India currency in which the accounts were kept) Mr. Jones's moiety of the profits made by Mr. Higgins for ten months, amounted to 153,273*l.* 17*s.* 10*d.* In sterling money it amounts to somewhat above 87,000*l.* A moiety of the profits made by this merchant, whose frauds are thus connived at by Mr. Jones, in ten months amounts to more than 87,000*l.* sterling, and that sum Mr. Jones actually received. And you see that not only are the frauds, and over-charges of Mr. Higgins in this account connived at by Mr.

Jones (for that, though highly criminal, he might have some excuse as not savoring of self interest), but they are actually invited by Mr. Jones. Mr. Higgins is exhorted to do that which he did, by the encouragement held out to him by Mr. Jones, who becomes a participator in the profits which Higgins was to make by this adventure.

Gentlemen, I told you I would state generally and shortly what these profits were, I will now state it with somewhat more particularity, as extracted from Mr. Higgins's books kept at the time in the West Indies, which will be to-day produced, and which Mr. Higgins will verify. This is Mr. Higgins's ledger; in this ledger and in the accuracy of the accounts contained in it, Mr. Jones had an interest, because he was to share the profits which upon the result of these accounts appear to have been made. Mr. Jones in the progress of this business had the curiosity to see that this 87,000*l.* sterling was all that was due to him; he chose to see that Mr. Higgins had not made larger profits than would leave to him when they were divided in equal shares 87,000*l.*; and he did see the accounts, he saw that all was fair and just, that the whole profits were not more than 300,000*l.* odd, currency; and consequently that his moiety of the profits was not more than 153,000*l.* odd, currency. I have stated that this is Mr. Higgins's ledger. Now the first article in it is "*With the Commissary-general.*"—And on the debtor side, here is an account of all that Mr. Higgins furnishes, on account of the commissary-general; all that he pays for the hire of vessels; all that he charges for the provisions that he supplies the troops with; and the balance due to Mr. Higgins upon this account is 247,442*l.* 10*s.* 10*d.*; the expenditure is something more than a million; the sums with which Mr. Higgins charges the commissary, for the hire of vessels, and for provisions supplied, is something more than a million, but the sum that remains due to him, after taking credit for the payments he had received, is 247,442*l.* 10*s.* 10*d.* That sum, therefore, you see, the commissary-general was to pay to him; that sum the commissary general owed to Higgins for supplies. This is to be wiped off. It is wiped off by two articles, in one of them, the entry is, Matthew Higgins, 153,273*l.* 17*s.* 10*d.* Matthew Higgins takes to himself so much of the debt. How is this to be explained? Why should Matthew Higgins take this 153,273*l.* 17*s.* 10*d.* upon himself? Another part of the account explains that:—There is in this, as in all mercantile accounts, an account of profit and loss upon the public adventure. Upon all his concerns with government there is profit and loss; that profit and loss as it appears upon the account is not summed up, but we have taken the trouble of summing up the debtor and the creditor side of this profit and loss, and we find that it leaves a balance of profit to Matthew Higgins, as you may suppose, of

306,547*l.* 15*s.* 8*d.* That sum it may be convenient to you to take down; and if you will take the trouble of dividing that sum by two, you will find that the moiety of it is exactly 153,273*l.* 17*s.* 10*d.*: and when you find that Matthew Higgins charges himself with that sum, the thing becomes perfectly intelligible; because it was agreed between them that Matthew Higgins should pay to Jones one moiety of the clear profit that he made: and when you find that the clear profit that was made was, by his own account, 306,547*l.* 15*s.* 8*d.*; and when you find that the moiety of that was 153,273*l.* 17*s.* 10*d.*; and when you find that in the general account with Jones he charges himself with 153,273*l.* 17*s.* 10*d.*, the account is perfectly clear; then you see that he is fulfilling the engagement which he had entered into with Jones, by ascribing to him one half of the clear profits that he made upon the whole adventure.

Of this sum Mr. Jones had the benefit; for in March, 1797, when Mr. Higgins was about to return from the West Indies, he was desirous of settling his accounts with Mr. Jones; he did settle them accordingly, and this balance was struck. It is fit I should state to you, that there was a person of the name of Nathaniel Winter, who had very much the superintendance of these accounts of Mr. Higgins's, which I believe were kept principally by a man of the name of William Winter:—however, Nathaniel Winter had constant access to them; he knew from Mr. Higgins that this agreement had been entered into between Mr. Jones and Mr. Higgins; he knew upon what terms this balance was to be struck, and the account settled; and he was told by Mr. Higgins that Mr. Jones would call upon him for the purpose of inquiring from him, and referring to his knowledge upon the subject, what the profits really were that Mr. Higgins had made. Accordingly Mr. Jones did call upon him for the purpose of asking him what these profits were, and Mr. Nathaniel Winter (whom I shall call to you as a witness to day) will tell you, that he either verbally related or delivered in writing (but he rather thinks he delivered in writing) to Mr. Jones the account of those profits made by Mr. Higgins as I have now stated them to you. He is sure that he communicated to him the amount of the profits.

Now, let me pause here for a moment. Mr. Higgins will state to you these transactions, as I have now detailed them to you. If Mr. Higgins relates a true account of the transaction to you, Mr. Jones is immediately convicted. For no man will stand up in a court of law, and say that this transaction is legal. No man, and less than any man, my learned friend who sits by me, will state to you that a man employed by government, as Mr. Jones was, is not guilty of the highest misdemeanor in entering into an agreement with a contractor, that he shall share the profits with him. If, therefore, Mr. Higgins, who will swear that

he should enter into this contract with Mr. Jones, is to be believed, there is an end of Mr. Jones's case.

But I am not unacquainted with the arguments my learned friend is likely to use for the purpose of taking from Mr. Higgins's credit. He will tell you that Mr. Higgins is an accomplice in this business; that he is himself guilty of the fraud he imputes to Mr. Jones; and that he comes here for the purpose of screening himself from that punishment which would otherwise await him. For what offence? For conspiring with Mr. Jones to defraud the public! What does he screen himself from? If Mr. Jones is not guilty, Mr. Higgins is innocent; and he comes here to load himself with an offence which, unless Jones be guilty, he Higgins cannot be charged with. It is not like the case of a man who, being detected in a robbery, comes forward and says, "If you will let me off I will tell you who the other person was that was with me;"—he comes forward, it being known that he had himself committed the robbery, to throw a share of the guilt and all the punishment upon another person. As his guilt is proved substantively—that he committed the robbery is clear. But here the charge against Mr. Higgins is, that he acted in collusion with Mr. Jones, and unless Higgins did act in collusion with Jones, he is guilty of no offence whatever. He, therefore, does not stand in the ordinary situation of an accomplice who comes to clear himself from guilt, which is fixed upon him, and from the punishment of which he is to shelter himself by charging another in the participation of his criminality; for unless Mr. Jones be guilty, nothing is fixed upon Mr. Higgins; and therefore Higgins comes forward to tell a story which he would be interested at this moment in suppressing, if it were not true; but supposing it necessary for me to confirm him, and supposing that you should hesitate upon the accuracy of his testimony—what say you to these accounts kept in the West Indies at the time?—entered up before there was any suspicion that any inquiry of this sort would ever be instituted, for it was some years after this transaction had been closed that the West India commission (of which I dare say you must all have heard) was ever thought of? It was not till after rumours had come home (and those rumours upon inquiry turned out to be well founded) of the gross frauds practised in the West Indies, that that commission was set on foot; there can be no possible charge against Higgins or those employed under him, of having fabricated these books with any view whatever. I shall prove them to have been in existence in the year 1797. I am stating to you the evidence of Nathaniel Winter.—Winter will tell you he communicated to Mr. Jones in the first place the amount of the profit and loss. Now that is the last thing that Mr. Higgins would ever have had communicated to Mr. Jones, if there had not been a fraudulent agreement between

them. If there had been no fraudulent agreement between them, their interests upon that subject would have been at variance. Mr. Jones's interest was, to make Mr. Higgins serve the public at as low a price as he could; Mr. Higgins's interest was, to get as high a price as he could. And Mr. Jones has no more right to call upon Mr. Higgins for an account of his profit and loss, than I have a right to call upon you, to know in the course of your trade what profits your house made last year. It is not therefore referable to any question of profit or loss, that Mr. Jones should ever require of Mr. Higgins that account, or that Higgins should render that account; and yet Nathaniel Winter will prove that he did, by the employment of Mr. Higgins, and on the application of Mr. Jones, render to Mr. Jones an account of the profits Higgins had made; which could be rendered upon no other ground than that Mr. Jones had an interest in those profits—that it was a partnership between them. And if Mr. Jones was to take any share in those profits, there is an end of his defence; it was foul and corrupt in him to take to himself any profits beyond the pay that was reserved to him.

I have been arguing now only upon the circumstance of his calling for an account of profit and loss, but here were the books. Nathaniel Winter gave him the account from these books; and Mr. Winter will farther tell you that, very soon after he had rendered this account to him of the 153,273*l.* 17*s.* 10*d.* as half the profits, he saw the books again; and he saw entered in those books, to the credit of Mr. Jones and to the debit of Mr. Higgins, this very sum of 153,273*l.* 17*s.* 10*d.* currency. What then becomes of any imputation that may be cast upon the credit of Mr. Higgins? What becomes of any attempt to persuade you that no credit is due to any account he shall give? He will refer you to documents that cannot deceive; he will refer you to entries made in his books at the time, when it was his interest as much as it was Mr. Jones's, to conceal these transactions; and he will show you, upon the face of his own books, that at that time he had made out his own profit and loss, 306,547*l.* 15*s.* 8*d.* and gave credit for a moiety 153,273*l.* 17*s.* 10*d.* to Mr. Jones, and that Mr. Jones actually had the benefit of that credit.

But, gentlemen, wonderful as it may seem to you—for these things seemed to be developed almost by Providence—wonderful as it may seem to you, this is not all, nor even the strongest, evidence that I have in confirmation of Mr. Higgins's testimony. I told you that this 153,273*l.* 17*s.* 10*d.* was a moiety of those profits that were at that time liquidated;—that it constituted the greater part of the accounts;—but there were some items which, in so large a concern, had not then been gathered up and thrown into this account; those items remained to be settled, they arose chiefly out of what the parties chose to call the American adventure, and that American adventure

was of this description. The way in which money is drawn in the West Indies is this;—the commissary-general draws for what he wants, upon the lords of the Treasury;—the deputy paymaster, who was Hugh Rose, draws upon the Pay-office; and these bills, when drawn, are carried into the market and sold; and one great profit those persons made was in charging the exchange much lower than it really was.

Mr. Matthew Higgins, who had the negotiation of all these bills, thought they could be disposed of to more advantage in America, than upon the spot: and accordingly, he established a house in America, with a view only to the profit that could be made by sending those bills to be sold in America, and purchasing, with the produce of them, provisions which he might afterwards render to the troops in the West Indies. Accordingly, he did establish a house in America, consisting of the names of Bennett and Carey; and with that house at Philadelphia he transacted this business. What the profits were that arose out of that branch of the transaction, was not accurately known; for that house had not rendered their account in March, 1797, at the time when this settlement took place. That remained, therefore, as a matter of future inquiry and settlement. Accordingly, at a subsequent period, in 1800, when Nathaniel Winter and Higgins and Jones were in this country, a farther settlement was made.

It was found, that with reference to the large account, there were some things, which ought to have been but which had not been brought either to the debit or credit side of it, and this American adventure had been wholly omitted. Mr. Higgins therefore settles this farther account. The balance of the profits of this American adventure appears to be 5,372*l.* 7*s.* currency, of which Mr. Jones's moiety would have been 2,686*l.* 3*s.* 6*d.* currency, or in sterling money 1,534*l.* 19*s.* 1*d.* naturally therefore he would, in this country, have received that sum from Higgins; but there were some errors in the former account, amounting to about 1,411*l.* 8*s.* 8*d.*, of which his moiety was 705*l.* 14*s.* 4*d.*: and that sum being deducted from the 1,534*l.* 19*s.* 1*d.*, left due to Mr. Jones 829*l.* 5*s.* 9*d.*;—that, therefore was the sum which, upon this settlement and the subsequent account, remained due from Higgins to Jones upon this corrupt contract between them. That sum Mr. Higgins paid in to Mr. Jones's bankers, Mr. Jones having, previous to the payment, deposited at his bankers, a receipt for that sum: it was paid in by Nathaniel Winter, on behalf of Higgins, for Jones—Jones having deposited with his banker a receipt for that sum, which receipt Nathaniel Winter, when he paid the money, carried away with him, and that receipt I now hold in my hand and will read to you:—“*Received, February 26th, 1800, of Matthew Higgins, esq., by the hands of Nathaniel Winter, esq. Eight Hundred and Twenty-nine Pounds, Five Shillings*

and Eight Pence, in full of Accounts between said Matthew Higgins and—VALENTINE JONES.”—Money to be received by Jones from Higgins, “in full of accounts between them”—What accounts could there be between them?

Let me suppose these gentlemen to have acted honestly. Mr. Jones was the commissary, Mr. Higgins was the merchant. Higgins was to supply the commissary with stores, he was to pay for the hire of vessels—money might be due from Jones to Higgins—it was impossible, in the ordinary course of things, that any thing could be due from Mr. Higgins to Mr. Jones. But, upon the balance of accounts between Mr. Higgins and Mr. Jones, here is a sum of 829*l.* 5*s.* 8*d.* actually paid by Higgins to Jones, and Jones's receipt is given for it in full of all accounts. Will Mr. Jones explain this? Will Mr. Jones give an account to you to-day how this debt arose? Will he show to you what the transactions were, and what the items of the account were, out of which this balance arose? Can he prove, that there were any regular mercantile transactions between him and Higgins? If he can, I shall be glad that he is able so to avert from himself the charge I am bringing against him—but I am sure it is impossible.

Mr. Higgins will not state to you that he entered into this agreement with Mr. Jones personally, but that he did it through the intervention of Hugh Rose. He will state, that Mr. Rose went, and personally communicated with Mr. Jones; and then stated to him (Mr. Higgins) what Mr. Jones had agreed to. He will state to you, that he received this conclusion of the agreement originally from Mr. Rose; that he afterwards saw Mr. Jones, and repeated it to him, and Mr. Jones acceded to it. Will Mr. Rose come forward to day, and deny this? I cannot question Mr. Rose. Mr. Rose will not be questioned by me. Mr. Rose keeps himself aloof. Mr. Rose answers no questions asked him on the part of the prosecution; but while I was uttering my last sentence to you, I was informed he has sent in word to the solicitor for the Treasury, that he is here. If he is here, Mr. Jones will have the full benefit of calling him as a witness; but a person connected with Mr. Jones and so conducting himself towards the crown, I am sure, I, on the part of the crown, shall not call as a witness for the prosecution; but if he chuses, in the course of my address to you, to send in word to me that he is here, I present him to his friends as a witness, whom they may call to discharge them from the guilt of which this indictment accuses them, and which Mr. Higgins by his testimony will fix upon them, and which Mr. Rose, if he be the witness of truth, and if Higgins's story be not true, can avert from them. But Mr. Rose having chosen to keep himself clear from all communication with—and having refused to furnish any information to, those who conduct this prosecution, I am sure there is no man who would think me fit to remain in the situa-

tion I hold at present, if I were to call Mr. Rose as a witness on the part of the prosecution, especially as, consistently with the story that I have told you, Mr. Rose would not be obliged to answer any question I may put to him, though he could have no reason for refusing (if it is not true) to answer any question the defendant may put to him. So stands the case upon the evidence I shall produce to you on behalf of the crown.

Gentlemen, there is one circumstance which I had forgotten. I stated to you that the balance due was 247,442*l.* 10*s.* 10*d.* currency, and that that was discharged, in part, by this 153,273*l.* 17*s.* 10*d.*, half the profits that were due from Higgins to Jones. The rest you know was to be discharged in some way; it is discharged by passing the remaining sum 94,164*l.* 13*s.* It is stated in the accounts—"By Hugh Rose a discount." The word discount, in these accounts, means setting it on the other side; discharging the account of so much. You will find that in Hugh Rose's account with Mr. Higgins, in this same book, Hugh Rose is made debtor to Higgins in that precise sum. I have Hugh Rose's account in another part of the book open before me, in which he is made debtor to the commissary-general 94,164*l.* 13*s.*; that is the way in which the whole balance of 153,473*l.* 17*s.* 10*d.* is made out—Hugh Rose debited for 94,164*l.* 13*s.* And Higgins for 153,273*l.* 17*s.* 10*d.*

Gentlemen, I had it in my mind once to have gone into a more ample detail of this subject. I have stated to you, that there is an account of the commissary-general with Mr. Higgins, in which Mr. Higgins takes credit to himself for all the articles that he supplied Mr. Jones with; and for all those articles Mr. Jones had credit with government: and I certainly could have shown you that these charges were beyond the market price of the article in the West Indies, infinitely beyond it. After I had, with some labour, gone into an inquiry of a good deal of evidence of that sort, it did occur to me at last to say to myself, "What am I doing here? I have, in the first instance, proved that the profits in ten months are 306,547*l.* 15*s.* 8*d.* currency; and then I am going to show that the particular charges are larger than they ought to be." Why, when I have shown that the profits are 306,547*l.* 15*s.* 8*d.*, to be sure, that would be a very idle labour; and I was glad to find the labour I had bestowed upon the subject was useless, because I then found I should be under no necessity of imposing that labour upon you.

I have now stated to you, I hope satisfactorily (it is a difficult thing to state figures, and if any few of them happen to escape your memory in statement it may confuse your minds), how I mean to fix this charge upon Mr. Jones. I will next state to you, out of Mr. Jones's mouth, what sense he had of his own conduct, how little he thought it would stand an accurate inquiry, and what instruc-

tions he felt it necessary to give to those who were left behind him in the West Indies, in case they should be questioned upon any part of these transactions, which should appear to them upon facts lying within their knowledge to press hard upon Mr. Jones.

Mr. Jones had been examined before the West India commissioners; and he writes to John Glassfurd, esq., who was his successor in the West Indies, a letter from Bath on the 3rd of December, 1802, in which he complains of the cruelty that he had experienced, in the manner in which the examination had been carried on against him; he tells him that every advantage will be taken of him. He says, "With respect to my Provision accounts generally, I have no doubt but many questions will be put to you." He states first, "that commissioners are coming out to investigate those accounts in the West Indies, and will probably have arrived before this letter, which I send by a merchant ship." He says, "with respect to my Provision accounts generally, I have no doubt but many questions will be put to you, but for heaven's sake do not be unmodelling them again, as they cost me more pains and trouble than I ever had in any business in my life, and they would desire no better than to perplex me more: if you can make them better or you can supply any deficiencies that I may seem to have made, I should be obliged; but do not make any observations on my general abstract being of different form from any state of yours. Nor would I wish it to be known that I had written to you about it; not that I should fear fair and candid investigation; and I trust you are, as well as myself, conscious that our proceedings had not the evil intention that our judges believe; but I have already seen too much ill-will on this side the water, not to suspect foul play on the other." Then he furnishes his correspondent with the means of avoiding the effect of any foul play that may be practised upon him, for he says—"On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by."

Now, gentlemen, do I put an unfair or an uncandid construction upon this letter, written by the defendant himself, when I say, that in suggesting to his successor, who was then commissary-general, that he had one general answer in his power, which was, that he "cannot remember points of business so long gone by," he means to suggest, that if your memory should furnish any thing to you which you think will bear hard upon me, instead of letting it out, plead that it has escaped your recollection? For with respect to those things, that Mr. Glassfurd really might not remember, surely it was not necessary for Mr. Jones to suggest to him that he had this general answer to give; for that is the answer Mr. Glassfurd must have given, where he actually forgot the transaction about which he was questioned. But if Mr. Jones knew that Mr.

Glassford must remember many facts that would bear hard upon him, and wished to persuade Mr. Glassford not to state those facts to the commissioners, when questioned upon them, is there any better advice that he could have given to him, than that which is contained in this sentence. "On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by:"—Suggesting to him a frailty of memory which he was afraid Mr. Glassford would not be sensible of himself.

Could this letter be written by a man, who was conscious of the rectitude of his own conduct? Could this letter be written by one who did not know that there lay within the knowledge of the person to whom he was writing, facts which, if disclosed, would be highly detrimental to the interest of him who was writing? Is it possible to reconcile this with any thing, but a consciousness, on the part of Mr. Jones, that Mr. Glassford was acquainted with so much of these transactions as would fix upon him (Mr. Jones) the guilt which I this day impute to him, if Mr. Glassford gave an honest and fair account of what lay within his knowledge? I wish not to press this beyond that construction which the expressions used by Mr. Jones fairly admit; I desire you to consider them with all liberality towards Mr. Jones; and if you can find any sense consistent with innocence, do so, and let it operate in his favor; but I confess, it appears to me to be impossible to reconcile this letter to a correspondent in the West Indies, with any thing but a consciousness that this person was acquainted with facts, the disclosure of which would be fatal to Mr. Jones's interest.

I think I have now stated all which, in the outset of this business, it is necessary to lay before you. The charge against Mr. Jones is this; that it was his duty to content himself with the five pounds a day, which by his commission was granted; that he had a particular and especial notice from the right honourable gentleman sitting by his lordship, that he was to content himself with that, and that if he received any further emoluments his offence would be visited with the utmost severity. That this information made an impression upon his mind, appears from the letter written by him to those whom it was his duty to control and to watch. I have stated that soon after his arrival in the West Indies, upon an application by Mr. Higgins to Mr. Rose, and by Mr. Rose to Mr. Jones, he entered into this contract which I detailed to you afterwards more at large: I have stated, that it appears upon the accounts of Mr. Higgins, and will be sworn to by him personally, that that contract for dividing the profits between him and Mr. Jones was carried into execution; that Mr. Jones actually had credit for that 153,273*l.* 17*s.* 10*d.* currency on account of one moiety of the profits; and that did not comprehend the whole; for there was the Ameri-

can adventure, and some other loose items outstanding, upon which there was a sum of money due to Mr. Jones, which was paid by Mr. Higgins to Mr. Jones's banker; which can be ascribed to nothing but that to which Higgins will, by his evidence, ascribe it. I have stated what the conduct of Mr. Jones was when these transactions were investigated; how he addressed a letter to his successor, which he supposed would never meet the public eye, desiring him to conceal as far as he could from the commissioners, any thing which might seem to bear hard upon him, Mr. Jones. This is the outline of the evidence: I have no doubt that the facts will be proved in the manner I have stated, and if they are proved, you will have no hesitation in saying that he is guilty of this offence.

EVIDENCE FOR THE CROWN.

The counsel for the Defendant admitted to have received notice from Mr. Litchfield to produce certain original papers.

[The following documents were read:]

His Majesty's warrant, dated September 1st, 1795, appointing Valentine Jones, esquire, to be superintendent and director of forage, provisions, necessaries, and extraordinaries of his majesty's forces then serving in the West Indies.

Another warrant from his majesty, of the same date, appointing Valentine Jones, esq. commissary-general of stores, provisions, and forage, to his majesty's forces in the West Indies.

[The following document was put in.]

Instructions, dated the 5th of October 1795, signed by three lords of the Treasury, to the defendant for the execution of his offices of commissary general of stores and provisions, and superintendent and director of forage, provisions, &c. of the army.

Mr. Dallas.—I do not know what authority there is for this.

Mr. Attorney General.—The commission to the lords of the Treasury authorizes them, or any three of them, to do an act; that which has been done, purporting to be by the authority of the lords of the Treasury, has always been received as evidence. Besides which, I do not care a farthing whether they have authority or not, for it comes out of the hand of the defendant himself, and he received this from persons who purport to be lords of the Treasury; and that carries the proof far enough.

Lord *Ellenborough*.—I want to know how the objection shapes itself. Is it to the authenticity of the paper, or to the effect of it?

Mr. Dallas.—The question is, what authority the commissioners of the Treasury have to give directions in a military matter.

Mr. *Garrow*.—His majesty's appointment.

Lord *Ellenborough*.—By whatever department of government he is appointed, he is instructed to obey the directions and instructions of the Treasury.

Mr. *Dallas*.—I am satisfied. It was our duty to make the objection.

Lord *Ellenborough*.—Certainly you are to watch the proof.

[The Instructions were read.]

The Right hon. *George Rose*, sworn.—
Examined by Mr. *Garrow*.

Have the goodness to look at that book, and see whether you directed a letter, of which that is the copy, to be sent to Mr. Valentine Jones?—I have no doubt of it.

After that letter had been directed to be sent to Mr. Jones, and before he proceeded to the West Indies, had you any personal communication with him?—I had.

State the substance of the communication you had with Mr. Jones?—At such a considerable distance of time, it will not be expected that I should recollect the particular words; but I did state to Mr. Jones, as I had occasion to do to other persons in his situation, that it was expected from him, in conformity with what was contained in the letter, that he would derive no advantage of any sort or kind beyond the pay stipulated in his two commissions and the usual allowances that were made to persons in his situation from the different departments, some official allowances known and fixed; it was also my constant habit in communicating with persons in his situation to state to them—

And therefore you conclude you stated to him?—Yes; that a considerable advance of pay was made to them beyond what had been given in former wars, in order to insure a punctual and faithful discharge of their duty. I think the War-office pay was double what it had been in former wars. I think thirty shillings had been the pay in the American war. It will be seen from the War-office that his official pay was 3*l.* a day. He had 2*l.* a day from the Treasury, and 3*l.* a day from the War-office, which was double (according to the best of my recollection) what it was in the American war; and by the War-office pay being doubled, his half-pay was doubled, for the half-pay is regulated by the pay he receives from the War-office. Instead therefore of receiving fifteen shillings a day half-pay, he was entitled to thirty shillings a day half-pay under the commission that has been read. This additional pay was stated to all the commissaries general that I had any intercourse with, in order to insure the strictest fidelity and punctuality on their part: the lords of the Treasury being aware of the importance of securing to the public the services of respectable men, in a part of the world where it had been found so difficult to check or correct abuses. I was in the habit also of stating—

And therefore do you conclude that you did to Mr. Jones?—I have no doubt I did, that as the reward was so considerably increased, any departure from the strict line of their duty would be the more inexcusable; and that if any delinquency should be found the utmost extent of punishment that the law would inflict would be sought for against them. I did endeavour to convey in the strongest language in which I could express myself that there should not be a particle of profit derived in any way or manner beyond the pay.

The Right Hon. *George Rose* cross-examined
by Mr. *Dallas*.

I believe those arrangements took place in 1795?—At the end of the year 1795.

Mr. Jones had been for many years before that time in the West Indies?—He had.

I believe you know that he had filled different public situations?—He had.

Among others, in 1793 he became commissary of the accounts to the army under sir Charles Grey?—He did.

And the manner in which he had conducted himself in those different situations had recommended him to those situations of trust?—Certainly.

He was one of those whom you believed to be a man of merit, as you stated him as such, and therefore selected him for his past conduct?—Certainly.

I believe at this time the establishment in the West Indies in point of military force was greater than ever it had been before?—It was certainly very large.

The duties therefore of the office of commissary general and superintendent of stores were very various, complicated, and extensive. Do you know that before Mr. Jones went out, he wished to decline going out on account of ill health?—It may be so; but I have no recollection of the circumstance.

[Extract of Mr. Rose's letter to the defendant read.—*Vide* Mr. Attorney General's opening speech.]

Mr. *William Smith*, sworn.—Examined by
Mr. *Garrow*.

You are a clerk I believe in the banking-house of Herries and company?—Yes.

Are you acquainted with the signature of Mr. Valentine Jones?—I am.

Do you believe that to be his signature?—I do.

[Letter to Michael Sutton, Esquire from Valentine Jones, dated the 12th of May, 1796, read.—*Vide* Mr. Attorney General's opening speech.]

Mr. *Garrow*.—Look at that letter (the letter from the defendant to Mr. Glassford): is that the hand-writing of the defendant?—It is.

Mr. *Garrow*.—We shall read it by and by. Look at that receipt, the 25th of February,

1800; is that Mr. Jones's hand-writing?—It is.

Mr. *Matthew Higgins*, sworn.—Examined by Mr. *Attorney General*.

In the year 1796 were you in the West Indies, carrying on the business of a merchant there?—I was.

Do you remember the time when brigadier general Knox had the command there?—I do.

Had you any contract with him for supplying such vessels as might be wanted on the part of government?—I had.

Did you know Mr. Hugh Rose?—I did.

Was he at that time in the West Indies?—He was.

What office did he fill there?—I understood that he was acting deputy-paymaster.

Do you remember when you first heard that Mr. Valentine Jones was coming out as commissary?—I do; it was in the year 1796.

Was that while your contract subsisted with brigadier general Knox for supplying the vessels?—It was.

Mr. *Park*.—If he was a contractor in hiring vessels that must be in writing.

Lord *Ellenborough*.—We are not now upon the terms of it. If we embark in any of the terms you shall have it, at present it is only a date and a period.

Mr. *Attorney General*.—You were, in fact, supplying vessels to brigadier general Knox?—I was.

In consequence of hearing that Mr. Valentine Jones was coming out as commissary general, did you suppose that your contract would be at an end on Mr. Jones's arrival?—I had reason to suppose so from what I had heard. I understood that it would be in the power of Mr. Jones to take the contract from me.

Mr. *Park*.—I submit that must depend upon the contract.

Lord *Ellenborough*.—It is not whether it would or not be taken from him, but whether he understood it would or not.

Mr. *Attorney General*.—Did you make any application to Mr. Rose?—I did; I told Mr. Rose.

Mr. *Dallas*.—What he told Mr. Rose I submit is not evidence.

Mr. *Attorney General*.—I mean to prove that in consequence of his making this application to Mr. Rose, a contract was entered into between Mr. Rose and Mr. Jones.

Lord *Ellenborough*.—If I send a message to a man, I can first show that I communicated that message to the messenger, and then the messenger can prove the delivery of it to the man to whom I sent it. That is all taken as inducement to something that will afterwards, it is presumed by the attorney-general's statement, be material.

Mr. *Attorney General*.—What did you desire Mr. Rose to do?—I told Mr. Rose that, as he was on terms of more intimacy with Mr. Jones than I was, I should be very much obliged to him if he would speak to Mr. Jones not to take the contract from me.

Mr. *Dallas*.—I am extremely sorry to object in this case, and I would not unless I felt it was my duty to do so. I cannot see upon what principle all this conversation between Mr. Higgins and Mr. Rose can be evidence against Mr. Jones. I perfectly understand the opening of the attorney-general; that in consequence of conversation of some sort, an application was afterwards made by Mr. Higgins to Mr. Jones, and therefore no doubt with respect to the conversation that took place between Higgins and Jones, that is evidence; but it will not follow that Higgins communicated to Jones the whole of the conversation between him and Rose.

Lord *Ellenborough*.—The uncommunicated part will have no influence. If I send a person a message, I prove the message I sent, then call the messenger to state what he communicated. But can you stop it *in limine*, or will you say, that that part which is communicated is evidence, and the rest is not?

Mr. *Dallas*.—They may go to the conversation with Mr. Jones at once.

Lord *Ellenborough*.—This witness, I suppose, afterwards had some communication with Mr. Jones, and then it will appear whether this message was communicated.

Mr. *Attorney General*.—He acts upon it. It would be a receipt for inverting the order of proof in all cases. It is the constant course of business, that we go through this which is not evidence in itself, but upon the faith that it will be brought home.

Lord *Ellenborough*.—Yes, that it fixes upon Jones the knowledge of what he communicated.

Mr. *Attorney General*.—You applied to Mr. Rose, whom you supposed better acquainted with Mr. Jones than you were, desiring him to make application to Mr. Jones that the contract might not be taken from you?—Yes.

In consequence of that, did you afterwards see Mr. Rose, and then Mr. Jones?—I saw Mr. Rose a considerable time afterwards. I went upon an expedition to Demerara that very day; this was at Barbadoes; Mr. Jones had not arrived at the time. I went to Demerara upon the expedition, and returned to St. Lucie.

When you got to St. Lucie were Mr. Jones and Mr. Rose there?—They were.

Did you see Mr. Rose, and afterwards Mr. Jones?—I did.

Did you, from any communication you afterwards had with Mr. Jones, learn from him that he had made any communication to Mr.

Rose?—Not from Mr. Jones. I afterwards repeated to Mr. Jones a conversation that had passed between Mr. Rose and me.

Was that the conversation that you had with Mr. Rose after your return to St. Lucie, and before you saw Mr. Jones?—It was.

What was that conversation?—Mr. Rose told me that he had arranged the business with Mr. Jones, or settled it for me; that I was to continue to have the contract. I told him I was very much obliged to him. He replied to me, and said, that he was obliged to make terms with Mr. Jones. I asked him what terms. He said that Mr. Jones must have a moiety of the emoluments arising from the contract, and the other moiety was to be divided between him (Mr. Rose) and myself. I told him I would have nothing to do with it, or that I would not agree with it. Mr. Rose said, I was very wrong; that I should think of it; that there were many people who were very ready to take it, and willing. Mr. Rose said, that the vessels might be discharged, for Mr. Jones had commenced purchasing vessels; that the intention, he thought, was, to buy vessels for government, and to navigate them, and let them be the property of government. I told him, I thought he would find that impossible.

You need not give the particulars of that conversation.—Mr. Rose used farther arguments, and said that sooner than I should not go on with the contract, I might keep his part of it, and retain the moiety to myself. I then told him that I should go on with it, but I would not accept his part of it.

That is, that you would give him his quarter of the profits?—Yes; and he, after that, stated to me, that for the loss I should sustain in giving up so much of the contract, that it would be made up to me in the supplies; that whatever supplies were wanting for the use of government, that I would be applied to for furnishing them. It was mentioned that the profit arising from the supplies was to be divided in the same manner with the profits arising out of the vessel contract.

This conversation passed on ship-board, I believe?—It did.

Did you afterwards see Mr. Jones?—Mr. Rose told me Mr. Jones was in the cabin, and desired me to go down to him, which I did. The conversation with Mr. Rose was upon the quarter-deck of the vessel. I went down to Mr. Jones, and I repeated the conversation that had passed between Mr. Rose and myself, as far as regarded the terms of the agreement, and my acquiescence.

Did or did not Mr. Jones assent to it?—He assented to it. Mr. Jones assented, as far as my memory goes, by an inclination of his head, rather than by any expression.

You stated to him the terms?—I did.

Lord *Ellenborough*.—Did you state them distinctly and audibly?—I did.

Mr. *Attorney General*.—After this time, did

you go on with the vessel contract, and were you employed to supply the government with what was wanted for the use of the stores?—I did; I went on with the vessel contract, and the supply of stores to a very considerable extent, for nine or ten months.

Can you state what your charges on those two accounts amounted to in foreign currency?—I cannot tell without seeing the books.

Look at this book—

Mr. *Dallas*.—Is that book your hand-writing?—It is not.

Mr. *Attorney General*.—Was this book kept with your knowledge?—It was; but with respect to accounts, Mr. Winter, who is here, can explain every part of it.

But did you ultimately settle your accounts with Mr. Jones upon the footing of that book?—I did.

I see there is, in the first page of that book, your general account with the commissary-general?—There is.

Mr. *Dallas*.—He says he did not keep it.

Lord *Ellenborough*.—Was that book produced at any meeting of Jones and you at settling accounts?—I do not think it was.

Mr. *Attorney General*.—I am asking him only to explain to us the nature of that book which he kept.

Lord *Ellenborough*.—This book may have different applications in evidence. Unless he had some communication with Jones about it, perhaps it may not be evidence upon that account; the question may be, whether he acted upon those books; a man may ask, is that your pocket-book? He says, "this book," which was shown him, "was kept with my knowledge, but Mr. Winter will explain the items of it; but I settled my account with Jones upon the footing of this book; I do not think this book was produced at any meeting between Jones and me."

Witness.—It is not in my power to swear to any thing in this book, because I left it entirely to Winter, the clerk, and his brother.

Lord *Ellenborough*.—Then for the veracity of the entries you refer yourself to Winter?—Yes, to Winter entirely.

Mr. *Attorney General*.—Is that entry, be it what it may, true or false? You will see there is credit given for 153,273*l.* 17*s.* 10*d.*; was that entry made in that book whilst it remained in the West Indies?—It was.

You saw it there in the West Indies?—I did.

At what period did you see it in the West Indies?—It might probably be in the month of March or April, 1797.

Was the preceding entry, which is "debit to Rose 94,158*l.* 13*s.*", there at the same time?—It was.

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Turn to page 44, there is a title "profit and loss?"—There is.

Were those entries made while the books were in the West Indies?—They were.

There is an account with Hugh Rose, page 16?—There is.

Mr. Dallas.—I really must object to reading all that is in this book; it is a book not kept by the witness.

Mr. Attorney General.—I am proving that these entries were made in the book while it was in the West Indies, in order that it may not be suggested that they are fabricated since.

Lord Ellenborough.—Can there be any objection to asking a witness, did you see such a thing in these books at such a time? you could not put three questions if these sort of objections were made. Is that your pocket-book? Yes, it is. What is that to me whether it is his pocket-book? The relevancy is not upon the first question, but upon the connection of the first with the second, and that with the third which connects the whole.

Mr. Dallas.—I have no objection to his stating that he saw the whole of that book in the West Indies.

Lord Ellenborough.—The present inquiry is merely whether he saw this book in the West Indies, with those entries in it.

Mr. Dallas.—I do not object to that.

Lord Ellenborough.—I will be as watchful as I can that no improper question shall be asked; but if these objections prevail I should be trying my first cause.

Mr. Dallas.—I stated it from the suggestion of my friends around me.

Lord Ellenborough.—If you think the objection is maintainable let it be argued. What is the objection to asking the witness whether he saw in the West Indies in March or April, 1797, a book containing those particular entries to which he has referred?

Mr. Dallas.—In that way the entries are made evidence.

Lord Ellenborough.—They are by no means made evidence. You cannot measure your course at once, but must go by steps. It is a step in the evidence they offer, that these entries were existing at a particular period; if a clear argument, I do not say a solid argument, but if a clear argument, can be offered to show that this is not admissible, let me hear it.

Mr. Attorney General.—When did you leave the West Indies?—In May, 1797.

You have no doubt you saw that book in the West Indies?—I have no doubt I did, at the latter end of April or the beginning of May, 1797.

Did you at any time come to a settlement

of accounts with Mr. Jones?—There was a settlement of accounts with Mr. Jones a little before I left the West Indies: from this book it must have been on the 31st of March.

Was the account settled upon the footing of that book?—It was, if you mean the profit and loss account?

I do.—Yes, it was.

Had he credit for his share of the profit and loss according to the agreement that you stated to have been entered into?

Lord Ellenborough.—The question is, with whom that settlement was.

Mr. Attorney General.—Did you personally see Mr. Jones?—I did see him.

When you saw him, did you come to any settlement with him of those accounts?—I stated to Mr. Jones what the amount of the profit and loss was.

Did you state to him the amount as it appears in that book?—I did.

What was it?—153,273*l.* 17*s.* 10*d.* currency or about 87,000*l.* sterling.

Was that the whole profit, or his moiety of it?—That was the whole profit that was due to him.

Then that was the half of the whole profit, was it not?—It was; there was a subsequent account; that was what was due by these books.

You stated it to him then, and settled it with him?—I did.

Personally? you were with him?—I cannot take upon me to say; there is an order given here for 94,000*l.*, and whether I received that order or Mr. Winter, I cannot say. When I came to this settlement, as here stated, he owed me 94,168*l.* 13*s.* currency more than his share of the profits came to.

He admitted that he owed you that, after taking credit for his moiety of the profits?—It was so, it appears from this book. I could not swear to it, but from what appears here.

Lord Ellenborough.—Independently of that book, do you recollect his stating that he owed you 94,000*l.*?—I do not recollect his stating it, but I stated it to him and he admitted it.

Mr. Attorney General.—I do not want to know whether the entries which constitute that account in that book are true or not, within your own knowledge, but whether you settled with Jones upon the footing of that book?—I did.

Had Mr. Jones, or not, credit for that sum as the moiety of his profits?—Mr. Jones, in finally settling with me, paid that sum short; he retained that sum in his hands, namely 153,000*l.* currency.

You stated that there were some parts of the transaction that were not comprised in this large settlement?—I did.

Had you any thing that went under the name of the American adventure?—I had.

Did that grow out of those concerns that

you had with government?—I rather apprehend it did. I had always been in the habit of considering it as a private adventure, and thought I had no right to render any account of it to Mr. Jones; that it was not within my agreement.

What led you to render any account of this to Mr. Jones?—At first, I thought it a private adventure; afterwards, on considering it, I thought that the agreement was too large; I considered it as optional with me, whether I rendered this account or not, for Mr. Jones never said a word to me upon it.

Did you in fact make him this allowance?—I did.

Did you direct any one acting under you, to make up an account of that American adventure?—I requested Mr. Nathaniel Winter to make up an account of that adventure.

Now, without asking you whether the account made up by Nathaniel Winter was correct or not, did you afterwards, upon the footing of that account, pay any sum to Jones? or did Nathaniel Winter by your order pay any sum to Mr. Jones?—He did; he paid a sum of 800*l.* and odd to him, but I am not very certain as to the sum.

Was that sum paid by you on account of the profits of the American adventure, including in it some other articles, perhaps, relating to the contracts?—I do not think it included anything relating to the contracts. I think it was a balance due upon the American adventure, which I had always considered as a private adventure; he never agreed with me directly or indirectly about it.

I have only one more question to ask you: had Mr. Jones any claim whatever upon you, except under that agreement which you stated to have been entered into between you and him on board the ship?—None in the world.

Was there any ground either for the allowance of 153,000*l.* odd, currency, or for the payment of 800*l.* odd, sterling, except that agreement?—None, whatever.

Mr. Matthew Higgins cross-examined by
Mr. Dallas.

Mr. Higgins, you had been for some years a merchant in the West Indies, before Mr. Jones arrived there as commissary-general?—I had.

In what island was your house of business?—At Demerara.

What was the firm of your house?—I established the house there under the firm of Mackalmut and Co.

Who were the partners in that house?—Mackalmut and myself.

You have told us, that before you had any meeting with Mr. Jones, before his appointment as commissary-general, you had a contract for supplying vessels, under general Knox?—I had.

Was any person concerned with you in the profits of that contract?—Mr. Rose was; he had a moiety of it.

Do you mean Mr. Rose who was in the situation, as you understood, of deputy-paymaster-general?—I do.

Had you any acquaintance with Mr. Jones before you saw him on board this ship?—I had.

But you conceived Mr. Rose to be more intimate with him than yourself?—I did.

In consequence of that, you had a conversation with Mr. Rose before Mr. Jones's arrival in the West Indies?—I had.

And then, I understand, the intended application to be made to Mr. Jones, arose on your part in an application to Mr. Rose?—It did, the proposition on my part not to take away the contract from me.

You have already stated that in that contract which was carried on under general Knox, Mr. Rose had one half of the profits; had any other person any allowance out of this contract?—After I had made the contract with general Knox, Mr. Rose asked me if general Knox derived any profit from that contract.

Was any person present at the conversation between Mr. Rose and you, in the first instance, except Mr. Rose?—No, not that I recollect.

Was any person present at the conversation in the cabin, of which you have spoken, between you and Mr. Jones, but Mr. Jones?—I think not.

You have told us that, besides having the contract for vessels continued, you were also to furnish the supplies?—I was.

What supplies do you mean?—There were supplies of every description; beef, pork, rum, flour, biscuit, and a vast number of things.

And were you the person by whom, generally speaking, the purchases of those different articles were made for the supply of public services?—I think so.

The bills of parcels were delivered in by you, I believe, to Mr. Jones?—In general they were.

Did you deliver in those bills of parcels in the name of the real seller or in fictitious names?—Very often in the name of the seller and very often otherwise.

Were not some of the names upon those bills of parcels, purporting to be the sellers names, the names of persons who were not the sellers?—Certainly.

The market price, I believe, was to be certified by those on the spot, having knowledge of it?—That was understood to be a thing necessary to be done.

Now, was the price so certified in those different bills of parcels, or were there fictitious bills of price?—They were by real persons, I never knew an instance of any fictitious person. I do not understand the question.

Did you ever apply, in any instance, to any person, to certify that the price was the market price of the day?—I do not recollect ever making such an application, but Mr. Winter, the clerk, made the applications.

Was that application made by your desire?—In some instances I think it must; but in general he got people to certify himself.

I think you have told me that those books were not produced upon any occasion to Mr. Jones?—It is not upon my recollection that they were. I think, but I cannot be positive, but it strikes me, that Mr. Jones did come into the office one day and look at the profit and loss account or some account; but I do not think Mr. Jones ever came there for the purpose of examining the books. I think he once came and looked at the accounts. I should be inclined to say it was at his account as commissary-general; it strikes me he did see them once, I fancy it arose from my having made an application for money, and he wished to see how his account as commissary-general stood.

Of course there was a constant running account between you and him as commissary-general?—There was.

He was debited by you for the supplies, and you were credited for the payments?—Yes.

There was, therefore, a constant running account between you and him?—Yes.

Look at that paper; is that your hand writing?—I think it is.

I think you told us that when you went down to the cabin in which Jones was, nobody being with him, that he was in bed?—I did not say so. I found him writing when I went down.

He said nothing, I think you said; but nodded his head?—I do not recollect any expression. There was some conversation. I spoke entirely to the agreement; upon my mentioning the subject, as far as my memory goes, Mr. Jones made no reply but rather seemed to nod his head.

At what time did you leave the West-Indies?—In May, 1797.

Do you mean to state that there was a settlement of accounts between Mr. Jones and you previous to that time?—I do; the settlement that is here stated in this book.

Before you left the West Indies, was there, during any meeting between you and Jones, a settlement of any account between you and him, you and Mr. Jones being together?—I took with me, as far as my recollection serves, a statement of the profit and loss in my pocket; and showed it to Mr. Jones.

Do you mean to state that positively?—It is impossible to state that positively at this distance of time; I speak as far as my recollection goes.

This was a settlement of accounts up to that time, before you left the West Indies was it?—It was.

Was any body present but Mr. Jones at this settlement?—I could not call that a settlement, it was an explanation rather.

At what period are you speaking of?—It might probably be ten or twelve days before the settlement took place.

Do you call that the period of explanation

or of settlement?—The period of explanation upon which a settlement afterwards took place.

I believe you had no interview with Mr. Jones after he came to this country?—I have seen Mr. Jones, but have had no connection with Mr. Jones these eight or nine years.

Not upon subjects of business?—No.

Mr. Matthew Higgins, re-examined by Mr. Attorney General.

You were asked by my learned friend, whether there was not a constant running account between you and Mr. Jones, in which he was debited for the supplies and credited with the payments; and you stated that there was: is that account which now lies before you the account which my learned friend has been asking you about?—That is the account I allude to; and this is the account Mr. Jones wanted to see.

But that is the account which subsisted between you?—It is.

This is the general account, page 1. I see by that, Jones is made debtor to you in 247,442l. 10s. 10d., you see that?—I do.

I see a part of that is struck off by an allowance of 153,273l. 17s. 10d. signed Matthew Higgins?—It is, being so much short paid me by Mr. Jones.

That is the half profits?—It is.

If you had had no agreement with Mr. Jones, should you have had to receive from Mr. Jones 153,273l. 17s. 10d. more than you actually had to receive?—I should certainly have had that 153,273l. 17s. 10d., if I had not been bound by promise; if I had demanded it of Mr. Jones, he must have paid it to me.

If you had not been obliged to pay him half the profits you would have been entitled to receive that sum more than you have received?—I should, if he had paid me the amount of the commissary-general's account. I should have had to receive 153,273l. 17s. 10d. more than I ever did receive.

And that sum was allowed him, on account of the half profits?—That sum he retained in his hands on that account.

And you received so much the less?—And I received so much the less.

Lord Ellenborough.—When you settled this account with him ultimately, did you settle it on the footing of the agreement that had been entered into in the cabin?—Certainly, on the agreement that had been entered into with Mr. Rose.

And ultimately settled with him in the cabin, in the manner you state?—Yes.

Have you any doubt whatever, that you, in stating what had passed between Rose and you, stated it so that it must have been completely intelligible?—I think it was intelligible.

Had you any doubt, from that time till the time of settling the account, that both you and he were proceeding upon the footing of that

agreement?—There was nothing on his part, because he never said any thing about it.

And at last you settled it upon the footing of that agreement?—I did.

Mr. Nathaniel Winter, sworn.—Examined by Mr. Attorney General.

You were in the West Indies, I believe, at the time Mr. Matthew Higgins, Mr. Hugh Rosa, and Mr. Jones were there; were you not?—I was.

Were you there at the time that Mr. Higgins had his contract for furnishing vessels?—I was there, when he had that contract.

Look at that book: you did not keep that book, I understand?—No; it is no writing of mine.

Did you see it from time to time?—Yes, I did.

You were in a house consisting of yourself, Tully Higgins, and Mr. Rose, who was a brother of Hugh Rose?—Exactly so.

Where were they carrying on business?—At St. Pierre's, Martinique.

Do you remember Mr. Jones calling on you at any time, to make any enquiry concerning Matthew Higgins's profits on the commercial account?—Mr. Higgins requested I would look at these books, and see what his profits were.

Had you, by desire of Mr. Higgins, informed yourself upon those books what his profits were?—I had.

Do you remember, after that, Mr. Jones at any time calling upon you?—I do.

Was this in 1797, just before Mr. Higgins came to this country?—I think it was.

When he came, what did he ask you for?—I gave him, by desire of Mr. Higgins, a statement of the profits from that book. It was made out, Mr. Higgins desired me to look at it, and, if Mr. Jones called, to give him an account of it.

Did Mr. Jones afterwards call?—He did.

Did you give him an account of what the profits were?—I did.

Was that in writing, or by word of mouth?—I think it was a statement of the profits in the different accounts in the book.

Mr. Attorney General.—We have given you notice to produce these.

Mr. Park.—We admit the notice to produce these, but we have no such papers.

Mr. Winter.—I do not know whether Mr. Jones took it away with him or not, but I produced it.

Mr. Attorney General.—Did you state to him what the amount of the profit and loss was?—I showed it to him.

And he saw it?—He saw it of course.

For what purpose he wanted it you do not know?—I do not.

What was the amount?

Mr. Mervyst.—He does not state that he

delivered it to the defendant; therefore, if it remained in the witness's possession he might produce it to show what it was.

Lord Ellenborough.—He made an extract from his book which he gave him; he says, "I do not know whether he took it away or not."

Mr. Attorney General.—If that paper remained with you is it lost? Is it with that book or any where where you should be likely to keep it?—No.

Lord Ellenborough.—Have you made such a search amongst your books lately, as that you might have found it if it had been there?—I think I should.

Mr. Attorney General.—You had an account made out upon a piece of paper of the profit and loss?—I had.

You produced it to Mr. Jones, he saw it; but whether he took it away, or left it with you, you cannot tell?—I do not exactly recollect.

But if it was left with you, you do not know what is become of it?—I do not.

Mr. Dallas.—We think that under these circumstances they should produce the paper.

Lord Ellenborough.—You describe it as a paper you made out from that book, for the purpose of delivering it to him: whether it is with him or not you cannot say?—I cannot.

But that it was with him, and he might have taken it, and you have no memory that he did not take it?—I have not.

Lord Ellenborough.—And it was made out for his use?—Yes.

Lord Ellenborough.—Then I should presume he took it away. We had a similar point upon a writ of error from the Common Pleas.

Mr. Attorney General.—What was the amount that was stated to him?—It was taken from the profit and loss account in this book.

Lord Ellenborough.—You have not seen the paper since?—I have not.

Lord Ellenborough.—And if it had been kept by you, you think you might have seen it since?—I think I should.

Lord Ellenborough.—As it was not a paper made for Mr. Higgins's use, but for Mr. Jones's, it would either be with you or Mr. Jones?—Yes, it was a copy of this profit and loss account.

Mr. Attorney General.—And the result of that is, that the profit and loss account would be 306,547l. 15s. 8d., the moiety of which would be 153,273l. 17s. 10d. currency. When did you come to this country?—In August, 1797; in May, 1797, I left the West Indies.

Do you remember, while Mr. Higgins was in this country, in 1800, being employed by him to make up the remnant of this account,

arising out of the American adventure?—I remember making out the account of the American adventure by Mr. Higgins's desire.

Was that with a view of ascertaining what the profit upon it was?—Certainly.

Did you make it out accordingly?—I made it out by the papers that were produced to me.

According to the papers that were produced to you, supposing Mr. Jones to be entitled to a moiety of the profits, what would that moiety amount to?

Mr. Park.—Should not we see those papers?

Lord Ellenborough.—If it is material to the question, whether the amount be justly or unjustly calculated, it is most material that you should have the papers; but if the precise amount is wholly immaterial, it is merely that he adjusted with reference to such an head of account; if there is any argument founded upon them with reference to the correctness of the account, every one of them must be produced.

Mr. Attorney-General.—I am willing to take them all right—all wrong, or part right and part wrong, just as they please.

Lord Ellenborough.—It is only a winding up of the account between the parties; he supposed he made it up correctly?—I do.

Mr. Attorney-General.—Supposing Mr. Jones was entitled to a moiety of the profits, how much in sterling money would be due to him?

Mr. Dallas.—The indictment states only the receipt of a certain sum in currency, which, at a certain rate of exchange, amounts to so much sterling: they are about to give evidence of the receipt of the different sums of money by a payment in London.

Mr. Attorney-General.—The gist and the gravamen of my charge against Mr. Jones is, that he colluded with Higgins and went shares with him in the profit. What he afterwards actually received is only aggravation; the precise sum is wholly immaterial: it is stated in the indictment under a *videlicet*, that in pursuance of the said corrupt agreement he received a large sum of money, to wit, so and so. In the next place, supposing that which is a decisive answer to my friend's objection, not to be so decisive; there are other counts in the indictment which do not state any sum whatever to have been received. My friend will ask me how can I proceed to prove that sums were received upon counts, which do not state that any thing was received? I prove it for this purpose; these counts do state that there was a corrupt agreement entered into, that he should receive a moiety, and I give the evidence that he did receive the moiety for the purpose of confirming that evidence which I have before given that he should receive the

moiety. Upon either of these grounds I submit that this is admissible evidence. The objection of my friend is, that though this goes to show a receipt of the moiety of the profits, it does not constitute a part of the sum precisely stated 153,273*l.* 17*s.* 10*d.*, and the answer is, that sum is stated under a *videlicet*, and therefore immaterial; and I might give in evidence any other sums; but even if that were not so, I give it in evidence under those counts that do not state the receipt of any money at all.

Mr. Dallas.—I do not conceive that my objection is removed by the answer given to it. I agree with Mr. Attorney-General that the sum stated in these different counts is under the *videlicet*, and I do not mean to contend that he is tied down to the proof of the receipt by the defendant of any such sum, for it would be enough to sustain either of these counts to prove that he received and kept a sum of money, and the amount of it would be immaterial.

Mr. Attorney General.—I ought to set myself right in one particular. I have stated, and it had been so stated to me, that there were counts in the indictment which do not state any sum to be received. It is true, there is a count which does not state a sum to be received. It states a sum demanded, but still they are all under a *videlicet*.

Lord Ellenborough.—Having given evidence to satisfy the sum of 153,000*l.* and a fraction, you cannot afterwards go on and enhance that, and make that allegation of 153,000*l.* extend beyond its amount; and therefore I could not let it in, I think, upon that.

Mr. Dallas.—I was about to state, in addition to what I have already said, that all the counts state a corrupt agreement, and the charge is the receipt of a certain sum under the agreement. It is perfectly clear, from all the evidence that has been given, that the transaction of the American adventure, has no reference to the corrupt agreement; because upon the testimony, we have heard from Higgins himself, he states that that was a payment entirely optional upon his part; and that he considered it as a private agreement; meaning thereby, something distinct from the agreement which forms the subject matter of this count. Therefore, it having been stated by the witness, that whether he paid it or not was a matter of option, of course it does not form any part of that which is charged as a corrupt agreement upon either of these counts, and, therefore, upon that ground, in addition to the other, I submit to your lordship that this evidence ought not to be received. The agreement applies merely to supplying vessels and stores.

Mr. Attorney General.—I will state correctly what the agreement was, as stated by the witness. What is proved is this, that he was to divide the profits.

Lord *Ellenborough*.—That Mr. Jones was to have a moiety of the emoluments arising from that contract. "I repeated the conversation;" then he states what the conversation was.

Mr. *Attorney General*.—Your lordship will find it was held out as an inducement to comply with the terms; that he was also to have the supply of the troops with provisions; that that supply of the troops with provisions was to be subject to the same terms; that Mr. Jones was to have a half, and Hugh Rose a fourth.

Lord *Ellenborough*.—"He said that for the loss I should sustain in giving up so much of the contract, it would be made up in the supplies; and that whatever supplies should be wanted for the use of the army, I should be applied to to furnish them; this was on board the ship." Whether this includes the matter that arose out of the bills—

Mr. *Attorney General*.—Your lordship will find afterwards the profits arising from the supplies were to be divided in the same manner.

Lord *Ellenborough*.—There is nothing which goes beyond the supplies of the contract for the vessels.

Mr. *Attorney General*.—Certainly. This was flour brought from America to supply the army with.

Lord *Ellenborough*.—We have not had detailed by him what the American adventure was. I do not find that he particularizes what it was.

Mr. *Topping*.—Higgins said it was perfectly optional; and Mr. Jones never spoke to him directly or indirectly upon the subject.

Lord *Ellenborough*.—It seems, by his evidence, as if it was paid by him under an idea that he might in fairness have resisted it; but still with reference to this agreement, it was the only foundation between them. I have great doubts in saying that this should not be received. I should like to see the other counts.

Mr. *Attorney General*.—I stated by mistake that there were some counts which did not state any receipt, or demand of money; all the counts do state either a receipt or demand of money, and they all state a large sum of money, 153,000*l*.

Lord *Ellenborough*.—But you may, under 153,000*l*., go for a less sum. You cannot use the same count upon which you recover, supposing that it were an action for 153,000*l*., and likewise add to it a farther sum; but you may, under the allegation of 153,000*l*., give evidence of that transaction, and you might, under the same allegation of 153,000*l*., give evidence of another sum.

Mr. *Marryat*.—I submit that would be making two offences under the same indictment. I submit a man cannot be indicted for two highway robberies, or two misdemeanors, under the same indictment.

Lord *Ellenborough*.—In cases of felony certainly not. But there is no pretence for that in misdemeanors. It never was, since Westminster-hall has been built. I suppose an objection that there were two misdemeanors contained in one indictment.

Mr. *Garrow*.—In capital cases the judge frequently says, select one of your felonies.

Lord *Ellenborough*.—You may make it evidence by showing that this connects itself with supplies; but at present it does not touch it.

Mr. *Richardson*.—There are other counts, which state that it arose from supplies as well as other mercantile transactions.

Mr. *Attorney General*.—Were any stores received from America under this American adventure?—When the provisions were received from America, they were entered in this book.

I ask whether the subject of the adventure was flour, and other things, coming from America, and afterwards supplied by Higgins to the troops?—Flour was a part of the articles.

Were there any other articles than flour?—Flour, beef, and pork were a part of the articles. I suppose that provisions came from America, and were delivered to Mr. Higgins.

Lord *Ellenborough*.—Were they delivered to him, and by him applied in the execution of his contract with the commissary?—I suppose so.

Mr. *Attorney General*.—Had he any other use to make of them than that?—I believe not.

And you were a good deal acquainted with his concerns?—I was.

Lord *Ellenborough*.—Was he a dealer in flour, beef, or pork for any other purpose than supplying his majesty's troops?—I believe he was not.

Mr. *Attorney General*.—Did you make out the balance upon that account to be the sum that you afterwards paid to Mr. Jones's banker?—The profits of that American adventure, from which were deducted several items that were omitted in these books, leaving a certain balance; and upon that there was a half of it, so much sterling money, that was to be paid by me, by order of Mr. Higgins, to Mr. Jones; it was all done under Mr. Higgins's direction.

Was that the receipt you obtained from the banker upon making that payment?—I paid the money into the bankers, and got up this receipt.

Lord *Ellenborough*.—I think we have it in proof that it was signed by the defendant.

Mr. *Attorney General*.—Yes.

Mr. *Nathaniel Winter* cross-examined by Mr. *Park*.

Of course, when you were paying that money into the bankers, you must have been in London. Did you ever see Mr. Jones upon the subject of that receipt?—I did not.

Did you ever see Mr. Jones?—I did not.

Mr. Jones was resident a considerable distance from London?—I believe he was resident at Bath.

Did you ever see him upon the subject of the account to which that receipt relates?—No, I did not.

The books that are now lying before you are not of your hand-writing?—They are not.

You were not a clerk of Mr. Higgins in the West Indies?—I was not.

Who was his clerk at the time those books appear to have been made?—William Winter, a brother of mine.

Were you resident in the same island with Mr. Higgins?—I was.

But you were a merchant?—I was.

Mr. Higgins was a general merchant in your house?—No, he was not; Tully Higgins was.

You purchased goods, however, in your house, to supply these contracts, did not you, which you supplied to Matthew Higgins?—Yes.

Of course you had a profit upon that?—We had a commission.

Did you not often insert in the accounts which were to be rendered to Mr. Jones false names, as persons selling you goods?—Not I.

And I dare say you knew nothing of it?—I knew there were accounts rendered of supplies from Mr. Higgins not in his name.

And in false names; you knew the fact?—I knew the fact.

That the accounts rendered from your house?—Not from my house, from Mr. Matthew Higgins.

Did you not apply to persons to put false names in the accounts which Mr. Matthew Higgins was to render to Mr. Jones?—Yes, I have applied to them.

And those false names were put into the accounts?—They were, at Mr. Higgins's request, for articles he had supplied; he requested they might be made out in some other names.

Those other persons not being the sellers of the goods?—Yes.

You told his lordship, some time ago, that by desire of Mr. Higgins, when Mr. Jones called upon you one day, you delivered him a statement of the profit and loss account?—Yes.

Was Mr. Higgins present at that time?—He was not.

Was there any other person present but yourself and Mr. Jones?—No other.

Whom are you living with now?—I am living in Fitzroy-street.

Do you reside at all with Mr. Higgins?—Mr. Higgins resides in Ireland, I believe.

Does Mr. Higgins now carry on any business?—Not that I know.

Are you his agent in England?—I do business for him.

You are his agent in England, his general residence being in Ireland?—Yes.

You spoke, a little while ago, about the American adventure: I ask you whether you do not know that that American adventure entirely consisted in a transaction respecting bills of exchange?—Bills of exchange formed one item of the debit side.

Do you, of your own knowledge, know any thing of the particular items that composed that American account?—Not of my own knowledge.

As you were not a clerk to Mr. Higgins in the West Indies, do you, of your own knowledge, know any thing of those accounts to which you have been referring, except as it has been told you by Mr. Higgins, or as you collected from that book?—My knowledge goes merely from the books.

The general memory you have about this supposed abstract of that account is, that it was left in your possession; you said you could not tell whether he took it away or not?—I cannot say positively.

You showed it him, probably, in the place where Mr. Matthew Higgins transacted his business, did you not?—I did not.

How came you in possession of Matthew Higgins's books?—At Mr. Higgins's particular request, he desired me to look at those books; they were kept by my brother, he desired me to look at this book, and see whether it was made out correctly from the books.

But you know nothing of the facts, except as you were told, or collected them from the books?—Certainly.

How long did you remain in the West Indies, after the time that you showed the account to Mr. Jones?—It could not be a couple of months, if so long, after that transaction.

Did you ever draw out any general accounts for the use of Mr. Jones from those books or statement of the accounts between him and Higgins?—I did, which account of course was rendered to Mr. Jones.

Will you take upon you to swear, of your own certain knowledge, that any account was made out from that book which Mr. Jones ever saw?—I certainly, to the best of my recollection, did render Mr. Jones an account from this very book up to the last March, in the West Indies.

Is it only from that book that you draw that conclusion? or will you take upon you to swear from your memory, that any such account was rendered?—To the best of my knowledge an account from this book was rendered to Mr. Jones.

Lord *Ellenborough*.—Have you any doubt about the fact?—I have not.

Mr. *Park*.—That is a Ledger as I understand?—It is.

What is become of the Journal?—That I know nothing about.

You never saw a Journal?—Yes, I did.

When did you last see it?—The last time I saw it, it was in possession of some of the auditors of accounts in England.

When did you last see that book lying before you, before you saw it now in Court?—I saw it a few days ago.

You left it, of course, in the West Indies I take for granted?—No, I believe Mr. Higgins brought it with him, I was not in possession of the book.

Then whatever books and papers which you had of that profit and loss account, you had delivered back to Mr. Higgins?—Yes, the very day I believe; that day or the next.

At the time when you say you showed the paper, and which you cannot recollect whether Mr. Jones took away or not; had you the journal with you then, as well as the ledger?—I had.

Did you deliver the journal as well as the ledger to Mr. Higgins?—I did.

You say that you cannot recollect whether you delivered the paper over into the possession of Mr. Jones or not. If it was left by Mr. Jones with you, of course you would deliver it back to Mr. Higgins with the books?—I do not know.

If Mr. Jones had left the paper in your custody, would you not have delivered that paper back when you were delivering back the journal and the ledger?—I think I should.

Can you now take upon yourself to say whether Mr. Jones did or did not take away the paper from you?—If I was obliged to say one way or the other, I should rather say that he took it.

Are you so assured of that fact that you will take upon yourself to swear ye or no, that he did?—I will not take upon me to say that. If it had been left with these books it is most likely I should see it afterwards; and I do not recollect seeing it afterwards.

Mr. *Nathaniel Winter*, re-examined by
Mr. *Attorney General*.

You were asked whether, from your own knowledge, you could say, that this American adventure consisted in beef and pork, salt provisions, and flour that were sent from America to the West Indies. Now I do not ask you that question, but whether it appeared to be so from the books out of which you made out the account?—There was no book from which I made out that account.

But the papers?—The papers.

Then you made it out as consisting of those articles?

Mr. *Park*.—I object to this. The question here is most material, because, in order to bring the American adventure at all within the
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purview of this indictment, it is necessary to show that it constituted a part of the original corrupt agreement respecting provisions. They can only fix that adventure upon this footing, namely, that it did consist of articles of provisions, the witness having said that he knew nothing whether it did consist of articles of provision, but from papers of which we have no possession, upon which we can form no judgment, nor your lordship nor the jury; he is to say, upon the recollection of some papers he had before seen, that it did consist of those articles. You drew that American account out in England from papers?—Yes.

Mr. *Attorney General*.—Was that account made out, be it right or wrong, upon the foundation of flour and other things sent from America to the West Indies?

Lord *Ellenborough*.—Did you know any thing of the materials of which that account was formed, but from the written papers that were put into your hand?—Only from the written papers.

Mr. *Attorney General*.—Do you know of cargoes of flour and provisions coming from America, from time to time to Mr. Higgins?—I do.

Had Higgins a house in America?—He had not that I know of.

The house they came from was the house of Bennett and Carey, was it not?—It was.

Did provisions of this description come to a considerable amount from America to Higgins?—There did.

You told me before, that you knew of no use that he made of such articles except for the supply of the commissary?—I did; I beg pardon; I believe there was some of the American provisions sent after the supply to the commissariat was over.

Do you know that some were supplied to the commissariat?—I do.

Lord *Ellenborough*.—It is open to you to shew that there was some other supply. He has come back to what he said before. That is only a general answer that he knew nothing of the goods. It appears he had a general knowledge of the articles of provision which were furnished to the commissariat, and he knows of no other use to which they were applied. I am afraid I have given too much encouragement to this; there is a very proper anxiety to have every thing brought forward which can be of service, but there can be no doubt upon this.

Mr. *Park*.—Will your lordship put this question for me?

Mr. *Attorney General*.—I have not done yet. You have been asked whether your house of Winter and others were not accustomed to send in these provisions in false names, and whether, at Mr. Higgins's request, you did not apply to persons to put false names

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to accounts which Mr. Higgins was to render to Mr. Jones, and you say you have?—Yes.

Was Mr. Higgins accustomed to render an account of provisions under names other than his own?—Yes he was.

Was he accustomed to render accounts of provisions to the commissary which he furnished himself, as if they had been furnished by others?—I think he did.

You say your house purchased a great number of provisions for Mr. Higgins?—Yes.

And Mr. Higgins rendered them again to the commissary?—Yes.

I take for granted your house, then: were you the brother of William Winter, who was Mr. Higgins's clerk?—Yes.

Mr. Rose was the brother of Hugh Rose?—Yes.

And Mr. Higgins was the brother of Tully Higgins?—Yes.

I take for granted you had some feeling in the business?—We drew a commission of five per cent upon the supplies for purchasing them.

You put on first a commission of five per cent on what you gave for them?—Yes.

How much did Mr. Higgins put on upon that afterwards?—That I do not know.

You had only five per cent?—No.

You would have been glad to have done that business for government yourself at five per cent, would not you?—That I do not know.

Would not you have done it for government as you would for any body else at five per cent?—I dare say I should.

Mr. Park.—Now my lord I will trouble you to put a question, whether he knows any thing, of his own personal knowledge, about these provisions coming from America, but as Matthew Higgins has told him.

Lord Ellenborough.—Do you know any thing of any provisions coming from America, but merely from what Matthew Higgins has told you?—Yes, I know the fact.

Mr. Park.—Or from seeing papers.

Lord Ellenborough.—He says he knew the fact. A man in the habit of seeing cargoes arrive, cannot fail to have known it. As you would have done the business at five per cent, all which is charged as profit, ultra that five per cent might have been saved to government, if you had been employed without the intervention of others?—I cannot say what I might have done.

Is there any thing odious in the money of government, that you would not have taken their money as soon as that of any other persons?—No, certainly not.

[The following receipt was read:]

“Received February 25th, 1800, of Matthew Higgins, Esquire, by the hands of Nathaniel Winter, Esquire, Eight hundred and twenty nine pounds, five shillings and eight pence, in full of accounts between said Matthew Higgins and
£.829 5s. 8d. VALENTINE JONES.”

Mr. Garrow.—We will now read the letter to Mr. Glassford that is mentioned in your lordship's paper, No. 6; it is proved by Mr. Smith.

[The letter was read as follows.]

“Bath, December 3rd, 1802.

“Dear Sir;—The commissioners having sailed three weeks since, will, of course, arrive long before this letter, although in a merchant ship; but unless their secretary, who went before, has applied to you on any matter concerning my accounts, I think you will have time enough to make out any thing that may be necessary before the commission proceeds upon much business. I do not, indeed, imagine, that any thing material can be expected of you, relative to my business of my cash expenditure, of which I made up all vouchers on my departure, now in their possession, but as the provision and store accounts came in a different degree under your inspection, you may be of service to them in clearing up any question of doubt or misconception. However, I should very much wish that in such cases you would be very circumspect, and not give any answer relating to me on my general business, without the requisite time for reflection, and recollection. As I am well assured of the subsequent concern it would give you, to be betrayed, by designing queries, into an hasty or incautious statement of any facts, which more deliberate information would put in a different view.

“As I have never known what entries you have made in any of your accounts sent home, for which credit was to pass to me on those matters which you settled after I left you, I could wish you to state them to the commissioners, such as the receipts of sales at St. Pierre. What Phillips was to account for from Barbadoes, some provisions at St. Kitt's, &c. &c. &c. and particularly the different parcels of rum which you got from Montserrat, Tobago, Fort Royal, &c. which it will be very material for me to get credit for, and it would be also doing me a service if you could ascertain the rum that was shipped with the Carriabs, for Ratan, and for which I have unfortunately no voucher.

“Had Thomas Smith been disposed, he might have accomplished it for me by obtaining the voucher from the agent of transports, but I cannot conceive how you omitted to obtain it originally.

“With respect to my provision accounts, generally, I have no doubt, but many questions will be put to you, but for heaven's sake dont be unmodelling them again, as they cost me more pains and trouble, than I ever had in any business in my life, and they would desire no better than to perplex me more. If you can make them better, or you can supply any deficiencies that I

may seem to have made, I shall be obliged, but do not make any observations on my general abstract, being of different form from any state of yours, nor would I wish it to be known that I had written to you about it, not that I should fear fair and candid investigation, and I trust you are, as well as myself, conscious that our proceedings had not the evil intention our judges believe, but I have already seen too much ill will on this side the water, not to suspect foul play on the other.

"On the whole you have one general answer in your power, which is that you cannot remember points of business so long gone by.

"The most extraordinary conduct I have met with, is on the part of your brother, whose answers to the different examinations he underwent, I have learnt with astonishment and disgust.—I hope you will forgive my expressing myself so strongly, but he has really exceeded the bounds of truth and common justice, to a man under whom he experienced no injuries himself, and whom he has manifestly wished to injure in order to comply with the designs of those who are making a tool and handle of him.

"If ever you get a sight of the answers you will acknowledge that D. G. has even gone beyond the matter on which he was interrogated, to convey insinuations of improper precedence with regard to rum supplied at St. Kitt's, trying to involve in censure and suspicion, not only me, but Somersall, Mc Lacklane, White, and others, too: probably also, what was intended to injure me, may ultimately tend to affect you, but he has not attended to any consequences even to himself.

"I shall consider it a favour if you will give me a line by every good opportunity, telling me what the commissioners are doing, and on what points of business they are engaged, with your own general observations, and opinions of the process which will be gratefully acknowledged by

"Dear sir,

"Your very sincere and obedient servant,

"VALENTINE JONES."

Mr. Attorney General.—That is my case my lord.

DEFENCE.

Mr. Dallas.—[afterwards Lord Chief Justice of the Common Pleas.] May it please your lordship; Gentlemen of the jury; The case upon the part of the crown has at last arrived at its conclusion, and it now becomes my duty to address you on behalf of the defendant. And for reasons that will presently appear, without any preliminary observation of any sort whatever, I shall proceed immediately to draw your attention to the question that you have to try; all the altercation that has taken place, which was more than ode could have

wished, but which has been unavoidably necessary, has left this case perhaps at last involved in some degree of perplexity and confusion.

With a view, therefore, to your clearly understanding what is the case that you have to investigate, I shall begin by requesting your attention to the particular charge. The question which you have to try, is, simply and singly, this, whether or not the defendant, Mr. Jones, has been guilty of participation in profits, with Mr. Higgins, the witness, who has been this day produced on the part of the crown, in violation of the duties of his station, and in breach of the trust reposed in him. That is the only question you have to try: and I must take the liberty of reminding you that nothing turns upon the magnitude of the sum, for, supposing the fact to be established by proof; and when proved, to constitute in point of law an offence; whether the sum was large or small, makes no difference whatever in the essence of the crime. So that, after all, the single question for your enquiry will be, whether or not this participation of profits has taken place.

I stated that I would begin by reminding you of the real nature of the charge, without any preliminary observation: and I did it for this reason, because my learned friend the attorney-general, in the exercise of his justice and humanity, seeing the very singular predicament in which this unfortunate gentleman is now placed, felt it to be his duty, on the part of the crown, to caution you against acting under the influence of any prejudices which you might have imbibed from charges made elsewhere.

Whatever adverse changes and revolutions may have happened around us, at least, hitherto, the administration of public justice has here been preserved, pure and perfect; and every man in this country, from the highest to the lowest, under whatever circumstances of accusation he might have stood, had, at least, I will not say the chance, but in almost every instance the certainty, of a fair and impartial trial. The public feeling itself led to it; all the provisions of the law tended to secure it; and it was enough to say of any man that he was under accusation, to put him (if I may so express myself) for a time under public protection. I am not disposed, upon occasions of this sort, to complain upon slight grounds; for I hope there is no man who from principle is more a friend than I am to a fair and even free examination of the conduct of those who are placed in any public situation, of whatever description: it is the condition upon which they accept their trust: the public have an interest in every part of their conduct; and the public have unquestionably a right to examine what that conduct has been. But still, in point of justice and of humanity, this must have some reference to times and seasons; and to circulate upon the eve of a trial of this sort, upon which a most respectable individual

has at stake all which can be dear and valuable to him, and to his family in this world, charges of the description which the attorney-general has stated for the purpose of raising a degree of prejudice, which I do not remember to have been equalled in this country, when the party accused has no opportunity of rebutting such charges, is to poison the very source and fountain of public justice, and to destroy that security upon which we all depend for the protection of our property, our liberty, our lives and our honour.

I do not mean to complain of it, but I think it was but a faint and feeble caution, which my learned friend the attorney-general gave you upon this point. After what every one of you must have read in every public newspaper for some days past, circulating into every part of the kingdom, and falling into the hands of all — after the atrocious charges which have been made against this gentleman, in common with others, I should think myself guilty of a desertion of the duty I owe to him, and of a dereliction of that defence which in part he has committed to me, if I did not on his behalf assert, as I am instructed to do, that all the material charges which have been brought against his past conduct, are founded on the grossest misrepresentation, and in many instances on gross misconception. He trusts that the day will arrive when he shall be able, as to those charges, fully to justify his conduct to the public; at present I admit it is not competent to me to go into the detail of them, and therefore I stop here; but I state it for the purpose of earnestly requesting that you will dismiss from your consideration all that you may have heard, and all that you may have read, confining your attention to the single question, whether he has been guilty of a participation of profit with the witness who has this day been produced before you.

The charge against this gentleman is, a breach of public trust. I am sure you cannot have forgotten the account that has been given of him, by the very respectable witness who was called upon the part of the crown, in the beginning of this inquiry. By the evidence of Mr. Rose, you have been informed that Mr. Jones had, for a considerable number of years before his most unfortunate and unhappy connexion with the witness, Mr. Higgins, been placed in different situations of public trust in the West Indian Islands; in all of which, he had conducted himself with unblemished integrity and honour, and had distinguished himself by so faithful a discharge of all the duties incident to those different situations, that upon the ground of his personal merit only, tried and approved in a long course of public service, his appointment to the office of commissary-general took place. I cannot avoid pointing this out to your attention, with a considerable degree of feeling for the situation of this unfortunate gentleman; for, whatever may be the result of this day's inquiry, there is no man in this country deserving the

name of Briton, who would not deeply deplore, that a man, thus distinguished throughout his early life, should be devoted to ruin on the testimony of such a person as Mr. Higgins, speaking of him only according to the odious picture which he has given of himself in this court on the present occasion.

In the year 1793, Mr. Jones accepted of two appointments, those of commissary-general, and superintendant of the stores; you have also heard from Mr. Rose, that this was a period of time when our military establishments in the different West Indian Islands, were greater than they ever had been before; in fact, our troops amounted to no less a number than 30,000 men. The situation, therefore, in which this gentleman was placed, was one of most extensive public trust; it comprehended the supplies for the army of every possible description, and not merely upon a particular spot where he himself might be personally present, but he was, with a superintending eye, to provide for every department of the public service, in all the islands in the West Indies, which were subject to the dominion of the crown of Great Britain. And, by the instructions which have been produced and read on the part of the crown, it appears that it was part of his duty to go, from time to time, to the different islands, to ascertain in each, what supplies were wanted for the service of the public. The reason why I point out this fact for your observation is, that in the course of a service of such unexampled extent, it was utterly impossible that this gentleman could conduct the details of it, without the intervention of subordinate agents; it became, therefore, necessary, in a season of all others the most important, in a state of war, and while different expeditions were on foot, to commit the execution of the subordinate parts of the public service to those different agents whom he was under the necessity of employing; and of this description was the witness, Mr. Higgins, who has this day appeared before you.

With respect to Mr. Higgins, you find that, for some time before the appointment in question took place, he had carried on business as a merchant in the West Indies; and it is in evidence, that long before the appointment of Mr. Jones, he had entered into a contract with general Knox, who had the command in one of the West India Islands; and, that Mr. Jones found Mr. Higgins in the execution of this contract. I would just remind you as I proceed, that it is proved, on the part of the crown, by the testimony of the witness on whom they rely (what credit is due to his story will be matter of subsequent consideration), that this proposal, if it ever took place—a point I shall presently examine, did not originate in the mind of Mr. Jones; but you have it distinctly avowed, by Mr. Higgins himself, that the intention of applying to Mr. Jones to continue his contract, originated in the mind of himself, Mr. Higgins, before Mr. Jones had

arrived in the West Indies. Now, when I pointed out what had been the previous situation of Mr. Jones, and what his conduct in that situation, that it had been uniformly exemplary and honourable, and such as to draw upon him the approbation of his superiors, and lead to the appointment in question, it was not for the purpose of suggesting to you that a long course of honourable conduct could constitute an answer to the proof of criminality; but when this is a question of fact, depending upon the evidence of the witness produced this day on the part of the crown, and when you contrast his conduct, according to his own testimony, with that of Mr. Jones, I am perfectly certain, that if the question should at last hang in any degree of doubt, against the testimony of a witness, according to his own profession, up to the chin in guilt, you will believe, that it is not probable, that in a single moment a person, who during his past life, had conducted himself in the way Mr. Jones had, would enter into that corrupt agreement.

With respect to the charge itself, my friend did me no more than justice in supposing that I should not, for a single moment, contend, that if a man accepts a public situation, the nature of which is, that his conduct shall operate as a check upon others, it is not a breach of the duty incident to that situation, that he should participate in profits with those whom it is his duty to control. We do not, therefore, (although I am always extremely glad to hear the right hon. gentleman*), want even from his high authority, that advice which was given to Mr. Jones on his entering into office; for the nature of the office would teach Mr. Jones, independent of the positive written instructions he received, but much more under those instructions, that he would misconduct himself by a participation of profits: and, I should be ashamed of myself, if I could follow any other course than that which my learned friend has pointed out for me, in admitting at once, that, if the facts which have been sworn to this day are to be taken as proved against Mr. Jones, they do undoubtedly amount to that offence which is charged upon the face of this indictment; that is, a violation of the duty incident to his situation by a participation of profits unjustly and unlawfully made. With respect, therefore, to the law of the case, I begin by distinctly stating, that there can be no disagreement between the attorney-general and myself. And having so stated the case, you will at once perceive, that this resolves itself into a mere question of fact; is, or is not, the charge made out upon the evidence you have this day heard?

His lordship will give me leave to draw his attention and yours, to the particular manner in which this charge is framed. It is not a charge against the defendant—after these West India concerns have been so long (in the language of the attorney-general) in every one's

* Mr. Rose.

mouth; after so many inquiries have taken place, first by the West India commissioners, and afterwards by the commissioners of military inquiry—of having delivered in a deficient quantity or of having made out a false voucher; for whatever may have been the conduct of others in that respect, they will stand distinguished from Mr. Jones; for, after all the inquiry which his conduct has undergone, after all the research to which it has been subjected by the keenest penetration on those successive inquiries, it ends in this, that he has entered into a participation of profits with a person who has sworn to such an agreement having taken place. It is not like any of those cases which have, some at more distant times and some more recently,* been before the Court, of having knowingly delivered in fictitious vouchers, in which the quantity was stated at more than it really was, or articles were stated at a price which they ought not to bear; but it depends upon a participation in profits with the contractor. I do not mean to deny (and I have admitted to the attorney-general) that, in point of law, supposing this to have taken place, it would have been a breach of public duty, I do admit it would have been so, on the implied ground of duty, independent of any condition for that purpose; but when the charge assumes the shape of an accusation of fraud, when this is stated to have been done with an intention to defraud the crown, it becomes a matter of very different consideration whether, upon the face of the indictment itself, the profits alleged to have been shared were undue and exorbitant profits, or are merely stated to have been large profits, which is consistent with those profits, which a merchant may honestly make. And, therefore, I think it necessary to point out to you that it is not averred on the face of this indictment, that the profits Mr. Jones is alleged to have participated with Mr. Higgins, were undue and exorbitant profits made by Mr. Higgins, but merely those profits which a merchant may make. For if they had meant to bring forward a charge of fraud, and a participation of profits beyond what ought to have been made, they should, by the indictment, have drawn our notice to a charge of that description; and then, we should have entered into a calculation whether or not these profits were such as a merchant might fairly make. For the attorney-general will give me leave to say, that on a criminal inquiry like this, much as we should respect his assertion on any other occasion, the fate of a man and of those connected with him, is not to be disposed of by saying that he had attempted to make a calculation, comparing the extent of profits with the extent of charge, to show they were excessive. My argument is, that if they had intended to put their case upon any such footing, they should, upon the face of the indictment have alleged them to be exorbitant,

* See the preceding case.

which they have not done, and therefore, it amounts to no more than a participation of profits, which must be taken to be such profits as a merchant might lawfully make. Therefore, though I do not mean to contend that the sharing in such profits was not a breach of public duty, still it would have been a very different case if Mr. Higgins had been permitted to charge beyond a fair mercantile profit to enable Mr. Jones to share in the excess; because, undoubtedly, though in point of law it is not to be justified, in point of practice, we know, it has happened, that men who have meant to do honestly and fairly, have become interested with those who have provided the supplies for the public service, upon a feeling, however false, and upon a footing not to be justified, but believing that if they merely shared in the fair profits, they committed no offence; and I point out this to show that the charge, as it stands, is stripped of every other imputation of fraud, and resolves itself into a mere breach of public duty, the having become a sharer with Mr. Higgins in these profits, taking it that the profits themselves were reasonably and properly made.

Having stated this, it becomes necessary upon this most important occasion to the individual who is now upon his trial before you, that I should state a principle of law upon which the attorney-general and myself are not likely to differ. It is one which you must never lose sight of in the progress of the present inquiry: that the evidence by which the fact which constitutes the criminal charge, is to be established, is as much a matter of law (that is subject to legal rules) as it is matter of fact that the fact itself, when established, shall amount to legal guilt. And therefore, the question will be, upon the consideration of this case, whether it be possible for you, consistently with the first principles of evidence to convict this gentleman upon the evidence which you have this day heard.

I will explain somewhat more distinctly what it is that I mean to maintain upon this part of the case. I will suppose, for the purpose of illustration, that, instead of this being a charge of fraud merely against the defendant, it had been a charge of the highest possible description, a charge of high treason—of a conspiracy to take away the king's life; and I will suppose, farther, that it had happened, by accident, that my learned friend who sits by me, instead of being as the first law officer of the crown employed to conduct that prosecution, had been called in court as a witness to prove it; why, gentlemen, after the attorney-general had sworn to all the facts within his knowledge, in the way Mr. Higgins has pretended to do this day, if that had not been followed up by the testimony of another witness, the defendant must have been immediately acquitted; and yet is there any man living who would believe that the attorney-general, as honourable a man as ever lived, would on his honour make an assertion not of the strictest veracity? is there any man who would believe

that he would come into court to convict a man falsely? When the attorney-general had retired from the court under these circumstances, there is no doubt that every man would believe every circumstance which the attorney-general had related: but yet, under such circumstances you could not convict the defendant, because the rule of law is peremptory; it requires a certain degree of proof which must be given to warrant a conviction; it requires that to every overt act of treason two witnesses shall be called, and, therefore, though it might be proved by the attorney-general as a witness on the floor of the court, though every one of you should believe every word of what the attorney-general had stated upon his oath, still you would be bound to say that the prisoner was not guilty.

Now, gentlemen, what is the use I wish to make of this observation? I trust no man will be so absurd as to suppose that I mean to insinuate, that because the law has required in a case of a certain description that there shall be two witnesses to convict in that case, therefore there must be two witnesses to convict in this case also: I do not mean to make any such absurd observation; but the way in which I apply it is this, that cases of this sort do not depend upon the credibility of the witness or the probability of the story told; for, however credible it may be, still if a witness stands forward in a character under which the law says, unless confirmed he shall not have credit, even if the jury believe the story he tells to be true, still they cannot convict upon his testimony. And I state this to meet an observation made by my learned friend in the course of his address, "What," says he, "can it be supposed that Mr. Higgins would accuse Mr. Jones, if Mr. Jones was not guilty? the fact of which he accuses him, is the participation of profit with himself; and if he did not accuse him he would not himself appear guilty, and would want no protection." But the fallacy of that observation is, that it makes it a question, on each occasion, whether the story ought to be believed; instead of putting it upon the rule of law; where a man is proved to be an accomplice, unless he is confirmed he cannot be believed; and, therefore, I state that, if this were a subject on which you were left to form your own opinion out of court, and were not sitting in the seat of justice—even if under such circumstances you should be of opinion that the story told by Mr. Higgins commanded your private belief, yet I state (subject to the direction you will hereafter receive from the noble and learned lord), if Mr. Higgins stands in the situation of an accomplice unconfirmed, it is utterly impossible, that, on his testimony, Mr. Jones can be convicted upon the present occasion.

Having given this answer to the observations of the attorney-general, I shall now proceed to examine (independently of the rule of law as it applies to the testimony of an accomplice) under what circumstances Mr. Higgins appears before you. The story told by this gentleman

is, that upon a proposal which, in some degree at least originated with himself, he had in the year 1795 a confidential communication with a gentleman of the name of Rose, and through him with Mr. Jones. I am now taking it up upon the footing of the representation made by Mr. Higgins himself; and I need not tell you that I am not now intending to vindicate the conduct of any of the parties, supposing the transaction represented to have taken place; but I am trying the degree of credit due to Mr. Higgins. And I ask you, as men, as gentlemen, as men of honour, what degree of credit would you give to any man who, having entered into an agreement of this sort, and under that agreement having derived advantages to the extent Mr. Higgins had, should afterwards, without the compulsion of the law, come into a court of justice for the purpose of accusing and betraying the man who, upon his own representation and by his inducement, had entered into this confidential transaction with him?

We are not now assembled in a court of honour; and I do not mean to say, that because a man is guilty of that which, upon the face of his own testimony, is a scandalous violation of his own honour, he cannot be listened to in a court of justice: but the question is, whether the fate of a person of the description and character of Mr. Jones shall be decided, and his comfort be for ever destroyed upon the testimony of a witness such as Mr. Higgins. The account Mr. Higgins gives is, that he comes forward voluntarily, not merely to confess his own turpitude, not from feelings of repentance, not under the influence of remorse, for there is no man such a driveller as not to perceive that the object this gentleman had in view in disclosing a transaction of this sort, was, that no prosecution on the part of the crown should be instituted against him. My learned friend, the attorney-general has presented to you this most extraordinary circumstance. After having discovered a gentleman of the name of Rose, who could have confirmed the testimony of Mr. Higgins as to the agreement in the first instance, after having subpoenaed him, after having been challenged to call him into court by a note which the attorney-general had received in the course of his speech telling him Mr. Rose was present, my learned friend does not think fit to call Mr. Rose, and he concludes his case without producing him on the part of the crown.

Now, here again the attorney-general is doing me the honour, to take a note of what I say; and, therefore, it may be necessary that I should explain myself more distinctly. I urge the observation to this extent, and to this extent only, that there is not, on the part of Mr. Higgins, this excuse, that he was compelled to make the disclosure; for he stands in the same situation as Mr. Rose, and if Mr. Rose could not be compelled to make the disclosure (which was the reason, the attorney-general gives, for not calling him), neither could Mr.

Higgins. What then can be said of a man, who, not being bound to make the disclosure, from reasons of personal convenience comes to accuse a man who, according to his statement, had this dealing which, from the nature of it was confidential, and that I am sure every man must acknowledge increases the turpitude of the man who makes the declaration. It is to that extent, and that only, that I urge this accusation. If Mr. Rose could not be compelled to disclose what took place between him and Mr. Jones, neither could Mr. Higgins; and therefore Mr. Higgins comes forward to give (for some reason of which you will judge) the testimony he has this day given before you.

But is or is not Mr. Higgins an accomplice? for on this part of the case that is the only question for your consideration. What is the account he gives of himself? he not only enters into this agreement; he not only is the person who goes into the cabin and mentions the circumstance to Mr. Jones, but he is the man who conducts the whole detail of the business, and who (according to his own account) being bound to provide these supplies to the amount of nearly one million of the public money, does, sometimes by himself and sometimes by his clerk, Mr. Winter, or his partner, who has been produced this day, put in false accounts; and upon his own recorded confession, stigmatised by his own testimony, he stands this day before you in the light of a person who, if these facts were proved against him by another and not by himself, would be subject to that very heavy sentence which a person for whom I have a great regard is now unfortunately undergoing.* These are fictitious vouchers of a very different nature and to a more mischievous extent; indeed; and this is avowed by Mr. Higgins to have been his conduct upon this occasion. Therefore, independent of the rule of giving no credit to an accomplice if not confirmed, Mr. Higgins being an accomplice to the degree stated, (and I speak now from his representation of his own conduct; I know nothing of him out of this court and out of this cause; all I desire to call your attention to is that part of the evidence which by and by will be read to you from his lordship's notes), suffer me to ask, would you, upon the testimony of a person who has proved himself to be a man of such moral turpitude, feel it decent in point of justice, to give your belief to a person of this description unconfirmed, to establish a corrupt agreement and afterwards a corrupt receipt? For (whatever may be the other parts of the testimony) with reference to the fact of a corrupt agreement, and the fact of a corrupt receipt, there is no paper under the hand of Mr. Jones, there is no person (except Mr. Higgins) who has pretended to have been privy to one of these transactions with Mr. Jones. The main points of the cause, namely, the agreement and the receipt stand upon the evidence of Mr. Higgins alone; and therefore

* See the preceding case.

if Mr. Higgins is an accomplice, and not confirmed by the testimony of the other witnesses, I state, with the utmost confidence (subject to the correction of his lordship), that no jury, acting upon the principles which relate to accomplices, can convict a man upon the testimony of such a witness, however credible to command private belief; I affirm that it is enough to say he is an accomplice, and not confirmed, to entitle the defendant to an acquittal.

If then the fact be so, really the remaining part of this cause resolves itself into a very narrow consideration; for the single question is, is or is not Mr. Higgins confirmed? Now let us see in what manner confirmation is attempted to be afforded to the testimony of Mr. Higgins. And first let us take it as to the American adventure. With respect to that, it is necessary in the first place that I should call back your attention to what the charge is. It is a charge of a corrupt agreement, under which Mr. Jones is stated to have received a half of the profits made by Mr. Higgins, amounting to between eighty and ninety thousand pounds; and it is quite impossible to look not only at the substance of this accusation, but at the frame and form of it, without at once perceiving that the charge is adapted and accommodated to the story Mr. Higgins has told of the transactions which actually took place in the West Indies. For I need not remind you that, of all men living, the person who knew best what the American adventure was, was Mr. Higgins himself; and the testimony of Mr. Higgins is, that, before he left the West Indies, he had actually settled the accounts with Mr. Jones, which depended upon the supposed corrupt agreement with respect to the participation of profit. And how had he settled them? Why, he had settled them finally (if their case be true) on a correct exhibition of accounts; winding up and closing the adventure by an exhibition of the different articles of supply, and then dividing the profit, one half to Mr. Jones, and the other two quarters to Mr. Higgins and Mr. Rose. This is the statement on the part of the crown; and, if it stands on the credit of Mr. Higgins alone, it is testimony which you cannot believe; because he is an accomplice who is not hitherto confirmed. Then how do they seek to confirm him? by the circumstances of this American adventure; and, no doubt, that is a most material part of their case, because the way in which they apply it is this, it is not only to show on the ground the attorney general has last taken (and there it was not necessary) that there was a participation of profits on public supplies, but the real and true use of this was, as evidence of confirmation, by producing a receipt in the hand-writing of Mr. Jones himself; and there is no doubt that, if they had produced a receipt in the hand-writing of Mr. Jones himself, on the footing of a corrupt agreement, applying to a share of profits in public supplies, it would have been impossible to me to have addressed you for a single in-

stant. I should have closed with stating that the case was too strong to render it proper for me to take up his lordship's time and yours; and that I should reserve what I should have to say for a future opportunity. But this most weighty fact has a directly contrary effect upon the testimony of this gentleman himself; for I hope that I am not, in the warmth of speaking, expressing myself too strongly when I say, that I pledge myself to satisfy you, that it is utterly impossible to say, that the receipt given by Mr. Jones was a receipt upon the footing of any corrupt agreement entered into between Mr. Higgins and himself. Have we forgotten altogether what is the case attempted to be made by the counsel for the crown? its essence is a corrupt agreement. It makes no difference at all, as between Mr. Higgins and Mr. Jones, whether it was a corrupt agreement or a legal agreement; for it was equally intended to be binding; the payment on this American adventure was optional; but that one word puts an end to the whole as matter of charge: the moment Mr. Higgins states it was matter of choice, it ceases to have been matter of agreement; because that which was matter of agreement was binding and not matter of choice: therefore, on the testimony of Mr. Higgins, looking to what was its real meaning, I submit to you with considerable confidence (subject to his lordship's correction), that the American adventure was distinct from any agreement to which Mr. Higgins refers; and Mr. Higgins has himself stated, that he considered it a private adventure. How does he mean private? Why, distinct from that to which he represents the supposed agreement to apply; which was that rendered under the contract for the public supply; and what proves it more strongly is this, all these transactions are entered, as they say, in the books of Mr. Higgins in the West Indies; but, I should be glad to know, if this constituted part of the transaction to which the supposed agreement referred, why was not it brought to the general account in the West Indies? its being omitted in that account proves, therefore, that it was matter of choice, and not matter of compulsion, as stated by Mr. Higgins; that it was a payment he made, not on a fair liquidation of accounts which had reference to a supposed agreement as between Mr. Jones and him, but was upon what he calls a private adventure. And I shall have deceived myself most grossly, if his lordship shall be of opinion or you shall be of opinion under his lordship's direction, that it can be said that this payment on account of the American adventure was a payment made on the part of Mr. Higgins and accepted on the part of Mr. Jones, upon the footing of a corrupt agreement in the West Indies, to divide profits. When was it made? Not at the time Mr. Higgins was in the West Indies, but after his arrival in this country. I might go on till midnight, endeavouring to enforce these observations, but it appears to me the facts are so evident and the consequences

so clear, that by saying more I should only waste your time and perplex and confuse the case; and therefore, leaving it upon these observations, I submit to you that the American adventure which introduced into the cause this single scrap of paper under the hand of Mr. Jones, has no reference whatever to this case.

Before I go into an examination of the other part of the case, I will beg leave very shortly to take notice of an observation made by Mr. Attorney-general. I am sure there is no man more disposed than he is to conduct public prosecutions with due liberality; but I cannot help thinking he has acted harshly, when he imputes to me that I do not call Mr. Rose, who is stated by the counsel for the crown to have been a party to this agreement. They subpoenaed him; they are bound to produce him; and it appears to me an extraordinary ground (when a witness is known to be subpoenaed by the crown), that being called upon by the witness himself, to produce him in Court, being apprized that he is present, they not only abstain from it themselves, but they desire the jury to infer guilt in the defendant, because he will not produce that witness whom they will not bring forward. I am glad, upon other occasions, to be instructed by the attorney-general in my professional duty; it would be the grossest arrogance in me to think of instructing him, but I will tell the attorney-general what I would have done; I would have called the witness into Court, and would have left him to object that he was not bound to answer. That is the course which, in the conduct of a public prosecution, I think the attorney-general ought to have pursued; but it is not dealing very kindly (he will forgive me for saying, not very liberally) to charge it upon the defendant that he does not call a witness who is attending with his subpoena in his pocket, on the part of the crown.

But, why was I to call Mr. Rose? I do not mean to say it was not known what sort of story was to be told to day; for, unfortunately, these charges have found their way into every man's hand. But suppose I was not acquainted with the charges; conceive to what length this might go. How could I call Mr. Rose, if I did not know that he was to be a witness or what was the case? But if I did know that he was to be a witness on the part of the crown, that would be a reason for my not calling him. My learned friend asserts that Mr. Rose has refused to answer any questions put by them. I can assert with equal veracity, that he has refused to answer any questions put by us. And there may be many reasons why Mr. Rose may not chuse to come forward and be asked questions, the answers to which may subject him to prosecution; but is it to be charged against a defendant that he does not call such a witness? I aver that it was the bounden duty of the crown (where a story of such a sort is ob-

truded upon a jury for the purpose of inducing them to believe it), when they state that there were only three persons privy to the transaction, and when they contrive to lay the scene in this way, to call not one witness merely, but each of the persons privy to it. When the agreement is stated to have taken place, where is the scene laid? In the room alone with Mr. Higgins and Mr. Jones, who cannot be called. When the payment takes place where does it happen? Only Mr. Jones and Mr. Higgins are present. And you have nothing under the hand of Mr. Jones to verify the transaction; and yet, with respect to these two material parts of the case, they stand upon the evidence of this accomplice only; though there was a man who, it is stated, might have confirmed him, I mean Mr. Rose, by proving certain conversations. Mr. Rose is not produced. There being but two witnesses, the one is not called to confirm the other; and yet, upon a case thus circumstanced, you are desired to convict the defendant. Under these circumstances, I am persuaded, I do you only justice when I suppose it cannot operate at all disadvantageously to the cause of the defendant, that he does not call Mr. Rose.

With respect to the American adventure, I have made all the observations that it occurs to me to make. Then what is the only confirmatory evidence that you have heard? It is the testimony of Mr. Winter. And you must always bear in mind, that though Mr. Higgins has stated that books were kept in the West Indies, and that certain entries were made in those books; and that he had a conversation with Mr. Jones; all that stands upon the evidence of Mr. Higgins: and, therefore, if Mr. Higgins be not to be believed, being an unconfirmed accomplice, he is not a bit the more to be believed, because he adds those other facts (likewise not confirmed), that books were kept in which particular entries were made. That would leave the case, as to Mr. Higgins, precisely where it was before.

But let us consider what other evidence there is in the case; and here, again, is something a little extraordinary. The entries in these books are stated to have been made by a person of the name of Winter: one would have thought, that in the conduct of a criminal prosecution, the man proper to be called was the man who had some knowledge of the facts themselves; for entries made in books are only evidence of facts at a distance of time: but it is extraordinary that the Mr. Winter, who made the entries is not called, but a Mr. Winter, who did not make them is called, stating that he knows nothing further than what he has been informed. The evidence of Mr. Winter leaves the case just where it was, without any confirmation of the story told by Mr. Higgins. As to the accounts, Mr. Winter has stated that, having called there upon a particular occasion, he remembers having had a conversation with Mr.

Higgins, on the profit and loss account; and he thinks he furnished an account to Mr. Jones upon that occasion, though he will not positively swear that he did. Though pressed, he will not go the length of stating positively that, in point of fact, the account was actually delivered; but, when he is further examined, what is the story he tells you? Why, that the journal was upon the desk of Mr. Higgins at the time; and you are told by the attorney-general, that the ledger is formed from the journal: and yet, though the journal in which these entries were, must be in the possession of Mr. Higgins, the books themselves are not produced. No search is made after this account which is supposed to have been delivered; but you are to take, upon the testimony of Mr. Winter by whom these entries were not made, that an account was delivered to Mr. Jones from which a certain profit appears. He does not pretend to say he was present at any conversation or any examination into the account; so that, even taking his evidence in its fullest extent, it leaves the case standing upon the testimony of Mr. Higgins confirmed, so far as you may think the evidence of Mr. Winter may in any small measure confirm it.

But, after all, are there not some observations upon the degree of credit which may belong to Mr. Winter? Mr. Winter was a partner in one of these houses; he was a party to this extensive fraud upon the public; he tells you that he applied to one of these houses to deliver in false vouchers; and his inducement to do this, was, his being a partner in a house which had five per cent upon these supplies. Now here let me ask you, when a man of the credit and character of Mr. Jones is to be ruined by the verdict that you give to-day (if it is given against him), whether on the testimony of such a man as this, and when the American adventure only contradicts and does not confirm it, with any small confirmation by Mr. Winter, will you, upon such evidence pronounce a conviction?

My learned friend suggests to me, what otherwise I might have forgotten, that it is stated that the books were produced to Mr. Jones. On looking at the books the name of Jones nowhere appears. The account about which we have heard so much, purports to be only a general profit and loss account in the name of Mr. Higgins himself; but in the books they have produced, there is no title of any account in which the name of Mr. Jones appears; but the only entries are with respect to the general profit and loss account of Mr. Higgins, subject no doubt to the general observations I have made; except that Mr. Higgins swears that there was a settlement of accounts between them, there is no one entry from the beginning to the end in which Mr. Jones's name appears.

I am not aware, that upon this case, I have now any observations to add to those which I have submitted to you. In truth, it lies within

a very narrow compass. I agree with the attorney-general, that if you believe Mr. Higgins, Mr. Jones is guilty; because undoubtedly Mr. Higgins has gone the length of swearing to the fact of a corrupt agreement; and he has gone beyond that, to establish by his testimony (if you believe it) the fact of the retention of money as a share of profits under that agreement. But what I submit is, that Mr. Higgins stands in the situation of an accomplice; that, as such he cannot be believed unless he is confirmed; that the only circumstances they have brought forward to confirm his testimony ought to have no such effect; for that, with respect to the fact of the receipt, it relates to the American adventure, and has no reference to the corrupt agreement stated on the indictment; and with respect to the evidence of Mr. Winter, I would repeat it appears to me that he speaks from an account not produced, and that his testimony is liable to the observations I have made as to the fact with respect to the false vouchers and false certificates.

I am sure you feel that this is an inquiry of the first consequence. It involves all that is dear to this gentleman, to his children, and to his connections; exposing him to ruin in its worst shape. If you think this a case of any doubt, you will give him the benefit of that doubt, and acquit him; and particularly when you consider that, up to the period of his acquaintance with Mr. Higgins, he is proved, in every public situation and every connexion in life, to have acted most honourably and uprightly; so much so, as to have had the appointment in question conferred upon him in consequence of his previous good conduct.

I shall call a great number of persons to whom this gentleman has been known for many years, persons who have known him through all those situations, and who will tell you what his general conduct and character has been. If there be any doubt, you will give him the benefit of that good character which he has sustained; but I submit to you, under his lordship's direction, that this is not a case of doubt, but one on which the defendant is intitled to an acquittal.

EVIDENCE FOR THE DEFENDANT.

General *Abercrombie* sworn.—Examined by *Mr. Park*.

Were you with your father, sir *Ralph Abercrombie* in the West Indies?—I was, in the years 1796 and 1797.

Had you known Mr. Jones before that time?—I had not.

I believe you were the colonel of a regiment at that time?—I commanded the 53rd regiment at that time.

You were also, I believe, part of that time, quarter-master-general?—I was deputy quarter-master-general, and at the head of the department.

At this time Mr. Jones was commissary-general?—He was.

Had you much opportunity of knowing his conduct in his situation as commissary-general, and superintendant of stores?—Not a great deal, as commander of my regiment. I had latterly, when I was at the head of the quarter-master-general's department.

I take for granted, you were a good deal with your father?—Not a great deal; I was occasionally.

Mr. Jones had of course, a great deal to do with the commander-in-chief on the station?—Necessarily so.

In what manner did Mr. Jones, so far as came under your observation, conduct himself?—As far as came under my observation, the commissariat department was perfectly well conducted at that period.

Did you, during that time, from any thing which occurred to yourself, as quarter-master-general, or from any thing which passed from your father, hear any complaints made of the conduct of the office?—I do not recollect any.

Mr. Attorney-General.—As far as this goes to general character it is evidence, but no further.

Lord *Ellenborough*.—General character is evidence, but whether this department may have been conducted in the best manner possible is nothing to the purpose. What was his general character for integrity is the question.

Mr. *Park*.—What was his general character for integrity, as far as came under your cognizance?—I never heard any thing against his character at the time I was in the West Indies. I never saw any thing improper.

Mr. Attorney-General.—Was general Maitland in the West Indies at the same time?—He was second in command.

General *Cuyler* sworn.—Examined by Mr. *Topping*.

How long have you known the defendant, Mr. Jones?—About eight and twenty years.

Were you in the West Indies, when Mr. Jones was there as commissary-general?—I was; I arrived there in the year 1797.

He had been there for some time before?—Yes, he had; he was deputy commissary-general during my command in 1788.

You knew him before the time he was commissary-general, filling situations of public trust?—Yes, I did.

And your personal knowledge of him has been for eight and twenty years?—Yes.

I am not permitted by the rules of law, to examine minutely into the character of the defendant; but, from the knowledge you have had of him for eight and twenty years, what has been his general character?—I always heard him spoken of in very high terms, as a very correct man; and I found him to be such, while he was under my command; in consequence of his going out last time he reduced the expenses of the army in the West Indies.

Lord *Ellenborough*.—We cannot go into particular facts.

Mr. *Topping*.—From your own personal knowledge of him, and the character you have heard, do you consider him a man of strict honour and integrity?—I have no reason to think otherwise.

Mr. *Colin Thompson* sworn.—Examined by Mr. *Marryat*.

I believe you were a merchant residing at the Island of St. Kitt's?—I was.

How long have you been acquainted with Mr. Jones?—About ten years.

Did you know him while he executed the office of commissary-general in the West Indies?—Yes.

Had you any opportunity of seeing in what way he conducted the transactions of that department?—We had several transactions with him—

Lord *Ellenborough*.—We cannot go into that; it is useless that you should give me the trouble of telling you each time that the rule of law does not permit this.

Mr. *Marryat*.—What was his general character and reputation?—I have always heard it was very good in his official capacity.

In your transactions did you find it so?—Most perfectly so.

—*Jourdan*, esq. sworn.—Examined by Mr. *Park*.

You are a barrister at law?—I am.

Did you reside in the West Indies?—I resided in the West Indies from 1783 to 1797.

Did you know Mr. Jones in the West Indies during all that time?—I knew Mr. Jones in the West Indies personally during his residence in the Island of Barbadoes, which was from 1783 to 1793 or 1794: at that time he executed the office of public secretary to the island, which was an office of great confidence.

Did you continue to know him from 1793, till the time of your quitting the West Indies?—Not particularly; his residence was, after that, removed from Barbadoes.

During the time you did know him, what was his general character for integrity?—During the whole time I knew him I considered him a man not only of unexceptionable but of most honourable character.

Lord *Ellenborough*.—It is reputation; it is not what a person knows. There is hardly one question in ten applicable to the point; it is very remarkable, but there is no branch of evidence so little attended to.

Mr. Attorney-General.—My lord, that arises, in some measure, from one's delicacy of interfering.

Lord *Ellenborough*.—Certainly; but it is my duty to interfere.

Mr. *Jourdan*.—I speak of his general character.

—*Moore*, esq. sworn.—Examined by Mr. *Topping*.

I believe you filled the office of attorney-

general of Barbadoes?—Yes; for eight or nine years.

During what time did you continue to be attorney-general?—From 1787 to 1796.

During that time did you know the defendant, Mr. Jones?—I knew Mr. Jones perfectly well, when he was secretary of the island, which was eight or nine years: he not only filled that office but several others, and his general reputation, during the whole of that time, was highly to his credit. He was a man of the soundest integrity and the highest principles of honor. That was the general reputation he bore in the colony at that time.

Robert Jones, esq. sworn.—Examined by Mr. Park.

You live in Hereford-street?—I do.

Were you at the bar in the West Indies?—Yes.

At what period did you know Mr. Jones?—I knew Mr. Jones from 1778 to the year 1784.

I believe he is no relation of yours?—No, he is not.

During the time you knew him, what was Mr. Jones's general character for integrity and honour?—During the time I lived in Barbadoes, Mr. Jones was secretary of the island, and during that time he was always looked upon as a man of a very immaculate character.

REPLY.

Mr. Attorney General.—Gentlemen of the jury; I have some hesitation whether, in a case so very plain, I should address you at all in reply; but some observations were made by my learned friend which I think you may suppose require from me some sort of answer, by way of taking off their general effect, rather than any particular effect they can have upon this case; for there never was (in the course of my experience at least) any case of the most trivial assault, supported by more powerful testimony on the part of the prosecution, and so perfectly unresisted (because there were no materials with which a resistance could be made) on the part of the defendant.

In the first place I will state to you what is the effect of the testimony to Mr. Jones's general character. It produces this melancholy reflection, that men who in other respects may conduct themselves honourably and uprightly towards those with whom they have communication, feel themselves unrestrained in any transactions which they may have with the public, and suppose that neither their character for honour nor integrity is impeached by practising the grossest frauds, provided those frauds affect only the public purse. If there were a doubt in this case—if the evidence left you in any hesitation whether Mr. Jones were or were not guilty, it would be fit that you should pay regard to his former character; because it is unlikely that a man possessing a character for general uprightness and integrity should practise a particular fraud; but if the evidence of that particular fraud be decisive and conclusive

the fact of his having possessed the good opinions of those who have not been cognisant of this transaction, or have not had the means of informing themselves, or who have known every other act of his life, cannot obliterate from your minds the memory of those facts which have been proved against him and to which he has not endeavoured to give any answer; an answer to which must certainly have been within his power if any answer had been consistent with the truth.

My learned friend, in inveighing against my witness, has in effect spoken more harshly of his own client than ever I have spoken or I shall speak of him. For every expression of harshness that he has uttered against Mr. Higgins—every imputation that he has endeavoured to fix upon him—every reflection that he has cast upon the conduct of Mr. Higgins, the merchant, recoils with redoubled weight upon the head of his client, the commissary, who was bound by the duty which he had taken upon himself, by the duty which he owed to his employer and his king—duties impressed upon him as they were repeatedly by the instructions which were sent to him—who was bound by the strong tie of all these duties, to pursue an even course in these transactions. Mr. Higgins's business was to make as good a bargain with the crown as he could; Mr. Jones's business was to prevent Mr. Higgins from making too advantageous a bargain for himself; and when my learned friend tells you that you ought not to convict Mr. Jones of the offence which is charged against him upon the evidence of so odious a witness as Mr. Higgins, how contemptible, how despicable, how odious does he represent him whom I am accusing, to be; who was not betrayed by Mr. Higgins into this agreement, but who forced Mr. Higgins, in self-defence, into the commission of these frauds, from which Mr. Jones was himself the only person who derived an undue profit. Mr. Higgins was entitled to a fair, to an ample, profit upon this transaction; and he would have been content with it, but for Mr. Jones.

My learned friend tells you that Mr. Jones did not first solicit Mr. Higgins, but that Mr. Higgins first applied to Mr. Jones: that is verbally correct, but substantially a contrary representation would be more according to the fact: it is verbally true that Mr. Higgins applied first to Mr. Jones, desiring that he might be continued in the contract which he had under general Knox; but it is not correct that he applied to Mr. Jones, and offered him any part of the profits; but after he had made the application that he might be continued in this employ by Mr. Jones, Mr. Hugh Rose brought him Mr. Jones's answer.—“It is true that you may be continued in this employ, but it is upon the hard terms that you must yield a moiety of your profits to Mr. Jones, as a bribe to him for continuing you in this supply; and to me as the pander of his iniquity, you must yield half of the remaining moiety; namely, a fourth.

Does that originate with Mr. Higgins?—No; the application originates with Mr. Higgins, but the reply to it with these nefarious conditions proceeds from Mr. Jones: it is not, therefore, by Mr. Higgins that the first movement towards this iniquity is made; it is suggested in the first instance by Mr. Jones to Mr. Higgins.

My learned friend tells you the question in this case is only upon the fact. It is so. The fact which I charge upon Mr. Jones is, that he entered into a corrupt contract with Mr. Higgins to share with him the profits; and by that means he removed from Mr. Higgins that check which he was paid for holding over him; namely, the check of seeing that his supplies to government were made at a fair price. It has been observed by my learned friend, that there is no charge against Mr. Jones of having sent in false vouchers to the public, or of having debited them with false quantities; that the charge is only that he had a share in the profits. It is true, and it is an aggravation of his offence, that the charge against him is, that he had a share in the profits—in the profits to what extent? In the profits upon the whole of this transaction, from the beginning to the end; that operated upon the whole. The effect of false quantities or of false vouchers ends with itself; it imposes upon the public a fraud with respect only to that quantity which is falsely charged, or that voucher which is falsely rendered; but a mean, base, and fraudulent participation of profit with the contractor, perverts every part of the contract—lays upon him a necessity (unless he chooses to be ruined) of cheating the public by an over-charge in every article that he renders to them; and by so much is this more dangerous to the public than false quantities or false vouchers, as this extends over the whole of a large and ample concern, whereas the effects of false quantities and false vouchers terminate with themselves.

My learned friend tells you that we have not asserted on the face of this record, that the profits that were taken were exorbitant, and that, therefore, that is no part of the charge against Mr. Jones. He tells you likewise, that the sharing in a fair mercantile profit (although it may in itself be a wrong thing), is yet a thing very commonly done, and that many good men have done it, without any apprehension that they were doing wrong. That is impossible: it is impossible that any man (above the degree of a driveller) sent out by government, and paid by them for holding a check over contractors, and for purchasing of contractors at the lowest possible price, should not think he were doing wrong when he shared in the profit with those contractors; because he must know that those contractors are at least content with so much of the profit as remains after the commissary has taken his share, and if that be so, that share which the commissary takes, he ought to carry to the credit of government, and to inform government that

he has provided the supplies so much the cheaper. He knows that the contractor, if he is to have one profit for himself and another profit for the commissary, must overcharge the article; he knows that men cannot live without a living profit; and he knows that if he divides the profit which this man makes, the man must charge so much the more in the price at which he renders the article to government; and it is mockery to tell us that those who are employed by government for an ample remuneration, paid out of the government purse, to make the best bargain they can with contractors, can, believing themselves to be acting like honest men, enter into partnership with the contractors, and, becoming themselves contractors, become interested in the high price which is charged; because the higher the price at which the contractor furnishes his goods, at so much higher is the profit which the commissary shares with the contractor. And if they tell us, that honest and honourable men have ever done this, it requires only to be explained to you to show the impossibility of such a proposition being founded in truth.

My learned friend tells you, that this case is supported only by the evidence of Mr. Higgins, and that Mr. Higgins is an accomplice, which is an odious character; but he is rendered odious only by the contamination of Mr. Jones. He tells you that Mr. Higgins is an odious character, and that upon his evidence alone you will never think of convicting Mr. Jones. I have heard no answer attempted by my learned friend to that which I stated, when I opened this case to you; that Mr. Higgins is innocent unless Mr. Jones is guilty; for the charge against Mr. Higgins is, that he was concerned with Mr. Jones in this nefarious transaction, and unless you suppose Mr. Higgins to invent a story of his own guilt, in order to fix guilt upon Mr. Jones, there is no possible ground upon which you can diminish the credit due to him. I stated to you that it was not like the case of a highwayman taken for committing a robbery with another, and who escapes by discovering who that other was; for here, Mr. Jones was the only man on earth who could conspire with Mr. Higgins in committing this fraud upon the public. Mr. Jones was the only person benefitted by it, for Mr. Higgins went off, at last, only with that which, perhaps, it is fair he should carry off, namely, one quarter of the profits; the public, perhaps, would not have much ground to complain that he supplied these goods taking only one quarter of the profits; and it was only Mr. Jones forcing Mr. Rose and himself upon his back which rendered the profit exorbitant; and, therefore, taking this to stand altogether upon Mr. Higgins's evidence, there is no reason why you should entertain a doubt of his story; on the contrary, you may be perfectly assured that if the story be not true, he would not have come forward to state it, for he could have no inducement upon earth to do so.

With respect to the rule, that a culprit is

not to be convicted upon the evidence of an accomplice, I never yet heard that rule applied to the case of a misdemeanor. Suppose I had nothing to support Mr. Higgins except the circumstances arising in Mr. Higgins's testimony,—my learned friends say, loud enough for the Court to hear, that they never heard this distinction. I say, I never heard the objection taken in the case of a misdemeanor and that I have heard the objection over and over again in other cases : a trespass is a misdemeanor, an assault is a misdemeanor —

Lord *Ellenborough*.—The conviction would be legal if it was on the evidence of an accomplice. The judge advises the jury not to proceed upon that alone, but no person can say the conviction would not be legal.

Mr. *Attorney General*.—That, considered as a rule of discretion which the judges impose upon themselves, I believe, never has gone beyond a felony. However, I am perfectly indifferent upon that head. I called Mr. Higgins to state to you what the transaction literally was ; but I hardly wanted his testimony ; I could have almost proved this without Mr. Higgins. But my learned friend says, that Mr. Higgins is disgraced by coming here voluntarily, that he could not have been compelled to answer and he exemplifies that by my not calling Mr. Rose. But there is a wide distinction between the conduct of Mr. Higgins and the part which Mr. Higgins took in this transaction and the part which Mr. Rose took as well as that which Mr. Jones took. Mr. Jones was an officer of the public ; the interests of the public were committed to him ; Mr. Rose was also an officer of the public ; each of them violated his public duty if he defrauded the public in that line in which he was employed. Mr. Higgins was not employed by the public. Mr. Higgins, in justice to himself, would make as good a bargain as he could ; and, therefore, he does not stand chargeable with the same degree of guilt or any thing like it that the others do ; and unless I could have implicated Mr. Higgins in a conspiracy, I could not have prosecuted him at all. But the other two stand guilty as public officers. You will ask me, perhaps, why I could not prosecute Mr. Rose in this case, and why I did not prosecute Mr. Rose with Mr. Jones ? That is a question that very naturally arises in the case. It was not convenient, for reasons which will occur to his lordship when he refers to the statute upon which this prosecution is instituted in *this country*.—I saw reason, or rather I should say my predecessor in the office which I hold (I concurring with him certainly) saw reason, for not joining Mr. Rose in this prosecution : but one good reason that I have for not choosing to call him upon the part of the crown was, that he remains amenable to the law for the part that he has taken ; and he will sooner or later probably discover that that responsibility rests upon him. I have said enough to explain to his lordship the line I have taken ; and it is not necessary for me to go into any further explanation of it.

My learned friend tells you, by way of disgracing Mr. Higgins, that Mr. Higgins admits that he rendered accounts of stores that he furnished to the commissariat under false names. Is it seen to what extent that goes ? Could that be for any other purpose than that it might not appear to the government at home, that all these stores were furnished in Higgins's name ? But did not all those accounts pass through Mr. Jones's office, and under Mr. Jones's inspection ? And did not Mr. Jones, when he paid Mr. Higgins for stores furnished by him, Higgins, and sent him his vouchers for them, as if they were furnished by other people, did not he see that the vouchers which denoted the goods to have been furnished not by Mr. Higgins but by others, were false ? And shall I be told it takes from the credit of Mr. Higgins against Mr. Jones that these vouchers were so delivered to Mr. Jones, when it was for the purpose of befriending Mr. Jones, and enabling him to return to his employers here vouchers which he must have known to have been fictitious. In truth all that was done by Mr. Higgins, all that is imputed to Mr. Higgins, as crime, was occasioned by Mr. Jones. It is stated that Mr. Higgins charged enormous profits ; he did ; why did he ? how were those profits to be divided ? half of them to Mr. Jones, and half of the other half to Mr. Jones's jack-all, Mr. Rose, the person whom Mr. Jones employed to close this transaction with Mr. Higgins. And shall Mr. Jones be heard to impute it to Mr. Higgins that he made extravagant and improper charges against government, when he, Mr. Jones, swept away from Mr. Higgins one half of the fair profits Mr. Higgins might have made upon this transaction ?

My learned friend tells you, that Mr. Higgins is not supported by any evidence : that the whole stands upon his own testimony. If it did, he is credible, and there is no ground whatever for your distrusting any part of his evidence. My learned friend undertakes to dissect this case, to show you where we have attempted to confirm him and where we have failed ; I will follow him in that course. He says, we have endeavoured to confirm him with respect to the American adventure : and he says, if that had really applied to the subject of this agreement, when we introduced that receipt of Mr. Jones, it would have been such a confirmation of Mr. Higgins, that he should have folded up his brief and reserved himself till the defendant was called up for judgment ; but he says it did not, and that that he will prove out of Mr. Higgins's own mouth ; for that Mr. Higgins says it was optional in him to have given Mr. Jones a moiety of this or not, and that he thought Mr. Jones was not entitled to it. Gentlemen, that is taking a part of Mr. Higgins's evidence and not the whole of it ; Mr. Higgins tells you, that, as he first saw the matter, his agreement with Mr. Jones did not, in his opinion, entitle Mr. Jones to any share of the profits on this American adventure ; but that upon further consideration and considering

the generality of the agreement, he did think that it might be construed to comprise it, and, therefore, he rendered an account and paid a moiety of the profits upon this adventure as ranging itself under the agreement; and when I asked him whether there was any other account upon which he could pay, or upon which Mr. Jones could suppose that he paid him any sum of money, except that agreement that they should share the profits of his general adventure, he said there was none, and that he did pay it upon that account. I will suppose him to have been mistaken; but if he did pay it upon account of that agreement, and if Mr. Jones did actually receive it, is not Mr. Jones's receipt of the money from Mr. Winter, who paid the money as the agent of Mr. Higgins, a confirmation of Mr. Higgins's testimony, that this agreement was entered into? Is not the payment of a sum of money ranging itself under the agreement in the ultimate view Mr. Higgins had of it, and the receipt given for it a confirmation of Mr. Higgins's testimony, that this was paid under that agreement? It requires only to be stated, to lead you by the statement to the conclusion.

One observation seemed to be wrong almost from my learned friend by the remark I made as to his not calling Mr. Hugh Rose upon this occasion. He did me the credit to say, that, generally, I had not pressed criminal prosecutions too hardly against those who were the subjects of them; and, with a kindness which I am sure I never shall forget, and I never can forget it because I am reminded of it by every act of my learned friend's professional life, in which I happen to be concerned against him, speaking of my general conduct in this way he makes this particular case an exception. He says he thinks I dealt hardly with Mr. Jones in leaving Mr. Hugh Rose to be called as his witness, and not calling him myself; that if he had stood in my situation, the course he would have pursued would have been this; he would have called Mr. Hugh Rose—he would have presented him as a witness, asked him questions and left him to have objected or not. Gentlemen, my learned friend would not have so conducted himself; because if he had been in my situation he would have had in his mind that which I had in mind, a contemplation of what conduct it might hereafter be fit to pursue with respect to Mr. Hugh Rose; and I am perfectly assured that my learned friend would not have conducted himself with a knowledge of this additional fact on his mind, as he stated just now he would have recommended to me; because if he had, he would have betrayed his duty to the crown. But how can I have dealt unfairly towards this defendant in leaving this witness to him? Mr. Higgins, whom I agree to be an accomplice in this case, does not come forward like a common accomplice, saying this transaction took place only between me and the person whom I mean to charge; but he states that it passed through a third person, Mr. Hugh Rose, to the defendant

whom he means to fix with the transaction. He puts it, therefore, in the power of that third person to contradict him. Now, what ground of complaint is there that I do not present this third person as a witness? My learned friend, if his client is guilty, has no ground of complaint; if his client is guilty he ought to be convicted: but let us suppose him to be innocent—is it possible that this can suggest itself to his mind as any ground of complaint? If his client be innocent Mr. Hugh Rose would almost spring from the grave to say so. If not only Mr. Jones, but Mr. Hugh Rose were stated to be guilty, where would be the difficulty of calling Mr. Hugh Rose to contradict him? If this charge be true, if Mr. Jones did enter into this agreement, through the agency of Mr. Hugh Rose, with Mr. Higgins, then I can understand the backwardness that they have to call Mr. Hugh Rose; but that they should have any backwardness to call Mr. Hugh Rose is consistent with no supposition but the supposition of Mr. Jones's being guilty. If Mr. Jones is guilty he has no cause to complain of being placed in a situation in which he cannot, by false evidence prove that which is not true, namely, that he is innocent; if he were innocent there could be no objection to his calling Mr. Hugh Rose; and I cannot feel, on reconsideration (if I did I would avow it) that I have conducted myself with any degree of harshness towards Mr. Jones in stating that I should not call Mr. Hugh Rose—in not calling him—in leaving it to Mr. Jones to call him if he pleased, and in making those observations to you upon Mr. Jones not having called him. For I state to you distinctly that if Mr. Jones were innocent Mr. Rose must know it, and Mr. Rose could have no objection to coming forward and proving it, neither could Mr. Jones have any objection to calling him. If Mr. Rose was supposed to have no private delinquency of his own that might prevent his being examined, why did not Mr. Jones call him and put him to the test? why did he not call him into the box, and leave it to him to make the objection? that course has not been pursued by my learned friend; and, therefore, I hope, by his not pursuing it on the part of Mr. Jones, you will think me acquitted for not having pursued it on the part of the prosecution.

My learned friend tells you there is no proof in this case of any account delivered to, or signed by Mr. Jones. Why, there is no proof of an account signed by Mr. Jones; but there is proof of an account delivered to him; for Nathaniel Winter says, that understanding Mr. Jones was to call upon him to know what the amount of the profit was, he did make out an account from Mr. Higgins's book; and when Mr. Jones came to him, he presented that account in writing to him, which he believes he carried away with him. Is not that confirmation of Mr. Higgins? What had Mr. Jones to do with the profit and loss of Mr. Higgins, if he was not to divide it? Mr. Higgins's story

is, that he was to divide it, and Mr. Winter's statement that he rendered the account is the strongest confirmation of that testimony.

But my learned friend says, that we have produced these accounts, and he has looked at them, and it is true there is the profit and loss account and there is the general commissariat account, but there is no entry of this sum of 153,000*l.* odd to Mr. Higgins.

Mr. Park.—To Mr. Jones, as paid to Mr. Jones.

Mr. Attorney General.—I protest I did not understand it. It is true there is no particular account of that as paid to Mr. Jones by that name, but there is an account of it as paid to the commissary-general, directly entered, and proved by all the witnesses to have been an entry concomitant with the transaction. I hold the account in my hand. My learned friend says, there is no entry of that sum to Mr. Higgins. There must have been an entry to Mr. Higgins, and there is. There is an entry on the one side to the one, and on the other side to the other. The index will refer you to both at once:—first, it is said that there is no entry of this sum of money credited to Mr. Jones. The first item in the account is debtor the commissary-general on this side, and creditor on this side; and here is Matthew Higgins (that is) received of Matthew Higgins 153,273*l.* 17*s.* 10*d.* but they may say this is not, perhaps, the half profit; this is the gross sum entered to Matthew Higgins; but here is the account of profit and loss, where there is actually double this sum stated as the profit. Why is it debited to Matthew Higgins? Because Matthew Higgins was the person who, in the first instance, had the whole profit, and who was therefore to render a moiety of that whole profit to the commissary-general, and who does render it to him by giving him credit for it in this account. Is this fallacious? Mr. Jones is credited, and Matthew Higgins is debited. I will only look in the index for Matthew Higgins's account, which is page 45, and I find "balance due to the commissary-general 153,273*l.* 17*s.* 10*d.*" the exact sum; so that if you come to dissect the books, the more you look into them the more clear the thing is. First, I am told it is not credited to Mr. Jones; no more it is: but it is credited to the commissary-general, who is Mr. Jones, and there is the sum. Then they may say, that is not the profits, but there is under profit and loss exactly double the sum. Then it may be said it is credited to Matthew Higgins; but I turn to his account and find him debited with that sum; and therefore it is impossible for any thing to be more clear than this is rendered. And it was a dangerous thing for my learned friend to meddle with the entries in this book; for I was quite sure that to whatever article I turned, having a reference to profit and loss, it would confirm the account I had given you of this transaction.

What reason had Mr. Jones to be solicitous how the profit and loss account stood? what

had he to do with that if not to divide it? and yet you find him going to Nathaniel Winter to get it, talking with Mr. Higgins from time to time, and (what is more material) receiving in hard money into his own pocket 153,273*l.* 17*s.* 10*d.* in the way which is stated by Mr. Higgins, and not contradicted by Mr. Jones. For against the commissary-general are all the items in this charge; for the sum total, amounting to more than a million, the contractor Higgins was entitled to be paid by him; all this he charges to government, and Mr. Higgins tells you that he paid him that sum, short of the 153,000*l.* which was allowed on account of the half profit. He therefore retained that as an emolument to himself. I have stated it incorrectly: he paid Mr. Higgins so much the less of the amount that was due to him. There was due, I will suppose, more than a million; he deducted out of that the sum of 153,000*l.* which was his share of the profits; he therefore, receiving the whole from government and paying Mr. Higgins so much the less, put that money into his own pocket.

Now, gentlemen, one word upon this subject of profit, which the curiosity of my learned friends led them to inquire of from Nathaniel Winter. This bears upon the present case; but it is of infinitely greater importance with respect to the general concerns of the public. They asked Mr. Winter how his house were concerned in this transaction? why they bought on a commission for Matthew Higgins? They purchased for Matthew Higgins all that he supplied government with, and they made those purchases upon a commission of five per cent: so that he paid them what they gave for their goods and five per cent over. He stood therefore as the purchaser from them at that rate, the house contenting themselves with a profit of five per cent. His lordship asked the witness whether his house would not have rendered these same things to government upon the same terms; he boggled a little, but at last he could not say that government money was worse than other money, and he admitted that they would. Then, gentlemen, if government had been fairly dealt with, these goods would have been rendered to them at the price which Mr. Matthew Higgins gave to this house for them; that I take to be demonstrated by the evidence which has been given. Now let us see what government was at last, by this fraud, obliged to pay. The sum total in the course of about nine or ten months, is somewhat more than a million. Mr. Matthew Higgins's profits upon that expenditure are 306,000*l.* which is divided, and a moiety of it goes to the defendant, so that you see here is a profit of thirty per cent, tacked on to the fair profit that the house of Winter and company made upon the purchase; and if the defendant had governed himself by the common rules of honesty, he might, by purchasing these goods, and charging no commission himself, have rendered them to government without a single farthing of that thirty per cent added

the price. For there was no reason whatever that he should not do for government what the house of Winter and company did for Matthew Higgins. You see that house consisted of Tully Higgins, his brother, of a Mr. Rose, the brother of Hugh Rose, and of Nathaniel Winter, the brother of William Winter, the clerk of Mr. Higgins. In truth this was only a little more profit to be got from the public, for here was a profit of five per cent gained by them at the first purchase, and then of thirty per cent by Mr. Higgins which was divided with Mr. Jones. Now, supposing Mr. Jones had applied in the first instance to the house, and desired them to purchase all these provisions for him; as it is proved they did purchase them for Matthew Higgins, is there any doubt that they would have purchased the whole for government (as they did for Matthew Higgins), at five per cent? and then government would have saved, upon this expenditure of more than a million, at least thirty per cent. All this falls upon government, in consequence of Mr. Jones entering into this corrupt agreement with Mr. Higgins and with Mr. Rose.

Gentlemen, it was not necessary for the purpose of convincing you that the case was proved against Mr. Jones, that I should have gone so much at large into it in my reply; but I did think it necessary, for the satisfaction of the public, that those topics which my learned friend had very ably urged, should receive the answer they were exposed to. I should be very sorry that any man in this court should think Mr. Jones hardly dealt with in this prosecution; it is a part of my duty to show, that the guilt I impute to him, is brought home to him by the most satisfactory evidence. I know his lordship's kindness would have excused me, if I had said shortly, that the case was so clear, that it did not require a reply; but I should not have satisfied myself if I had not given these answers to the arguments of my learned friend, and pointed out again to you the enormity of the offence, of which the defendant, in concurrence with others, has been guilty.

SUMMING-UP.

Lord Ellenborough.—Gentlemen of the jury. This is an indictment against Valentine Jones, esquire, which comes before you for trial, under circumstances which have been particularly commented upon by both sides. It is stated, that this trial has been preceded by inflammatory accounts of the matters to which it relates, which may prejudice your minds in the discharge of your duty as jurors. I trust that those accounts (if such have been published respecting the subject of this trial) have not reached you; but I trust, still more confidently, that if they have, they will produce no effect upon your minds, but that you will confine yourselves to what ought to guide you upon the present occasion, the evidence given upon oath.

The hardship which has been complained of

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on the part of the defendant cannot, I conceive, exist to any considerable degree; because if it was apprehended that it would have produced material prejudice, the court is always anxiously alive to any applications, which may be made, that a trial may be deferred to a period of more indifference and impartiality: and if it had been conceived that the present was not such a period, if it had been thought likely that such representations as have been alluded to, would influence your minds, it would have been my anxious wish, sitting here either in term or out of term, that the trial should have been postponed. Assuming that there is nothing which could contaminate your minds or mine, no such application having been made, we will now address ourselves to the immediate matter of charge, and the evidence by which it is sought to be sustained.

This is an indictment against Mr. Jones, charging him with a great breach of duty in his office of commissary-general and superintendent of forage and provisions, under an appointment, or rather two appointments, which he received from his majesty in the month of September, 1795. He was appointed (by two instruments; one signed by the secretary of state, and the other by the lords of the Treasury) to the office of commissary-general, and superintendent of forage and provisions; and the emoluments he received, in respect of those offices, was for the one 2*l.* and for the other 3*l.* making an aggregate sum of 5*l.* a day.—The indictment charges, that, having an ample salary for the discharge of these offices, and it being his duty to provide the articles which might be required, in the most economical and the least expensive manner to his majesty, and not to receive to himself any share of any gains or profits made by any person employed by him, as such commissary, he, in violation of his duty, corruptly bargained and agreed with Matthew Higgins, that he, Matthew Higgins, should pay and allow to him one moiety of the profits and gains to be made by him, by means of his furnishing and supplying, under the defendant's authority as such commissary: That Matthew Higgins did, in consequence, furnish divers articles; and that, in pursuance of this bargain, the defendant unlawfully and corruptly kept and retained to his own use, out of the sum of money payable by the defendant as commissary-general to Matthew Higgins, a large sum of money, stating the amount to be 153,273*l.* 17*s.* 10*d.* of Leeward island currency, and of lawful money of Great Britain 87,179*l.* 5*s.* The question for your consideration is, whether, upon the facts stated, he was or was not guilty of this offence. That it is an offence of high magnitude, in case the facts bring it home to him, has not been questioned by the learned counsel for the defendant. A more enormous offence can hardly be conceived, than that a person in public trust shall enhance the charge to the public, by leaving the contractor only one-fourth part of the profit, taking to himself one-half, allotting

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one-fourth to another person, and of course unnecessarily charging the public with three-fourths. It is, I say, an enormous offence, if it be made out; and the only question for your consideration is, whether it is made out by the evidence; which depends upon the credit you give to Higgins, confirmed as Higgins is by Nathaniel Winter, and by the circumstances of the case.

The first witness who has been called is Mr. Rose, who speaks of his having admonished and warned this gentleman, on his appointment, of what was the expectation of the public, and what was the duty of a commissary, in addition to that which every person so appointed might consider as the necessary duty of his office, namely, that when he was appointed at a fixed salary to inspect others, he was not to receive that which he was to prevent others receiving in the shape of profit. Mr. Rose, on being shown a letter, says, "That letter was sent to Mr. Jones by me; after that letter being sent, I had a personal communication with Mr. Jones before he proceeded to the West Indies. I stated to him, as I had done to others in his situation, that it was expected from him, in conformity with what was contained in the letter, that he would derive no advantage of any kind beyond the pay stipulated in his commissions, and the usual allowances, which were known and fixed allowances to persons in his situation. It was also my constant habit to communicate to all persons in his situation, and, therefore, I take for granted that I communicated to him, that a considerable advance of pay was made to him, beyond what had been in former wars, in order to insure a punctual and faithful discharge of the duty of himself and of other commissaries. The official pay from the War-office was 3*l.* a day, and 2*l.* from the Treasury, which was double what it had been in the American war, and his half-pay, which is regulated by the amount of his whole pay, would, on his quitting the service, be doubled in consequence." He says, "This additional pay was stated to all the commissaries-general that I had any intercourse with, to be in order to insure the strictest fidelity and punctuality on their parts, the lords of the Treasury being aware of the importance of securing to the public the services of respectable men, in a part of the world where it had been found so difficult to check or correct abuses. I told him that, as the reward was so considerably increased, any departure from the strict line of duty would be the more inexcusable; and that if any delinquency should be found, the utmost extent of punishment which the law could inflict, would be sought for against him." He says he certainly meant to convey to him, what certainly there could be no necessity to say, that no profit could be derived beyond the pay directly or indirectly.

A part of that letter I will read in this place. After stating what was to be the commissary-general's allowance, which was double any former allowance, and what was to be the al-

lowance to the deputy-commissaries, whom it names, it goes on to state this: "The lords of the Treasury expect that neither you nor they shall derive the smallest advantage, in any shape or mode whatever, from your situation, beyond the pay above stated, except the regular allowances of provisions, and the articles usually furnished from the departments of the quarter-master-general, and barrack-master-general." In another part it says, "It should be distinctly understood by every person in your department, that if any one shall be found to have profited in any manner directly or indirectly contrary to the strict injunctions hereby communicated to you, immediate dismissal will be the consequence without a possibility of the offending party being ever afterwards employed in any public situation." Then he desires him to communicate this; and then gives other general directions, with which it is unnecessary at this time of day to trouble you. It is, in effect, the same which he had orally communicated to him, so that he must have been (if otherwise uninformed) perfectly cognizant of his duty. Even if he could have alleged any thing by way of excuse *before*, he could not *after*, receiving this letter, being here told that he was to receive nothing but his salary.

Mr. Rose, says "The defendant had been, for many years before, in the West Indies, and had filled different public situations. The manner in which he had conducted himself, had recommended him. I believed him to be a man of merit, and he was selected as such. At this time the military force in the West Indies was very large; the duties of the office were, of course, very various, and complicated, and extensive." He is asked whether he knows that the defendant wished to decline going out on account of his ill health; he says, "I do not recollect that he did wish to decline; it may be so."

Now, certainly, the circumstance of the defendant's character having been mentioned here, and being proved afterwards, we are to assume him to have been, up to the period of his appointment, a man who had merited the situation by his former conduct; and if he has committed this offence, one cannot but lament those unfortunate lapses from virtue, which we so often see produced by an overbearing temptation. He appears, according to the evidence, to have been, up to this, a man well fitted for the office in which he was placed.

A Mr. William Smith was then called to prove the defendant's hand-writing to a letter addressed to Mr. Michael Sutton, who was assistant commissary at Demerara; and that letter is material for your consideration only as it shows that this particular paragraph in the Treasury letter to him, which defined the amount of salary and allowances, and told him that that was to be in lieu of all emoluments whatever, passed under his particular notice, and was pointed out by him to the subordinate officers under him. That letter has been de-

tailed, and I do not think it necessary to repeat it. Then there was put in a letter from him to Mr. Glassford, which was written after inquiries began to be instituted in the West Indies; and it was put in to show that it was the letter of a man writing with a guilty mind. Whether it was preparing a person, likely to be examined, to give his evidence in a particular way favourable to the person writing that letter, will be for you to judge when I read the letter.

The first witness upon whom much observation has been made, is Matthew Higgins, and it is objected in *lamine*, that he ought not to be received unless confirmed. I find a great difficulty in applying the law about accomplices; it obtains not to the extent which has been often extravagantly contended for in argument. But the particular crime charged upon this record, is not a crime in which Higgins could participate; for it is the crime of a particular officer—it is the crime of the commissary-general. He might be guilty of another crime for which they might be both indicted, namely, a conspiracy to defraud government of emoluments, beyond those fairly receivable from government; and, as far as he assisted the commissary, or was a party in so doing, he might be indicted for a conspiracy. I should feel a vast difficulty, even if there had been an act of parliament passed constituting this a felony, to say, that the law, as to accomplices, would apply to him. But, supposing he was to be considered as an accomplice in the strained and forced sense of the word, an accomplice is a competent witness, or why do we every day admit such evidence. An accomplice, when admitted and sworn, is unquestionably a witness on whose solitary evidence a conviction may take place. But it is the custom of courts of justice (in their humanity), wherever a witness stands under any circumstances of exception as to his testimony, to tell the jury to disbelieve it, either wholly or partially, or only to believe it as it is confirmed. I feel it the more necessary to mention that, because a misapprehension has gone forth upon this subject. No longer ago than two years, four persons, on a deliberate consideration of their case by the judges, were executed, having been convicted of burglary on the testimony of witnesses, the principal of whom was an accomplice. There was no confirmation of the main parts of the case, as it respected one of the defendants; but the accomplice was confirmed as to the main tenor of his story as it applied to the rest of the defendants; and all the judges thought that he had sufficient confirmation as to the general scope of his story. That person, in respect of whom there was no confirmation, it was deliberately recommended, should undergo the sentence of the law, and he did undergo the sentence of the law. I mention this only because it has been very much misunderstood. But, good God! gentlemen, what degree of comparison is there between the guilt of a man

who extorts from the contractor three-fourths of the profit he would receive, and that contractor who permits him to take one-fourth, and retains the rest? For that is the relative situation in which they stand, according to the evidence for the crown.

Higgins comes to relate a story, which I dare say he comes to relate unwillingly. It is certainly a story reflecting no credit upon a man, that he should have been guilty of such conduct. You observed the manner in which he gave his evidence. You will judge whether you think there was any forwardness or anxiety to convict; or whether he did not give his testimony under the compulsion of the oath he had taken, without any wish to convict. The integrity of the witnesses may be judged of from their demeanor; of that demeanor it is fitting you should judge.

Matthew Higgins says, "In 1796 I was a merchant in the West Indies. Brigadier-general Knox had the command there. I had a contract for supplying such vessels as might be wanted on the part of government. I knew Mr. Hugh Rose; he was then in the West Indies; he was acting, I understood, as deputy-paymaster. In the year 1796 I first heard that the defendant was coming out as commissary; that was whilst my contract with general Knox subsisted. I had reason to suppose, from what I had heard, that my contract would be at an end on the defendant's coming out. I therefore applied to Mr. Hugh Rose; I told him that as he was on more intimate terms with Mr. Jones than I was, that I should be very much obliged to him if he would speak to Mr. Jones not to take the contract from me." Now, there certainly is no corrupt overture on the part of Higgins; all he desires is to propitiate this person through Rose, his friend, and to desire that this contract might not be taken from him. You will see, according to this, in whose mind the first idea of a corrupt bargain arose. He says, "I saw Rose a considerable time afterwards. I went upon an expedition to Demerara; Jones had not then arrived; I returned to St. Lucie again; Jones and Rose were there, and I saw both of them, and in the communication which I had with Mr. Jones, I repeated to him a conversation that had passed between Mr. Rose and me." That conversation, on account of the subsequent communication of it to Mr. Jones, is admissible evidence: "Rose told me that he had arranged the business with Jones, or settled it for me, that I was to continue to have the contract. I said I was much obliged to him." At this moment he does not appear to have known what the terms (rather hard terms as he thought them) upon which he was to have it. He replied to me "that he was obliged to make terms with Mr. Jones; I asked him what terms; he said, that Mr. Jones must have a moiety of the emoluments arising from the contract, and that the other moiety was to be divided between him (Rose) and myself. I told him I would have nothing to do with it or him, I would not agree to it; Rose, upon

that, said, that I was very wrong, that many people were ready to take it and willing to take it." I am afraid that is too much the case, that they are willing to take it, on terms so extortionate, because if they may make their bargain with those persons who are to pass their accounts, they, of course, will make a harder bargain with government. "Rose said, that the vessels might be discharged, for Jones had commenced purchasing vessels, and that it was his intention to buy and navigate vessels, and let them be the property of government. Rose said likewise, that sooner than I should not go on with the contract, I might keep his part of it, and retain the moiety myself. I then told him that I would go on with it, and that I would not accept his quarter." So that Mr. Higgins is now persuaded to take it upon the terms proposed. "He said that for the loss I should sustain in giving up so much of the contract, it would be made up to me in the supplies; that whatever supplies might be wanted for the use of the government, I should be applied to to furnish them. This conversation took place with Mr. Rose on ship-board, on the quarter deck. He said, that the profits arising from these supplies were to be divided in the same manner with the profits arising out of the vessel contract. Mr. Rose told me Mr. Jones was in the cabin, and desired me to go down, which I did, for the purpose of mentioning my acquiescence. I went down to Mr. Jones, and I repeated the conversation that had passed between Mr. Rose and myself, as far as regarded the terms of the agreement and my acquiescence." Mr. Jones assented, rather, he says, by the inclination of the head than by any particular words, that he recollects. "After this, I went on with the vessel contract, and with the supply of stores, to a very considerable amount, for nine or ten months."

Then being shown a book he says, "It is not my hand-writing, but it was kept with my knowledge." Mr. Winter, who appeared to be the brother of Nathaniel Winter, who was called, wrote the book; but he was called to prove a specific communication upon the subject of this book, and of items contained in it with the defendant; so that, except for the terms of the original bargain, this evidence is less material; for if you believe that an account was shown, in which a moiety of profits was to be retained by the defendant out of the gross profits, Mr. Higgins's evidence is comparatively insignificant. If you believe this person, on whom no disqualifying imputation rests, he says, "These entries were made while the book was in the West Indies." On the first page here is debtor commissary-general, creditor, Matthew Higgins; and here is an entry by Matthew Higgins 153,273*l.* 17*s.* 10*d.*; the word *by* would import, that it was so much paid by Matthew Higgins. By reference to another part of the account, which is contained in this book under the head of profit and loss, there appears to be balance in favour of profit and loss 306,547*l.* 15*s.* 8*d.* Now, the 306,547*l.* 15*s.* 8*d.*

is just twice that 153,273*l.* 17*s.* 10*d.*; therefore, this item is a moiety carried to account in the way this witness explains it; this is the total profit and loss arising upon the whole of his supplies for those ten months; this refers to the account which he states was kept, and that he settled the profit and loss with the commissary on the ground of that account, which makes it exactly the sum I have stated. He says, "I left the West Indies in the latter end of April, or beginning of May, 1807. There was a settlement of accounts with Mr. Jones a little before I left the West Indies from this book; that must have been on the 31st of March, 1807. The settlement was on the footing of the profit and loss account. I personally saw Mr. Jones, and stated to Mr. Jones what was the amount of the profit that was due to him." which is the amount, as it appears in the book. "I stated that to him personally, and after I had told him that, he admitted that he owed me 94,168*l.* 13*s.* currency more than his share of the profits was." That is the amount put down as due to Hugh Rose, and this is what he swears to, and which verifies the allegation in the indictment. "Mr. Jones, in settling finally with me, retained that sum, namely, 153,273*l.* 17*s.* 10*d.*, and paid me so much short." If, therefore, the commissary paid the contractor that sum short, he retained it in his hands, and that verifies the indictment that he did so retain that sum. He says, "There were some things not comprised in this settlement. There was one which went under the name of the American adventure. I considered that as a private adventure, and that I was not bound to render an account of it to Mr. Jones, that it was optional with me whether I rendered it or not. I afterwards did make him this allowance, and I directed Mr. Nathaniel Winter to make out an account of that adventure." Now, gentlemen, whether he was bound to render it under the agreement or not, is not material. There had been, according to him, an agreement, which would comprehend all profits made in the course of supplies, and, according to the evidence of Matthew Winter, the profit of the American adventure consisted, in part, of the discount of bills, and in part, of supplies of flour, meat, and so on. If Mr. Higgins was right in supposing it did not come within the scope of his contract with Mr. Jones, yet if he paid it upon that ground, and the other received it upon that ground, it shows both to be acting upon the footing of a supposed agreement; and he says, "I afterwards did, in fact, make him that allowance, and requested Nathaniel Winter to pay to Mr. Jones eight hundred and odd pounds, and that was paid on account of the American adventure. I do not know that that included any thing relating to the contracts." Then he says, "Mr. Jones had not applied to me directly about it; Mr. Jones had no claim whatever upon me, except in virtue of the agreement entered into on board the ship." So that, under the supposed, or the real effect of this agreement, he pays another sum, added to this 153,273*l.* 17*s.* 10*d.*,

of eight hundred and odd pounds. The only material circumstance, in reference to that, is this receipt signed by him; that is a collateral circumstance in favour of the witnesses, and is a thing incapable of telling an untruth; for that is an acknowledgment of that sum being received by him on behalf of Higgins. If this did not spring out of that, but belonged to some perfectly distinct transaction, and there were accounts of any other nature than what arose out of a corrupt bargain, it was competent to Mr. Jones to show it; nay it was proper for him to show any one to which it might be referable. If it be true that this was connected with any thing else, or it was not true that it originated out of this agreement, it might be expected, and would be expected by you, that proof would be given on the other side. In the absence of that proof, it is very strong confirmatory evidence in aid of the evidence of Higgins, and of Nathaniel Winter. He says, "There was no other account on which the 153,000*l.* or the 800*l.* could be paid to Mr. Jones except the agreement."

Then, on his cross-examination, he says, "I had been for some years a merchant in the West Indies before Mr. Jones arrived there as commissary-general. My house of business was in Demerara, under the firm of Mackalmut and company; Mackalmut and I were the partners in the house; I had the contract for supplying vessels under general Knox, before the appointment of Mr. Jones. Rose, the deputy paymaster-general, had a moiety of the profits of that contract. I had an acquaintance with Mr. Jones before I saw him on board the ship. The application to be made to Mr. Jones arose on my part, not to take away my contract; nobody was present at the first conversation between Mr. Rose and me, nor was any other person present at the conversation between Mr. Jones and me in the cabin."

Now, if it be said that, as no person was present but Mr. Rose and him at this conversation, his evidence ought to have been supported by the evidence of Mr. Rose on the part of the prosecution, I own I do not feel that it was in any manner (not only on account of the reasons assigned, but on general principles of prudence) at all to be expected, on the part of the attorney-general, that he should call Mr. Rose. He, seeing that his evidence had a tendency to criminate himself, might at once have exempted himself from examination. But supposing him to have been willing to forego the objection, in order to lend a willing testimony to Mr. Jones, was he the sort of witness whom, in his discretion, a prosecutor would be disposed to call? But if, upon the part of the defendant, it is objected that he is pressed by the solitary testimony of Higgins, it is stated in court, and I presume is true, that the man was here ready to be examined. If he could tell the truth, and that truth would exculpate Mr. Jones, every motive of self-preservation, and of attention to his own interest, most imperiously required him to have called him

without stating what he would have said if he had been called. The case on the part of the prosecution is, therefore, relieved from all blame on account of the solitariness of Mr. Higgins; inasmuch as there was a person who could have disproved his statement, if the truth would have allowed him. That person is not called.

He says, "Besides having the contract for vessels continued, I was also to furnish the supplies." Which he enumerates. "The bills of parcels were in general delivered by me to Mr. Jones. I delivered them sometimes in the name of the real seller, and sometimes in fictitious names, that is, of persons who were not the sellers. The market price was to be certified by persons on the spot; in some instances, I think that I directed Winter, the clerk, to apply for the certificate, but in general, he applied without my expressing the desire. I do not recollect that the books were produced to Mr. Jones by me; I think he saw them once in the office, but I do not think he came there for the purpose of examining them. If he looked at any thing, I think it was his account as commissary-general; there was a constant running account between me and the commissary-general: he was debited by me for the supplies, and I was credited for the payments." Upon being shown a paper, he says, "I think that is my hand-writing." It was suggested that Mr. Jones might be in bed when he saw him in the cabin; he says, "No; he was writing when I went down. Upon my mentioning the agreement, as far as my memory goes, Mr. Jones made no reply, but rather nodded assent. I left the West Indies in May, 1797; a settlement of accounts took place between Mr. Jones and me before I left the West Indies; I think I took to him a paper, containing an account of the profit and loss, for explanation: that was eight or ten days before we settled, and afterwards we settled accordingly; it is impossible to speak positively at this distance of time."

Upon his re-examination, he says, "The account before me is the running account I allude to, and which, I think, Mr. Jones once saw; the sum of 153,273*l.* 17*s.* 10*d.* was struck off as short paid to me by the commissary. If I had had no agreement with Mr. Jones I should have had to receive just 153,273*l.* 17*s.* 10*d.* currency, more than I had if he had paid me the amount of the commissary-general's account; I should have had to receive 153,273*l.* 17*s.* 10*d.* more than I did, but which he retained, and I received so much the less."

I put a question to him in the close of his examination, in answer to which he says, "We settled on the footing of the agreement made through Mr. Rose on the deck, and with Mr. Jones in the cabin. I have no doubt that I so stated to him what had passed with Rose, that it must have been perfectly understood."

The next witness called, is Mr. Nathaniel Winter, and he says, "he was in the West Indies at the time these several parties were

there." He is shown the book which was kept by his brother, and he says, "Mr. Higgins requested I would look at these books to see what his profits were." For some reason or other, Mr. Higgins wished that he should cast them up, and not employ his usual clerk, who was his brother. "After this, Mr. Jones called upon me, I think, just before Mr. Higgins came to this country, and I gave him, by desire of Mr. Higgins, a statement of the profits from this book; Mr. Higgins desired me to look at it, and if Mr. Jones called, to give him an account of it." So that if Mr. Jones called, he was to give him this account at the instance of Mr. Higgins. This is very strong confirmation of Mr. Higgins's statement. "Mr. Jones did afterwards call, and I gave him an account in writing of the profits on the different accounts in the book; I do not know whether Mr. Jones took it away or not, but I produced it." The most natural thing is, that, being produced to a person, and not seen afterwards, he took it away; every presumption, to be sure, is, that he did so; however, it was produced and read by him, and he saw the total amount to be 306,547*l.* 15*s.* 8*d.* And the divided moiety short paid to the contractor, on account of the retention of that sum by the commissary to be 153,273*l.* 17*s.* 10*d.* "If that paper was left with me, it is lost; I think if he had not taken it, I must have seen it since. It was not made out for the use of Mr. Higgins, but for the use of Mr. Jones merely, and to be taken away by him; whether it was so taken, I cannot say. In 1800, I made out the account of the American adventure, by Mr. Higgins's desire, in order to ascertain what the profit upon it was; I made it out according to the papers which were produced to me." It is no matter whether it was correctly made out; it is only material to show that there was something paid by Mr. Higgins, who said he could claim nothing except on the footing of the agreement, as there was no other transaction subsisting between them. He says, "The subject of the adventure was flour, beef, and pork, delivered to Mr. Higgins, and by him applied in the discharge of his contract. This paper, marked A (which is a receipt), I received from the bankers on making this payment." It is proved to be the hand-writing of Mr. Jones; this is a copy of it:—"Received February 25th, 1800, of Matthew Higgins, esq. by the hands of Nathaniel Winter, esq. 829*l.* 5*s.* 8*d.* in full of accounts between said Matthew Higgins and Valentine Jones. (Signed) Valentine Jones." It does not appear that there was any transaction, from the beginning of the world to this hour, but upon the footing of this agreement; if there was, Mr. Jones might have explained it; but not being explained, it is a very strong confirmation of the account given by Mr. Higgins and Mr. Winter. He says, "I never saw Mr. Jones upon the subject of the account to which that receipt relates;" but a man who signs a receipt for 829*l.* must, of course, be presumed

to have known for what he received it. "Our house purchased goods which we supplied to Matthew Higgins to apply to his contracts, and we had a commission on them. I never inserted false names of sellers of goods in the goods I sold to Mr. Higgins, but I have applied to have false names put into the account which Mr. Higgins was to render to Mr. Jones." It is certainly blamable in any person to put a false name. Unfortunately one has had occasion to see, that in disguising public accounts, and in order that it may appear that they have gone through many hands, or to warrant an increase of profits, or to prevent a discovery of the overcharge, false names have been used; in this case they were used. It does not appear that Mr. Jones was privy to this transaction, so as to render him an accomplice in it. He says, "This was at Mr. Higgins's request; he requested they might be made out in other names." He had some reason why he did not wish to appear the seller. He says, "When I delivered to Mr. Jones the statement of the profit and loss account, nobody was present but us two. I am now living in Fitzroy-street; Mr. Higgins resides in Ireland; I believe he carries on no business. I have done business for him in England as his agent. As to the American adventure, bills of exchange formed one item of that on the debit side." Being asked as to his knowledge of the American account, he says, "My knowledge was from the books; I came into possession of Matthew Higgins's books by his desire, that I might examine the account of profit and loss made up by my brother. I did not remain in the West Indies above two months after I had rendered the account to Mr. Jones." Then he says, "To the best of my memory, an account from this book was rendered to Mr. Jones." Being asked as to that expression, "to the best of his memory," he says, "I have not the least doubt about the fact. This is the ledger; the last time I saw the journal, it was in the possession of some of the auditors of accounts in England. I delivered back both the books to Mr. Higgins, either the day I received them from him or the next day. If Mr. Jones did not take away with him the paper I made out, I should have probably delivered it back with the books to Mr. Higgins. If I was obliged to say one way or the other, I should say he took it." To be sure the probability is that he had it.

Upon his re-examination, he says, "There was no book from which I made out the account of the American adventure: I made it up from some papers in England; but," says he, "I know of my own knowledge, of cargoes of flour and provisions coming from America from time to time; Mr. Higgins had no house in America, they came from the house of Bennett and Carey, to a considerable amount; I know of no use that he made of such articles but the supply of the commissariat, except some sent after the supply of the commissariat was over. Mr. Higgins used to render accounts

of provisions to the commissary, which he furnished himself, as if they had been furnished by others. Our house purchased a great quantity of provisions for Mr. Higgins; we had a commission of five per cent upon the supplies; I would have done it for government at five per cent." That, to be sure, does lay too much foundation for the observation of the attorney-general, that all beyond this five per cent was corrupt profit taken by these persons so dealing in the execution of their public trust. At least the one-fourth, ultra the five per cent, which rested with the contractor, would have been sufficient, and the other three-fourths, which were absorbed by the commissary and his friend Mr. Hugh Rose, might have been saved, if you believe this corrupt transaction did take place. "If I had been employed, all beyond five per cent might have been saved."

The receipt which I have stated to you was then read, and the evidence closed with a letter written by Mr. Jones, dated the 3rd of December, 1802, from Bath, to Mr. Glassford, then acting commissary-general in Barbadoes. It is written after some inquiries had been instituted into the conduct of himself and others in the West Indies, and it is for you to say, as far as this is material, whether it does not betray an anxious feeling, and at the end a very distrustful mind, on the subject of the inquiries then going on in the West Indies. He says, "Dear Sir;—The commissioners having sailed three weeks since, will, of course, arrive long before this letter, although in a merchant ship; but unless their secretary, who went before, has applied to you on any matter concerning my accounts, I think you will have time enough to make out any thing that may be necessary before the commission proceeds upon much business." "Make out any thing"—Is not this suggesting something like preparation as to the answers he was to give, for fear of being taken by surprise? Is that the way in which a person whose accounts will bear examination and inquiry is likely to conduct himself? "I do not, indeed, imagine that any thing material can be expected of you relative to my business of my cash expenditure, of which I made up all the vouchers, on my departure, now in their possession; but as the provision and store accounts came in a different degree under your inspection, you may be of service to them in clearing up any question of doubt or misconception. However, I should very much wish that, in such cases, you would be very circumspect, and not give any answer relating to me on my general business without the requisite time for reflection;" that is right enough; "and recollection, as I am well assured of the subsequent concern it would give you to be betrayed, by designing queries, into a hasty or incautious statement of any facts which more deliberate information would put in a different view. As I have never known what entries you have made in any of your accounts sent home, for which credit was to pass to me on

those matters which you settled after I left you, I could wish you to state them to the commissioners, such as the receipt of sales at St. Pierre."

Then he says, "With respect to my provision accounts generally, I have no doubt but many questions will be put to you; but, for heaven's sake, don't be un-modelling them again;" he has put his accounts together, and does not wish them to be disturbed; "as they cost me more pains and trouble than I ever had in my life." What difficulty there could be in modelling accounts of provisions bought and sold, and which must be made from day to day, one cannot conceive, if they were fairly executed: if they had been managed in any way, it might be a subject of difficulty to put them together again, if once taken to pieces, "they would desire no better than to perplex me more—if you can make them better, or you can supply any deficiencies that I may seem to have made, I shall be obliged, but do not make any observations on my general abstract being of a different form from any state of yours; nor would I wish it to be known that I had written to you about it; not that I should fear fair and candid investigation, and I trust you are as well as myself conscious that our proceedings had not the evil intention our judges believe, but I have already seen too much ill-will on this side the water, not to suspect foul play on the other. On the whole"—Now, this is certainly improper, for it is in a manner preparing a witness for the inquiries to be made of him. "On the whole, you have one general answer in your power, which is, that you cannot remember points of business so long gone by." The rest of the letter is not, I think, very material for your observation; if the learned counsel think there is any thing further in it, I will bring it under your consideration. Certainly that letter is subject to various interpretations—certainly a man when subject to inquiry, might very properly wish that the attention of a witness should be called to the subject—but to suggest that he must have a difficulty in answering to matters so long gone by, is like suggesting a sort of general denial of knowledge whether he could make it truly or not.

The question, gentlemen, for your consideration is, whether this defendant was guilty of a corrupt participation of profit with his contractor; for the learned counsel has very properly not made any question upon the law; it would not bear one. If a commissary colludes with his contractor in an agreement, that he shall have one-half of the profit, and that another quarter shall be dealt to another person, that is certainly an offence. The question is a question of fact, upon which you will decide. You have the witness Higgins coming forward, as it seems to me, unwillingly, waiting to have every fact almost extracted from him by particular inquiry, stating facts which he can have no interest to reveal, which certainly place him in a discreditable situation, though less discre-

ditable than the commissary's. They place him certainly in a disadvantageous situation. He states to you facts, which are confirmed by the evidence of this Mr. Winter, who says, that he made out, by his orders, an account which he delivered to the defendant, containing the gross amount of profit and loss. If there had been no dealing between them, what reason had he to inquire what was the profit and loss of the contractor? or would the contractor be desirous of exhibiting the profit and loss to a man who was not to have participation? But he swears that he exhibited an account in which a moiety is carried to account in the manner Mr. Higgins represents it to be. If it be said only one witness out of two was called, who might have proved this corrupt agreement, it should at the same time be recollected, that it was in the power of the adverse party to have called the other, for it is admitted that he is here. Then there is an account afterwards cast up, of the different items of the American adventure, which, Mr. Higgins says, he allowed him to have, though he did not consider it as coming within the scope of his agreement. It was, however, allowed by him, and there is 800*l.* proved to have been received by the defendant.

If he could have shown that these payments were made on any other account, or that there was any other account on which they could have been made, that might have thrown a little doubt upon the case of the Crown; but it is wholly unmet, except by the evidence of general Abercrombie, general Cuyler, Mr. Thompson, Mr. Jourdan, Mr. Moore, and Mr. Jones, all of whom state him to have had, at the period when they knew him, a general good character for honesty and integrity, and to have been in the highest estimation at that period. If it was so (and we cannot doubt it) one can only lament that a man who had acted so honestly and fairly, and whose conduct had been so correct, should have been drawn aside from the path of rectitude by any inducements of interest. It is for you to say, whether you believe the evidence on the part of the prosecution; the evidence of Mr. Higgins and Mr. Winter, confirmed by the circumstances which I have commented upon. If you do believe them, the defendant undoubtedly is guilty of the crime imputed to him by this indictment.

The Jury immediately found the defendant GUILTY.

684. Trial of JOHN LAMBERT and JAMES PERRY, for a Libel upon his Majesty George the Third; tried before the Right Hon. Edward Lord Ellenborough by a Special Jury of the County of Middlesex, Saturday, February 24: 50 GEO. III. A. D. 1810.*

The following were the names of the Jurors sworn.

| | |
|------------------------|----------------------|
| William Lewis, esq. | Henry Woodgate, esq. |
| Charles Jones, esq. | TALESMEN. |
| James Heath, esq. | Mr. John Horseman. |
| Thomas Jeffries, esq. | Mr. John Brown. |
| Thomas Wright, esq. | Mr. Thomas Swift. |
| George Parkinson, esq. | Mr. Isaac Ayres. |
| John Irwin, esq. | |

Counsel for the Crown.

Attorney General [Sir Vicary Gibbs, afterwards Lord Chief Justice of the Common Pleas];

Mr. *Garrow* [afterwards a Baron of the Exchequer];

Mr. *Richardson* [afterwards a Judge of the Court of Common Pleas].

Solicitors—Messrs. Litchfield.

Solicitor for the Defendants—Mr. Lowten.

Mr. *Richardson*.—This is an information, filed by his majesty's attorney-general, against John Lambert, printer of the "Morning Chro-

nicle," and James Perry the proprietor, for a libel on his majesty's person and government: and to which the defendants have pleaded Not Guilty, upon which issue is joined.

The Information was as follows:

INFORMATION.

Michaelmas Term, 50th Geo. 3rd.

Middlesx. BE it remembered, that Sir Vicary Gibbs, knt. attorney-general of our present sovereign lord the king, who for our said lord the king, in this behalf prosecuteth in his proper person, cometh here into the court of our said lord the king before the king himself, at Westminster, on Monday next after the morrow of All Souls in this same Term, and, for our said lord the king, giveth the Court here to understand and be informed, that John Lambert, late of the parish of St. Paul, Covent Garden, in the county of Middlesex, printer, and James Perry, late of the same place, gent. being seditious, malicious, and ill-disposed persons, and being greatly disaffected to our said present sovereign lord, George the third, by the grace of God, of the United kingdom of Great Britain and Ire-

* 2 Camp. 398, s. 6.