

1876.

NEW ZEALAND.

# CHARGES MADE BY MR. J. S. CRAIG AGAINST CAPTAIN ROWE, ENGINEER VOLUNTEER MILITIA,

(PROCEEDINGS OF COURT OF INQUIRY INTO).

TOGETHER WITH EVIDENCE TAKEN BY THE PUBLIC PETITIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON THE PETITION OF J. A. SMALL AND J. BARLOW.

*Extract from the Journals of the House of Representatives, Thursday, the 28th day of September, 1876.*

*Ordered, That a selection be made, by the Chairman of the Public Petitions Committee, of Papers in connection with the inquiry into the charges made by Sergeant Craig against Captain Rowe, Waikato Engineer Militia, and that they be printed.*

## No. 1.

Mr. J. S. CRAIG to the Hon. the DEFENCE MINISTER.

SIR,—

Taupiri, Waikato, 18th February, 1875.

Having been a member of the Engineer Volunteer Militia force since its formation, and holding the post of colour, pay, and quartermaster-sergeant in No. 1 Company for several months back, and there having been committed towards me (in my opinion) an act of injustice, I beg to submit the entire case to your notice, not so much with the idea of regaining the post again, as from a sense of duty.

Having incurred the jealousy of Captain H. T. Rowe, of No. 1 Company, from the knowledge that I was in possession of the facts of several acts of delinquency committed by him, and of which he dreaded an exposure, he adopted a course of conduct towards me with the apparent idea of disgusting and thereby getting rid of me, by making my post so annoying as to compel me to leave the force. Failing in this, he had recourse to the following measures:—

On Saturday, 23rd January, 1875, he (Captain Rowe) sent an order by a lance corporal to me to make out a requisition for forage. As there had been some difficulty with regard to forage previously, I declined taking the order unless written or direct from Captain Rowe. I then pencilled a note to him, stating that I could not take orders in that loose manner, and requesting either a written or direct order from himself to that effect.

Now, this course of conduct may not have been in strict accordance with military rule; if so, the only apology I can offer is that I joined the Engineer Volunteer Militia force as a private without any previous military experience, and nothing to guide my conduct except a desire to do my duty honestly—a course not so easily followed, as may be seen by the sequel of my letter.

The pencilling of this note was made the apparent motive for dismissing me from the force in the following manner:—I was placed under arrest by Captain Rowe. He then sent to Newcastle for Captain Schofield, of No. 3 Company, a junior officer to himself, and a person of infamous character, as a report forwarded to the department, never disproved or attempted to be disproved, may have shown. I allude to the case of sapper Fawcett. This Captain Schofield was a fitting tool to carry out any act of injustice he (Captain Rowe) might contemplate. They then went through the farce of a trial, Captain Rowe, while acting as prosecutor, being closeted with Captain Schofield for some time before issuing sentence. Captain Schofield then sentenced me to be deprived of five days' pay and to be dismissed from the force; not forthwith, but on the 26th January, three days after. They then kept me on the strength of the force until the 2nd February before carrying out the sentence, which they did without stopping the five days' pay inserted in the sentence. This was the first charge ever brought against me during the whole time I had been connected with the force; and from the entire proceedings it is apparent that there were other motives than the enforcement of discipline at work.

I may mention that they tried to manufacture another charge—disobedience—against me, which not only broke down for want of evidence, but was clearly proven to the contrary; yet, as both charges were inserted in the charge sheet, Captain Schofield did not think it worth his while to scratch out the disproved case, but appended his name to both charges, evidently thinking that beyond him there was no appeal.

I think the enclosed charges against Captain Rowe will show sufficient motives for the above extraordinary proceedings; and I have no fear whatever but that, on an impartial inquiry being made, I can substantiate every word of my complaint.

With regard to the first charge, which happened in September last, Major Cooper (then commanding) was made aware of the affair; but Mr. Lovell refused to go against Captain Rowe; and on Major Cooper demanding a copy of the receipt for the price of the mare, Mr. Lovell sent him a

manufactured copy of the receipt for £30, instead of £35, the actual price paid for the mare. When I spoke to Mr. Lovell about it, he said that he did not like to go against Captain Rowe, but that if put on oath he would tell the truth. I, myself, am in possession of other facts connected with this charge, which leaves no doubt about it whatever.

With regard to the second charge, the balance sheet, ledger accounts, and company duty roster, placed alongside of the different working sergeants' returns now in my possession, leaves no doubt on that charge. I would have reported these cases at the time, but, as a member of the force, I would have had to report through Captain Rowe himself as senior officer in the force, Major Cooper having left by that time; and it can easily be judged what the fate of such reports would have been.

Should you deem it necessary, I will take an affidavit as to the truth of the foregoing statements before any Magistrate, and forward the same.

I will also, if required, forward copies of the documentary evidence now in my possession.

In conclusion, I may say that had I gone in with the miserable course of conduct pursued by my superiors in the force, I would have occupied a more comfortable position, and been in the force still.

Praying an inquiry into the entire affair,

I have, &c.,  
J. S. CRAIG.

Sir Donald McLean, K.C.M.G.,  
Minister Colonial Defence, N.Z.

P.S.—My address is care of J. T. Giffney, Esq., builder, Newcastle, Waikato.

### Enclosure in No. 1.

#### CHARGES against CAPTAIN H. T. ROWE, E.V.M.

1. That on or about the beginning of September, 1874, Captain H. T. Rowe, being empowered by Major Cooper, then commanding Engineer Volunteer Militia, to sell a Government mare then in his possession as Captain of No. 1 Company, Engineer Volunteer Militia, did sell the said mare to Mr. Lovell, Taupiri, for the sum of £35. He then communicated with Major Cooper, stating that he could only get £30 for the mare, and pocketed the £5 difference. The various facts will appear on evidence.

2. That on 24th September, 1874, Mr. Oldrey, Paymaster's clerk, paid No. 1 Company, Engineer Volunteer Militia, for month ending 23rd September. Captain Rowe, having entered into a contract for clothing for the company with Mr. Loveday, deducted £1 from each man who was to receive clothing. The men not having received any part of the clothing at the time were dissatisfied, and some of them refused to sign the balance sheet and ledger unless paid in full. As he (Captain Rowe) evidently did not want too much said about that contract, he offered to advance the £1 so charged to some of the most obstinate of them, at the same time taking an order for the amount from each on future pay. Several of the men (old soldiers) were so thoroughly disgusted that they requested—in fact demanded—a pass for fourteen days, which Captain Rowe did not seem to think it prudent to refuse. I will only name two of them, sappers Baskeville and Flynn: they never came back. Baskeville's pass dated from the 24th, and Flynn's from the 25th September; consequently there was one day's duty for Baskeville and two for Flynn. At the making up of the following month's accounts, he (Captain Rowe) caused four days' duty to Baskeville and three days' to Flynn to be inserted in the company duty roster, which they had never performed, thereby showing five days' duty as performed by each, instead of the actual amount of duty performed by them, so that there might be balance enough left to their credit to pay the £1 he had advanced to them. He then put in the orders as claims for the £1 he had so advanced, which he could not have got had the proper balance due to them only been shown; consequently the Government lost in those two cases alone seven days' pay.

Witness my hand, this 18th day of February, 1875.

J. S. CRAIG.

### No. 2.

Lieut.-Colonel ST. JOHN to Major GORDON.

SIR,— Auckland, 27th February, 1875.

By direction of the Hon. the Native Minister, I beg to enclose to you documents relative to the Engineer Militia in Waikato.

I am also directed to instruct you to proceed to the Waikato, and there conduct an inquiry into the charges preferred in those documents, copies of which should be furnished to the officers named in them. In addition to the report you will make in these two cases, you are requested to give a general report as to the state of discipline, &c., of the corps.

I have, &c.,  
J. H. H. ST. JOHN,  
Lieut.-Colonel.

Major Gordon, Auckland.

### No. 3.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,— Auckland, 26th April, 1875.

I have the honor to report that I have this day posted to you the proceedings of Court of Inquiry into charges made by Mr. J. S. Craig, late of the Engineer Volunteer Militia, against Captain Rowe, of that corps.

I have, &c.,  
WM. GORDON, Major,  
Commanding Auckland District.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

## Enclosure in No. 3.

PROCEEDINGS of a COURT of INQUIRY assembled at Newcastle, Waikato, on the 27th March, 1875, by order of the Hon. Sir DONALD McLEAN, K.C.M.G., to investigate and report upon certain Charges preferred against Captain ROWE, Engineer Volunteer Militia, by J. S. CRAIG, lately a Non-commissioned Officer in the same Corps.—Investigating Officer, Major GORDON.

THE Court being assembled, and the accused and accuser being present, the charges for inquiry are read over in the hearing of both parties. The charges as preferred by Craig will be found in the annexed correspondence, but are shortly as follow:—

*1st Charge.*—That Captain Rowe, in September last, was directed to sell a mare, the property of Government; that he did so for the sum of £35, and on receiving payment he credited the Government with £30, and pocketed the remaining £5.

*2nd Charge.*—That Captain Rowe, in September last, so falsified the working pay accounts of certain men of his corps (Baskeville and Flynn) in order that he might obtain for his own use their working pay, amounting in all to seven days' pay, and that consequently the Government lost these seven days' working pay.

In prosecution of these charges, Mr. Craig proceeds to state his case as the first evidence, and informs the Court that on or about the 29th August, 1874, Mr. Lovell, storekeeper at Taupiri, purchased a mare, the property of the Government, from Captain Rowe, which was then in his possession as captain of No. 1 Company, Engineer Volunteer Militia, for the sum of £35, the price which had been fixed by Major Cooper, when he empowered Captain Rowe to sell the mare. I was informed of the transaction by Mr. Lovell, who told me that he had purchased the mare and paid £35 for it. He informed me immediately after making the bargain. I was informed of the transaction also by Captain Rowe himself on the same date—that is, Captain Rowe told me that he had sold the mare to Mr. Lovell, but did not mention for what price. On the 5th September, Captain Rowe ordered me to go to Newcastle—I was acting as pay-sergeant and quartermaster-sergeant at this time to No. 1 Company—and went there to meet Mr. Lovell (who was at this time employed there), to receive the sum of £34 from him as balance of the price of the mare which he had sold to him. Mr. Lovell or Captain Rowe had informed me having paid to him £1 as a deposit at the time of purchase; and that if I received the money I was to lodge the sum of £30 in the Bank of New Zealand at Newcastle, to the credit of the Public Account, and to bring back the difference, £4, to him. On his giving me these instructions, he said that he did not see why he should not make a pound as well as another. I then went to Newcastle as ordered, and met Mr. Lovell there. I got a cheque for £34 from him as balance of the price of the mare, and gave him a receipt for that sum. I then went and lodged £30 of the cheque at the Bank of New Zealand with Mr. Hume, the manager, and took back the difference, £4, to Captain Rowe, at Taupiri. I gave him the money in the presence of Lance-Sergeant Cook in the orderly room. About the end of September or beginning of October, I met Major Cooper at Newcastle in the street. He had been informed of the transaction from some other source and asked me about it. I told him what I did know about it. Major Cooper saw Mr. Lovell immediately after that in the street, Sergeant-Major Small, myself, and others being present. Major Cooper asked Mr. Lovell in my hearing how much he paid to Captain Rowe for the mare which he had bought from him. Mr. Lovell hesitated, and seemed at a loss to know what to say. He said he could not exactly say, but thought he had paid £30 for it. Major Cooper pressed the question, and said he thought it curious that he should forget a transaction of so recent a date. Mr. Lovell said that he could not tell unless he saw his books, and took out a note-book from his pocket in which he commenced to turn over the leaves in a meaningless manner, which all present took as an attempt to gain time to think, instead of answering the question.

Major Cooper then asked him for a copy of the receipt he had obtained from Captain Rowe for the price of the mare; and as Mr. Lovell and I were going to Taupiri that night, he ordered me to call at Mr. Lovell's place for a copy of the receipt. Major Cooper then left us, when Mr. Hope, who was present, said to Mr. Lovell, "You know well enough that the price you paid for the mare was £35, and the mare was below her value at that." Mr. Lovell made him no definite answer. He went to Taupiri that night. Before I called on Mr. Lovell next morning, I saw him and Captain Rowe having a conversation together in front of Mr. Lovell's door. When I called for a copy of the receipt, Mr. Lovell took a copy off the top of his file and handed me the copy. Seeing it to be a manufactured one, I looked at it and then at him. He smiled, and said that (meaning the document he had just given me) is the copy that he was going to give, and that he would save Rowe if he could, not so much for his (Captain Rowe's) own sake as for his wife's; but that if ever he was put upon oath, he would tell the truth. He made the same admission in my presence, and in that of Sergeant-Major Small, on the night that we saw Major Cooper, on the road to the barracks in Newcastle, and in the Sergeant-Major's quarters. Shortly before my leaving the Engineer Volunteer Militia force, Mr. Lovell came to the orderly room at Taupiri, and requested me to go to his house, as he wanted to speak to me. I went, as requested. He then told me that he had had some angry words with Captain Rowe that morning, on account of Captain Rowe refusing to assist him to recover some debts contracted by some one or more men of his company; that Captain Rowe had said he was not going to act as bailiff for him; that he said, in answer, that if Captain Rowe did not do better for him than he was doing, he would shift him out of that, as he had the power to do so—saying to me, "You know, Sergeant Craig, I have the power."

On the 24th September, 1874, Captain Rowe advanced £1 each to two men of his company, Baskeville and Flynn, on account of their being dissatisfied at or with having the sum of £1 stopped out of their wages for clothing, of which they had not received any part. I saw the advance made by Captain Rowe, who told them that he would stop it out of their next pay. To this the men agreed. Captain Rowe instructed me at the same time to write out an order, which these men might sign, and to obtain their signatures, so that he might recover his money on next pay day, which I did. These men then wanted a pass, which Captain Rowe granted. On these men not returning at the expiration of their passes, I reported the matter to Captain Rowe, at the same time mentioning to him that

he would be apt to lose his pound. He said, "I will make that all right." During the month, he came into the orderly room, asked for the duty roster, opened it, and found that the exact amount of duty which they had performed was entered against these two men. He then altered, with his own hand, the amount entered to them, by adding to Baskeville's, 24th, 25th, 26th, and 27th of September, and to Flynn's, 25th, 26th, and 27th of September, as days on which they were at work when they were really on pass, and then instructed me to make up the month's accounts accordingly. I did so, and Captain Rowe examined and passed the next month's accounts with a full knowledge of the wrong entries. On the succeeding day, Captain Rowe produced the orders of Baskeville and Flynn to the pay clerk (Mr. Oldrey), and received payment for them.

1. *Captain Rowe.*] When I gave you the order to call upon Mr. Lovell in Newcastle, did I give you a note to him or a verbal message?—You ordered me verbally to go to Newcastle; whether you gave me a note to Mr. Lovell or not I do not remember.

2. Did I give you any order to sign a receipt for the money?—I did give a receipt to Mr. Lovell for £34. (Mr. Craig could not answer, or would not, in any other way.)

3. Do you remember what you told me on the morning following the night of your return from Newcastle—the night when Major Cooper accosted Mr. Lovell?—I told you that I had been accosted by Major Cooper in Newcastle, and that he asked me concerning the affair of the mare, and that I told him what I knew about it.

4. Do you not remember that you told me that you were hauled up like a prisoner by the Sergeant-Major (Small) before Major Cooper, in front of Fitzpatrick's store, relative to the price paid for the mare; and whilst before the Major, did you not tell me that Mr. Lovell came along very drunk, and that the Major could not get any information out of him at all?—I certainly did say that I was asked about the affair at Newcastle by Major Cooper, but in what words I conveyed the information I do not recollect. I said that Mr. Lovell was drunk when he came down the road with me to Taupiri, but did not say that he was drunk at the time he was speaking to Major Cooper, some time having elapsed between the two periods.

5. Did not Mr. Lovell tell Major Cooper that he (Major Cooper) was trying to make a fool of him because he (Mr. Lovell) was in liquor, and that if he wanted the receipt, or to see the copy of it, he could get it at his office or house?—Not in my hearing. I also heard them conversing about a receipt, but cannot say that I heard that particular part of the conversation.

6. When Mr. Lovell gave you the cheque, did he tell you what it was for?—When I saw Mr. Lovell, I told him that I was sent by Captain Rowe for the balance of the price of the mare. He answered, "All right, I will give you a cheque for the amount," and did so.

7. How do you know that I received a deposit of £1 on account of the mare?—Mr. Lovell told me so, Mr. Hope told me so, and you yourself told me so.

Mr. Lovell, having been duly warned to attend the Court on 29th March, as an evidence on the side of the prosecution, sends to Investigating Officer the annexed letter marked A, which, being read to Mr. Craig and Captain Rowe, they each determine to proceed without him.

Mr. Craig calls upon Mr. Hope as the next witness. Mr. Hope states: I live at Mr. Lovell's, at Taupiri. Some time back I told him that I had learnt that one of the Government mares used on the works was about to be sold, and that I thought her worth about £45. Lovell thought that she was not worth so much, but had said that he would give £40 for her, or rather that he thought she was not worth more than £40. Every time I saw Major Cooper I urged him to sell the mare. He said she would be sold, and Mr. Stewart authorized the sale. The mare was soon afterwards advertised for sale, with a reserve of £35. Lovell saw the advertisement, and went to Captain Rowe and secured her, telling me that he had paid a deposit, but without saying how much. The mare subsequently became Lovell's property. He told me that he had given £35 for her. The sale was effected on the day the advertisement appeared: I believe on the 29th August. Mr. Lovell gave me to understand that he had given £35 for the mare, and he has not said since that it was not so. I was present one afternoon with Major Cooper, Mr. Lovell, Sergeant-Major Small, and Sergeant Craig. We were all together, when Major Cooper asked Lovell about the price of the mare. Mr. Lovell replied that he could not exactly recollect, as he had not his receipts or cheque book on him. At this time Lovell was sober, but he had been drinking; he was quite capable of managing his own business, however, at the time. It was then that I said to Lovell, "You know you paid £35," or words to that effect. There had been some general talk to the effect that there was going to be some investigation on the subject of the sale of this mare, and Mr. Lovell had told me that he would save Captain Rowe if he could; that if he had to appear, he would tell the truth. He said to me that if put on oath, he would make a clean breast of it.

8. *Captain Rowe.*] What reply did Mr. Lovell make when you reminded him that he had paid £35 for the mare?—I do not think he replied at all.

9. Will you explain the latter portion of your evidence, commencing with, "There had been some general talk," &c.?—I looked upon Captain Rowe as guilty of the imputation of having pocketed some of the proceeds of the sale of the mare, and told Lovell that it looked bad for Captain Rowe; and it was then that Lovell told me that he would save him if he could; that he would have nothing to do with the case; but that if he was compelled to give evidence, he would tell the truth.

Mr. Craig calls upon Sergeant Sheehy, hospital sergeant, Engineer Volunteer Militia, who states: Of my own knowledge I know nothing whatever of the accusations against Captain Rowe by Craig; but Major Cooper asked me if I knew anything about the sale of a horse? My reply was that I did not. Lovell, on one occasion, asked me if I knew why he had not received the money for some forage, as the Government had been down on him pretty quickly for the price of a horse which he had purchased? I replied that I did not know, but that the return or cash voucher for the forage had gone in to the Government for the payment of the account.

10. *Mr. Craig.*] Did you not say to Major Cooper that Mr. Lovell had informed you that he had paid £35 for the mare?—Never.

11. Did you tell Major Cooper that Mr. Lovell had paid £35 for the mare?—No.

The Court adjourns till 10 o'clock on 30th March.

The Court reassembles at 10 o'clock on 30th March; and Lovell also appears, the Investigating Officer having insisted upon his presence, notwithstanding the resolve (previously recorded) of the accuser and accused, that they would proceed without him.

Craig calls upon Lovell to produce the receipt which he gave to Lovell for the sum of £34. Mr. Lovell is not able at this moment to produce it, but believes he could find it if he were allowed to go to his residence at Taupiri. (A receipt signed by Craig not being considered of any consequence in this case, its production is not required.) Lovell withdraws.

Mr. Craig calls upon Sergeant Barlow, orderly room clerk, Engineer Volunteer Militia, who states: One day about the end of September last, I had to go down with documents for Major Cooper's signature. I found him talking to Lovell in the street. Mr. Hope was present; so also were Sergeant-Major Small and Craig. The substance of the conversation was that Major Cooper asked Mr. Lovell how much he gave for the mare, who replied, "Well, I can hardly say." Major Cooper said, "Is buying a mare such a frequent occurrence with you that you cannot remember the price you gave for it?" Mr. Lovell answered, "If you particularly want to know, no doubt I have it here," producing his pocket-book. He turned over every leaf of his pocket-book, and then told Major Cooper that he had not got it, and could not tell him. I recollect Lovell saying that he would send and let him know when he got home, or words to that effect. Major Cooper then left him. I accompanied Major Cooper into the store adjoining. Sergeant Sheehy came in at the time Major Cooper was signing some papers. In answer to a question Major Cooper asked Sergeant Sheehy, the latter said that Mr. Lovell told him that he had given £35 for the mare. I then left, and returned to barracks. Lovell was in Sergeant-Major Small's quarters when I returned to barracks, and I went in there too, and heard Lovell tell Sergeant-Major Small that £35 was the price of the mare, but that he did not want to get Rowe into a row. He also stated that if he was called upon to give evidence, he would tell the truth. Lovell was perfectly sober when Major Cooper was addressing him in the street. He was not the worse for liquor when he was in Sergeant-Major Small's quarters afterwards. He was about an hour in Small's quarters. I only heard him leave Small's quarters, as I was at that time in an adjoining room; therefore cannot say in what state he was.

12. *Mr. Craig.*] Did Mr. Lovell seem willing to tell Major Cooper the actual price he paid for the mare?—I consider that he did not show willingness. In the first place he said he did not remember the price, and then he could find no entry in his pocket-book.

13. When Mr. Lovell said that he would screen Captain Rowe if he could, but that if put upon oath he would tell the truth, what was the inference drawn by you from such impressions?—The inference I drew was that he had not told Major Cooper the truth, but would do so if put upon oath—that is, that he withheld the truth from Major Cooper.

14. Was there any sign of drink in Sergeant-Major Small's quarters during the time you were there?—There was no sign of drink whilst I was in Small's quarters.

Mr. Lovell's name being included in Craig's list of evidences for the prosecution, he is called into Court, and the charges being read to him, states as follows:—I am not certain about the date on which I purchased a mare from Captain Rowe. The first knowledge I had of the mare being for sale was through an advertisement. I cannot remember if any price was mentioned in the advertisement. Now I believe the price was mentioned in the paper as £35. I offered Captain Rowe £30 for her. He said that he could not take it, unless he had authority to do so. I offered Captain Rowe a deposit of £1, which he accepted under protest, the protest being she might possibly have been sold by some other officer for the advertised sum; but still the meaning of my offering the deposit was that I would pay the remaining £29, and Captain Rowe telegraphed to Major Cooper to ask if I could get the mare for £30. I cannot say how long after this Sergeant Craig came to me for payment for the mare, and gave me a letter from Captain Rowe. From the tenor of the letter, I thought that unless I paid for the mare at the advertised rate, some one else might be after her; also as, so far as I can now remember, Captain Rowe's letter did not mention any sum, I gave a cheque to Craig for £34. I believe I wrote on the cheque at the time that it was to pay "Mare, or balance due for mare," believing that £35 was to be her price. In fact, I would have given £40 for her. I took delivery of the mare that night, on returning to Taupiri. The note which Craig brought to me from Captain Rowe also asked me to call upon him when I got back to Taupiri, and he (Captain Rowe) would give me a receipt for the money. I waited upon Captain Rowe, and I believe the first words I used were, "Well, I believe I have had to pay through the nose for the mare after all." The reply Captain Rowe made was, "No, you have not, for I have £5 to return to you, as I am authorized to sell her for £30." Captain Rowe then and there on the spot returned to me £5—four in one pound notes, and two half-sovereigns. Captain Rowe informed me that Major Cooper had authorized the sale of the mare for £30. Captain Rowe gave me a receipt for the £30.

15. *Mr. Craig.*] Did you get a receipt from Captain Rowe on the morning that you gave me the copy for Major Cooper?—I have not the slightest recollection of giving you any copy.

16. Do you remember Captain Rowe and you talking in front of your own door that morning, and you and Captain Rowe saying, "We'll go in and stamp it at once"?—Yes, I do perfectly well. The night that I received the receipt from Captain Rowe he had no receipt stamps, and I had none in my house. He told me then that it was not necessary that a Government receipt should be stamped. I suppose I had asked when he gave me the receipt to stamp it.

Craig now proceeds to propose innumerable irrelevant questions to Lovell, to which the Investigating Officer took exception, and overrules them; and Captain Rowe hands in Lovell's receipt for the mare, which is marked B, and attached to these proceedings.

Mr. Craig calls upon sapper Aultridge, Engineer Volunteer Militia, who states: Mr. Kay told me several times that Mr. Lovell gave £35 for the mare and £1 on deposit. He told me this frequently, and again last night the same thing in the presence of Craig and Fawcett.

Mr. Craig calls upon Sergeant-Major Small, Engineer Volunteer Militia, who states: Mr. Hope, in the month of September last, informed me that Mr. Lovell had purchased a mare for £35 from Captain Rowe, and that she was worth from £40 to £45. Some time afterwards I saw Sergeant Craig, who

informed me that Mr. Lovell had bought a Government mare from Captain Rowe for £35, and that a pound deposit had been paid, and that Captain Rowe had sent him (Craig) for the balance of the money previously, telling him that he did not see why he should not make a pound when he had the chance, and that he was to deposit £30 in the Bank to the Government account, and bring him back the remainder. About the end of September, I saw Major Cooper, and told him of what Craig had informed me. He said he would bring Sergeant Craig and Mr. Lovell face to face and question them regarding the transaction. A short time after this, Mr. Lovell and Sergeant Craig were brought face to face opposite Mr. Fitzpatrick's store, in Newcastle. I was present, so was Mr. Hope, Sergeant Barlow, and Major Cooper. Major Cooper asked Mr. Lovell the price he paid for the mare. Mr. Lovell said he could not just then remember—in words to that effect; that he had got a place to call at, and would be back again to tell him.

On Mr. Lovell's return, Major Cooper repeated the question. Lovell took out a pocket-book and continued to turn over the leaves for some time. Major Cooper said it was extraordinary that he could not remember a transaction which took place so short a time back. Mr. Lovell then said he would see if he could find the receipt, and would let him have a copy of it. Major Cooper had then walked away, and Mr. Hope now said, "You know well, Lovell, that you gave £35 for the mare." Mr. Lovell hung his head and said nothing. We then proceeded down to the barracks (Mr. Hope excepted), and in my room Lovell admitted that he had given £35 for the mare, but that he did not wish to get Captain Rowe into trouble over it; that if he was put on his oath, he must tell the truth.

17. *The Court.*] Have you ever addressed any member of the Government on the subject of the perpetration of what you considered to be frauds against Government in your corps?—I did mention to Mr. Stevens, at the recent prize-firing, the stand I had taken against anything of a fraudulent nature which had occurred. I alluded specially to the case of certain screwjacks. He said that he had seen something of the matter in the office at Wellington.

18. Mr. Stevens not being a member of the Government, the Court wishes to know if it is not a fact that you addressed—what you therein termed a "private epistle"—a letter to the Hon. Dr. Pollen in January last?—I wrote a private letter to Dr. Pollen, in which I referred to the stand I had taken, assisted by others, with regard to certain fraudulent transactions which had taken place in the corps.

19. Was this mare transaction one of them?—It was one of them. I believed, from all I had heard, that this transaction was one of them, or of this nature. The words I used on the subject in my letter to Dr. Pollen were, "I have no hesitation in saying, although in a subordinate position, that had it not been for the firm stand I have made against any attempts to defraud the Government of moneys, by collusion with contractors and others, the corps ere this time would have been in a state unpleasant to contemplate."

*Mr. Craig.*] Have you any ill-feeling towards Captain Rowe?—None whatever.

The prosecution being closed, Captain Rowe is placed upon his defence, and is questioned by the Court.

1. *The Court.*] What sum did you hand to the Government as the proceeds of the sale of the mare?—£30.

2. Who authorized you, and in what manner, to accept that amount?—Major Cooper, by a telegram. I cannot produce it, as Major Cooper took possession of it, or rather I gave it to him. I also gave him the Bank receipt for the £30.

Captain Rowe then accepts the evidence of Mr. Lovell given on the side of the prosecution, in exculpation of the charges made against him by Craig.

3. *The Court.*] You have been accused, Captain Rowe, of having falsified the working accounts of two men under your command, by which means it is alleged that the Government have been defrauded of seven days' working pay. Is this true; state the particulars of the case?—I have not defrauded the Government of any working pay by the alteration of accounts, but I will give my explanation of the circumstances alleged against me on this point by Craig. (At this stage of the proceedings, Craig, whose conduct towards the Court, towards the accused, and towards some of the witnesses, Lovell in particular, from the commencement, was exceedingly offensive, became so intolerable that I was obliged to inform him that I could now proceed without him unless he chose to behave himself in a becoming manner. Whereupon he rose from his seat, put on his cap, folded his arms, and stood in the doorway, saying that he would not stay any longer. He withdrew, and I gave directions that he was not to be allowed on the barrack premises.) Captain Rowe proceeds: On the 20th August, 1874, I entered into an arrangement with Mr. Loveday to make fifty uniforms, more or less, for my company, and to supply twelve uniforms or more in each week. I agreed to pay £1 per suit on delivery, and the balance one month after, or on the nearest pay day. Consequently, on 20th September, the accounts for the financial month were being made up, when I ordered Pay-Sergeant Craig to make a column and stop £1 from every man who had been measured for his uniform, believing that it would arrive in a few days. The men previously had always agreed to such an arrangement. On the 24th or 25th September, the uniforms for Baskeville and Flynn had not arrived, and they refused when at the pay table to sign for the deduction of £1 without having received the uniform, and claimed the return of the 20s. Mr. Oldrey, the pay clerk of the Public Works Department, made them wait until the remainder of the company were paid, when he explained to them that the money was retained in the hands of the Government and would not be paid to the tailor until I gave authority to do so. I told Mr. Oldrey that, sooner than alter the accounts, and in order to obtain these men's signatures, I would advance the amount to each of them, if they would give me an order to receive it back next pay day, and they agreed to do so. These two men had on the previous day submitted passes for signature to absent themselves from camp for some considerable time, and their passes were granted. Their departure left in my hands an authority to sign on their behalf, and an order on the Paymaster, Mr. Oldrey, for the sum of £1 each. In the meantime, their uniforms had arrived and were thus thrown on my hands. At the time the accounts were being made up for next monthly settlement, I told Pay-Sergeant Craig to put Baskeville and Flynn down five days' pay each on the pay sheet, believing that they would be at work again in a few days when their passes expired. They never returned, and when I was satisfied that they were

deserters, I made up my mind to stop the amount of pay over-credited to these two men from whatever recruits should take the uniforms thrown on my hands by Baskeville and Flynn, and the uniforms were disposed of on such terms. At the time that I directed five days' pay each to be credited to the two men in question, two days' pay were actually due to each of them. I acquainted the Paymaster with all that I had done, and he concurred, and the overcharge was adjusted with him to the credit of the Government.

Craig having, in the charges which he submitted to the Government against Captain Rowe, alluded to the contract entered into between Captain Rowe and Mr. Loveday—thus: "Captain Rowe evidently did not want too much said about that contract"—the Investigating Officer wishes Captain Rowe to produce the document, but Captain Rowe replies that it had been stolen from a drawer in his private residence, and that the only clue which he could give as to its probable whereabouts might be ascertained from an evidence who was in attendance. This evidence is therefore called into Court.

Sergeant Cook, Engineer Volunteer Militia, states: About six or eight months ago, Sergeant-Major Small asked me to join him, Sergeant Craig, and Sergeant Barlow, to assist them to oust Lieut. Eyre and Captain Rowe. They said that these officers ought to be out, and that if they were I would get my stripes. Sergeant-Major Small said, "I have got Craig made a full sergeant, and to be colour-sergeant at Taupiri, to watch everything appertaining to the books of Captain Rowe, and to try and get any papers that will blast him. You will be down there, and must assist him all in your power." He asked me then to write out a complaint or charge against Captain Rowe to the effect that I had been working for Captain Rowe in Government time and with Government timber. He also said that he had already caused Sergeant Gibbs to write out a report against Lieut. Eyre, and that is one spoke in the wheel. Small also said, "Major Cooper is with us, and will assist all in his power." I told Small that I had nothing to write a complaint about, but still he tried to persuade me to come into his room, saying that he and Sergeant Barlow would help me to make it out; that if I would come in and write this complaint, the next time Major Cooper came up I should have my full stripes. I was then a corporal. I told him again that I had nothing to complain of. Then he said, whatever you do, help Craig, as he will move heaven and earth to get these officers out, and get better men in their place. I was then sent to Taupiri where Craig was stationed, and thinking that I was one of his party, he used to tell me most things that transpired. One serious thing he told me of was, that he went into the captain's quarters, Captain Rowe's, and hunted among his papers, and got some valuable documents, but, for God's sake, I was not to tell any one about it. I laughed and said, "Not I;" but at the same time, if I had heard of any inquiry about missing papers, I would have spoken of them to Captain Rowe. I asked Craig if he kept these documents in his house, when he replied that "Barlow and Small would keep them safe enough."

Mr. Oldrey, the Paymaster under the Public Works Department of the Engineer Volunteer Militia, states: I submit for the perusal of the Court the balance sheet of the No. 1 Company Engineer Volunteer Militia, for the period from 23rd September to 20th October, 1874; and I also submit for inspection authorities from Baskeville and Flynn to pay Captain Rowe the amount of money coming to them for that period. Baskeville was stopped twenty-three days' pay, and was paid five days' pay, less deductions 8s. 2d. for rations. Captain Rowe signed the balance sheet as his agent, the original of which is in Wellington. On my last arrival here, I found that in the balance sheet produced to me by Captain Rowe, the name of D. E. Smith appears, with the observation against it of "Seven days' pay stopped on account of uniform." I required an explanation from Captain Rowe, and that which he gave me was satisfactory to me as the Paymaster of the corps. I have looked into the accounts very minutely, and find that the Government has not in any respect lost seven days' pay, or even one day's pay, in the matter of Baskeville and Flynn. The system in existence with this corps as regards its cash accounts is such that the Government cannot be defrauded, and the officers of the corps have no control in any way over the payment of their men, or in recovery of stoppages. Even payment on account of plant, forage, or such stores required by them, must and does pass through the Paymaster, and not one penny is disbursed by the officers.

The defence on the part of Captain Rowe being closed, the Court proceeds to record its opinion on the matter which has been under its consideration, and now desires to submit its finding in the following terms:—

*Finding.*—The Court is of opinion that Captain Rowe is not guilty of either of the charges preferred against him, and it is moreover of opinion that they were preferred against him by J. S. Craig in a malicious and vindictive spirit.

Newcastle, 30th March, 1875.

WM. GORDON, Major,  
Investigating Officer.

### Sub-Enclosure A to Enclosure in No. 3.

Mr. LOVELL to Major GORDON.

DEAR SIR,—

Just received your despatch, and am sorry that I cannot attend in accordance with your wish, in consequence of my business demanding my attention even more to-day than any other time. I presume my presence is required to give evidence in connection with a mare I purchased from the Government; if so, I can only repeat that I have already given evidence to Major Cooper, and also (I believe) a copy of receipt I received from Captain Rowe as payment. I don't see that I could do more if I attended the investigation.

Major Gordon.

I have, &c.,

W. H. M. LOVELL.

### Sub-Enclosure B to Enclosure in No. 3.

Taupiri, 5th September, 1874.

RECEIVED from Captain H. T. Rowe, No. 1 Company Engineer Volunteer Militia, one (1) bay mare. Marks, like C on off shoulder; age, 5 years 6 months; price, £30.

W. H. M. LOVELL.

## No. 4.

Mr. BACK to the Hon. Major ATKINSON.

*Re Court of Inquiry on Charges preferred against Captain Rowe, Engineer Militia.*

Audit Office, 13th May, 1875.

THE attached muster roll shows both Baskeville and Flynn to have been on duty from 23rd to 27th September inclusive, and to have gone on pass on the 28th September. The muster roll is certified by Captain Rowe.

In acquittance roll (voucher 4-6440) Baskeville and Flynn are each paid five days' pay, 23rd to 27th September inclusive. Receipts acknowledged by Captain Rowe; authorities in proper form. The acquittance roll bears the following certificate:—

"I certify that the individuals named in the foregoing account were actually employed in the situation and during the period specified opposite the name of each respectively.

"HENRY T. ROWE,  
"Captain in charge."

With reference to the explanation of Captain Rowe, that he adjusted the stoppage with the Paymaster to credit of the Government (page 29), and to Mr. Oldrey's statement that Captain Rowe's explanation was satisfactory to him as Paymaster to the corps (page 32 of proceedings), it would appear that in March (voucher 46047) seven days' pay was stopped from sapper D. E. Smith for uniform, the said sapper having earned a full period's pay. It may be inferred that Captain Rowe paid the difference to Smith out of the money stopped from Baskeville and Flynn.

On the other hand, there is nothing to show that the stoppage from Smith was not a legitimate stoppage for clothing issued to him on contractor's account. It will be observed that Mr. Oldrey does not detail Captain Rowe's explanation. Further, it may be remarked that, under any circumstances, the certificates to the acquittance sheet and muster rolls under Captain Rowe's hand were not in accordance with fact. That Captain Rowe drew from the Paymaster money which had never been earned by the men from whom he procured orders; and the accounts were passed on the strength of his certificate.

In the audit of pay sheets, the certificate of the officer is looked upon as a guarantee that the money has been earned, in the same manner as the certificate to a voucher for supplies that the goods have been delivered.

The Paymaster's clerk would appear to be much to blame, as had he not sanctioned the irregularity complained of, it could not have occurred.

To stop men's pay for stores which they not only have not been supplied with, but which were not even in the possession of the corps, nor indeed in existence, is a most unusual proceeding. With reference to the objection of the stoppage of £1 per man, Captain Rowe, in reply to a question by the Court (page 27 of proceedings), states:—"Mr. Oldrey, the pay clerk of the Public Works Department, made them wait until the remainder of the company were paid, when he explained to them that the money was retained in the hands of the Government, and would not be paid to the tailor until I gave authority to do so."

The question might be asked, In whose hands was the money which was stopped for uniform, and how long elapsed before the whole of it was paid to the tailor?

Notwithstanding the finding of the Board, it may be noticed that Captain Rowe admits that he placed men on pay to whom no pay was due. That he appended untrue certificates both to the acquittance sheets and muster rolls is self-evident. The money drawn by Captain Rowe on account of the two absent men was retained by him from October to February, when, with the connivance of the pay clerk, he attempted to square the matter. Captain Rowe cannot be justified, as far as can be learnt from evidence, in retaining the money for four months, on the plea that it was to pay the tailor for uniform, as it is clearly shown that no uniform was issued to either Baskeville or Flynn, they having left before the uniform was made.

FRED. BACK.

The Hon. Major Atkinson, &amp;c., &amp;c.

## No. 5.

Lieut.-Colonel LYON to Captain ROWE.

(Telegram).

Government Buildings, 17th May, 1875.

I AM directed by the Hon. Major Atkinson (acting for the Native Minister) to inform you that he considers the evidence given at the late Court of Inquiry is so very unsatisfactory that the Government dispense with your services from this date; and His Excellency the Governor will be advised to cancel your commission. You will hand over the command to Captain Schofield.

I have, &amp;c.,

WILLIAM C. LYON, Lieut.-Colonel,  
Acting Under Secretary Defence.

Captain Rowe, Ngauawahia.

## No. 6.

The Hon. Major ATKINSON to Major GORDON.

Wellington, 26th May, 1875.

SIR,— I have the honor to acknowledge the receipt of the proceedings of the Court of Inquiry held by you to investigate certain charges preferred against Captain Rowe, Engineer Volunteer Militia, and to inform you that I have perused them with no little astonishment, both on account of the manner in which you took the evidence, and at the conclusion at which you have arrived.

The first charge relates to the sale of a Government mare.



I am quite at a loss to understand how you could have contented yourself with the very imperfect evidence with which you were apparently satisfied. The case was, at any rate, one of grave suspicion, and it was clearly your duty to have called Major Cooper, whom you must have known would have given important testimony.

The following points, however, were clearly established, notwithstanding the lax and careless way in which you conducted the inquiry:—

1. That the mare was worth £40.
2. That Mr. Lovell did actually pay £35 for the mare, and that Captain Rowe received that amount for her, of which only £30 was paid to the public credit.
3. That Captain Rowe repaid to Mr. Lovell £5 of public money without authority, or making any report to his superior officers. And,
4. That the Government lost at least £5 by a deliberate act of Captain Rowe.

Now, the charge for such an inquiry as you were conducting was clearly divisible into two parts:—

1. Had the mare been sold for £35? And,
2. Supposing this to be proved, had Captain Rowe applied the £5 to his own use; and if not, what had become of it?

Yet, with the above facts established, and further evidence available, you simply, without remark or comment, report as your opinion that Captain Rowe was not guilty of the first charge, and that it had been preferred maliciously.

The second charge relates to the falsification, by Captain Rowe's orders, of the accounts of two men—Baskeville and Flynn—with the view to obtain seven days' working pay for his own use, thereby defrauding the Government of £2 2s.

The manner in which you took the evidence relating to this charge is even more unsatisfactory than that upon which I have already commented. It was clearly your duty to have ascertained from the witnesses the actual date upon which the men went on pass; the date on which the passes expired; the reason why, if Captain Rowe expected the men to return, he caused the Government to be charged with the days on which he knew the men were absent, instead of the days when the passes had expired; the date on which Captain Rowe first considered the men were deserters; the date upon which he actually drew the pay which had not been earned; the date upon which he informed the Paymaster of what he had done; the date and manner in which the money was returned to the public account; the date upon which the uniforms were paid for, the cost of which is alleged as a reason for having obtained the money; the fact whether or not Captain Rowe had uniforms thrown upon his hands in any true sense; the names of the men to whom, and the dates upon which, the uniforms of Baskeville and Flynn were disposed of; the nature of the explanation of Captain Rowe to the Paymaster, which satisfied that officer.

Yet, notwithstanding that you failed to put upon record any one of these important facts, it is established beyond dispute from the evidence,—

1. That the accounts of Baskeville and Flynn were falsified by order of Captain Rowe in September last, and that he then drew and applied to his own use seven days' working pay on account of these men, which had never been earned.
2. That no report of this circumstance was made by Captain Rowe to the Paymaster until the following March after this charge had been preferred, when, by the connivance of that officer, the seven days' pay wrongfully drawn in September was, under false pretences, returned to the public account.

The charge, therefore—"That Captain Rowe in September last so falsified the working pay accounts of certain men of his corps (Baskeville and Flynn), in order that he might obtain for his own use their working pay, amounting in all to seven days' pay, and that consequently the Government lost their seven days' working pay"—was fully proved.

How you can have permitted yourself, with these facts proved, to report that Captain Rowe was not guilty of this charge, and that it had been maliciously preferred, is altogether past my comprehension; but before making any further comment, I will await any explanation you may desire to give.

I have, &c.,

Major Gordon, &c., Auckland.

H. A. ATKINSON.

## No. 7.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 29th June, 1875.

I have the honor to acknowledge the receipt of a communication, dated Wellington, 26th May last, signed by the Hon. Major Atkinson, censuring me in exceedingly harsh terms for the manner in which, in his estimation, I conducted an investigation at Newcastle into certain specific charges which were preferred against Captain Rowe, of the Engineer Volunteer Militia.

I apprehend that you were not in Wellington at the time that this letter was written and recorded in your office, or you would have ventured to point out to the Hon. Major Atkinson the course always adopted when proceedings of Courts are considered not to have been properly conducted.

I must assume that the Hon. Major Atkinson was acting, although he has not so informed me, for the Hon. Sir Donald McLean, who was not absent from the colony, and who, at the date of Major Atkinson's letter, had not abandoned the exercise of his defence and military functions; and when I transmitted the proceedings of the Court on Captain Rowe to you, I did so under the impression that they would be placed in the hands of the convening Minister, the Hon. Sir Donald McLean, as a confidential document; but of this sacred character they were soon deprived, by the circumstance of their having been submitted to the manipulation of five or six copyists before being finally disposed of by the convening Minister.

Sir Donald McLean, having previously had the matter for inquiry under his consideration, resolved

upon having recourse to a Court of Inquiry, ordered that Court, handed to it certain specific charges for investigation, which the Court did investigate, and its report was transmitted by the proper channel to be put into his hands as the convening and confirming officer, and it is by him alone that the proceedings can be reviewed.

My authority for this statement will be found in the "Manual of Military Law," page 160, which directs that "after the proceedings are signed, they are forwarded to the convening officer, who has the power to direct the reassembly of the Court as often as he may deem necessary, should he be of opinion that the Court has failed in carrying out the investigation to the extent desired, or that their report is not sufficiently full or explicit."

Then as to the manner in which, under certain circumstances, a Court should be assembled or censured, allow me to quote from a military text-book by Major-General Sir C. Napier, entitled, "Remarks on Military Law," and especially on the subject of the reprimanding of Courts. It is stated:—"I have known prisoners to be fully acquitted by the Court, yet reprimanded, and therefore punished, and consequently the Court was also reprimanded by implication. I have known Courts directly and violently censured for refusing to pass a sentence in accordance with the opinion of a Commanding Officer. Now, let me ask if judges, sworn to do justice, and actuated by a high sense of honor, are to be reprimanded for acting according to their conscience or their oath? That men may have viewed matters in a false light is easily conceived, and for this reason the power of revising the sentence has most prudently been given to him who assembles a Court, approves of the proceedings, and carries the sentence into execution. The Commanding Officer so invested with the power to approve, and confirm or revive, the proceedings of a Court, though he has probably taken a general view, may be supposed to come fresh to the details of the subject, quietly reads over the whole, and if he detects error, he sends for the President of the Court, and explains—calmly and dispassionately—his opinion of the proceedings, pointing out what appears to him to be wrong. If the Court agrees with him, it alters its opinion, and the Commanding Officer approves and confirms, or wholly rejects it. But while he expresses his total dissent in opinion, it seems to be unjust that he should have the right to reprimand a set of conscientious men because they differ in opinion with himself."

These are but a few of the rules and ideas by which all military Courts are judged, and in my own experience I have never known them departed from until now; and I think that, had you been consulted on the subject, your experience also would have enabled you to say at once to the Hon. Major Atkinson that any censure or rebuke of my action should, at all events, proceed from Sir Donald McLean, the authority who convened the Court, and who alone could condemn its proceedings if necessary.

And now to advert to the letter under acknowledgment. Major Atkinson states that he has perused the proceedings of the Court with no little astonishment, "both at the manner in which I took the evidence and at the conclusion at which I arrived." With respect to the manner in which I took the evidence, I must be allowed to say that I am in no way responsible for the manner in which it was taken, for it was my duty to take down the words of each witness, and the evidence is so recorded; and as to the conclusion at which I arrived, I will advert before I close.

As to the first charge, the sale of a Government mare, with respect to which Major Atkinson expresses himself "at a loss to understand how I could have contented myself with the very imperfect evidence with which I was apparently satisfied," my answer is, as I have said before, that it was my duty to receive and record the evidence as it was adduced, and he is perhaps not aware that every evidence whose statement is recorded (excepting Cook's) was produced by Craig, the prosecutor. Their statements, so far from being imperfect, served, in the opinion of the Court, to establish the innocence of Captain Rowe.

Major Atkinson records his opinion that "this case (of the mare) was one of grave suspicion, and it was clearly my duty to have called upon Major Cooper, whom I must have known would have given important testimony." Now, I am bound to say that an officer who proceeds to the investigation of any subject actuated by or who entertains "grave suspicions," enters upon the case in a most unfair and improper character; and if it were known or even supposed that he did so, would, in my opinion, impose upon himself the severest reprobation. I am happy to say that I allowed myself to entertain no "suspicions" whatever in adjudicating upon this case. And as to the statement that it was "clearly my duty to have called upon Major Cooper, whom I must have known would have given very important testimony," I answer, that I was not made aware by the prosecutor that Major Cooper could give important testimony; and the assumption that I ought to have been aware that he could give such testimony, I cannot admit. And I, as constituting the Court, had good grounds for not insisting upon the presence of Major Cooper, when the best evidence of which the case was susceptible was obtained by me in the statement of Mr. Lovell, who was one of the evidences also named by Craig, the prosecutor.

In the second page of his letter, Major Atkinson states that, in the course of the investigation into the matter of this mare, "four points were clearly established, notwithstanding the lax and careless way in which I conducted the inquiry;" and here I would beg to say that I would plead guilty to so severe an accusation, if I had allowed myself to take into consideration these four to him so clearly established points, represented as he represents them. They are not the questions or charges which I was ordered by Sir Donald McLean to inquire into, but are collateral or consequential allegations arising out of the evidence given in the course of the investigation, with which it was not my duty to interfere.

Major Atkinson suggests, in the third page of his letter, that the charge against Captain Rowe, in respect of the sale of the Government mare, "was divisible into two parts:—1st. Had the mare been sold for £35? And 2nd. Supposing this to be proved, had Captain Rowe applied the £5 to his own use; and if not, what had become of it?" But into these two parts I do not think the accusation of the prosecutor is divisible.

The very specific first charge I was "ordered to inquire into was that Captain Rowe was authorized

to sell a Government mare for £35; that he did so, but on receiving that amount he credited the Government with £30, and pocketed the remaining £5."

The evidences for the prosecution proved that he did sell the mare for £35, that he credited the Government with £30, and that he did not pocket the remaining £5; therefore the Court acquitted him of the crime attributed to him in that charge.

Major Atkinson is of opinion that "the manner in which I took the evidence relating to the second charge is even more unsatisfactory than that upon which he had already commented." I can only say that the evidence already recorded in this case also is the language of another witness introduced by Craig, the prosecutor; and I but ask Sir Donald McLean to read the emphatic, concise, and clear statement made to the Court by Mr. Oldrey, the paymaster or pay clerk of the Engineer Volunteer Militia, when, after doing so, he will admit that such evidence, given by an officer (and by one who is still a Government officer, notwithstanding the guilty collusion between himself and Captain Rowe attributed to him by Major Atkinson) in the pay and service of the Government, could not but bring about an acquittal in the case of the second charge against Captain Rowe in any Court either civil or military.

I have said that I would before closing advert to, in the language of Major Atkinson, "the conclusion at which I arrived;" for I apprehend that he refers to the finding of the Court when he expresses his astonishment in the first page of his letter; and will do so by saying that when certain charges are preferred against an individual in any Court, and that individual is proved by the witnesses produced by the prosecutor to be innocent of such charges, then such Court is bound to return a verdict of acquittal.

Major Atkinson would appear to have some objection to my holding the opinion, or recording such opinion, that the charges were preferred "maliciously." Sir Donald McLean has but to read the statement of Sergeant Cook, the only evidence produced by Captain Rowe in the trial, as well as the specious "private epistle" attached to the proceedings sent by Sergeant-Major Small to the Hon. Dr. Pollen, and Sergeant-Major Small's evidence before the Court, when he will perceive how malicious and vindictive was the motive of the prosecution.

I would have asked you to submit to the Hon. Sir Donald McLean the propriety of causing the Court to be re-assembled, with instructions to obtain from Mr. Oldrey additional evidence, as in the testimony he has already afforded he has been discovered by the Hon. Major Atkinson to have connived at the wrongful detention by Captain Rowe, from September to March last, of certain Government moneys; but I find that Major Atkinson has intimated to Captain Rowe that, because of the unsatisfactory nature of the evidence given to the Court before which he was arraigned, his commission has been cancelled, so that the presence of Captain Rowe at any re-assembly of this Court could not be insisted upon.

As the Hon. Major Atkinson concludes his letter by intimating to me "that before making any further comments, he will await any further explanation I may desire to give," I have the honor to give expression to the hope that Sir Donald McLean, as the only legal convening and confirming officer of this Court of Inquiry, will take into his careful and thoughtful consideration the letter of the Hon. Major Atkinson already written, and my refutation of the aspersions made against the Court; and direct, if he considers that it should be so, that the review of the proceedings of this Court, which has been made by other than the properly constituted and responsible revising Minister, be withdrawn.

I have, &c.,

WM. GORDON, Major,  
Investigating Officer.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

## No. 8.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 30th June, 1875.

At a Court of Inquiry conducted by me under the orders of the Hon. Sir Donald McLean, K.C.M.G., held at Newcastle, Waikato, on the 27th March last, Captain Rowe, of the Engineer Volunteer Militia, was arraigned upon certain charges preferred against him by J. S. Craig, who formerly served as a non-commissioned officer in the same corps. Of the charges so preferred against him, he was proved by the evidences, produced by the prosecutor Craig, to be entirely innocent, and was accordingly acquitted by the Court, as Sir Donald McLean has been already informed in the proceedings of the Court.

On the 17th May last, Captain Rowe was dismissed by the Hon. Major Atkinson, not for being guilty of the charges made against him, but, being proved innocent thereof, "because the evidence given at the late Court of Inquiry was considered so very unsatisfactory;" and the intimation was at the same time conveyed to Captain Rowe, but after his dismissal, that his Excellency the Governor would be advised to cancel his commission.

The verdict of the Court being as I have above stated, and no revision of the Court's finding having been made or ordered, the intimation made to Captain Rowe seems to me to impugn, to a very serious and unjust extent, the proceedings of the Court.

Under such circumstances will you do me, as the officer who conducted the inquiry, before such an issue—"viz., because the evidence given at the late Court of Inquiry was considered so very unsatisfactory"—is submitted to his Excellency the Governor as that upon which Captain Rowe's commission shall be cancelled or otherwise—the kindness to inform me of the points upon which the evidence given before the Court are considered to be so very unsatisfactory as to set aside so wholly and completely the verdict of the Court?

I have, &c.,

WM. GORDON, Major,  
Investigating Officer.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

## No. 9.

Lieut.-Colonel LYON to Major GORDON.

Native and Defence Office (Militia and Volunteer Branch),  
Wellington, 14th August, 1875.

SIR,—

In reply to your letter to me of the 29th June, in answer to the Hon. Major Atkinson's communication to you of the 26th May, I am directed by the Hon. the Native Minister to inform you that he apprehends you have altogether mistaken the position in which you were placed on the occasion of your holding the Court of Inquiry at Newcastle; and that he considers the whole tone of your letter with respect to the Hon. Major Atkinson as highly reprehensible, totally subversive of discipline, and extremely disrespectful to the Minister who, in Sir Donald McLean's absence, performed in Wellington the duties of Native Minister, and was therefore your immediate head.

I have to point out to you that your instructions were to inquire and report upon the charges forwarded to you, and that you were not instructed to give an opinion. This, however, you chose to do, and the consequence has been that this opinion, being found to be so much at variance with the evidence recorded, it has been deemed necessary by the Hon. the Native Minister and the Hon. Major Atkinson to disregard it.

With respect to the quotations made by you as a sort of shield for yourself from the just strictures made upon you, I am instructed by the Hon. the Native Minister to acquaint you that he looks upon them as totally irrelevant and inapplicable to the case in point; and he requires that you should immediately withdraw your letter of the 29th June, and forward an ample apology and explanation for having written it. Your letter of the 30th June, No. 35, should also be withdrawn.

I have, &amp;c.,

WILLIAM C. LYON, Lieut.-Colonel,  
Acting Under Secretary Defence.

Major Gordon, Auckland.

## No. 10.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 31st August, 1875.

I beg to acknowledge the receipt yesterday of your communication of the 14th instant, intimating that the Hon. the Native Minister, although he had, in his instructions to me of the 27th February last, directed me to inquire into and report upon the charges preferred against Captain Rowe, Engineer Volunteer Militia, not having instructed the Court before which that officer was arraigned to give an opinion on the case, had deemed it necessary, in consequence, to annul the opinion which the Court had recorded.

Such being the ruling and decision of the convening officer, the Court is bound to acquiesce, and it does so cordially; and as a consequence of such review of the proceedings of the Court by Sir Donald McLean, the Court has expunged from its record of the proceedings all those portions on 16th, 33rd, and 34th pages after the closing words of the last evidence, together with the correspondence which has recently proceeded from the Court on the subject of its now cancelled finding or judgment; and in this new aspect the original record of the proceedings will exist in your office as the record of this Court of Inquiry.

I have, &amp;c.,

WM. GORDON, Major,  
Investigating Officer.The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

## No. 11.

Lieut.-Colonel LYON to Major GORDON.

SIR,—

Militia and Volunteer Office, Wellington, 8th September, 1875.

I beg to acknowledge receipt of your letter of the 31st ultimo, No. 82, which I have submitted for the consideration of the Hon. the Native Minister, who directs me to say that the fact of his having disregarded the opinion you gave in the case of the inquiry into the charges against Captain Rowe, does not in any way whatever "expunge the correspondence which has recently proceeded from the Court on the subject of its now cancelled finding or judgment;" and he is quite at a loss to understand the reason why you endeavour to evade a reply to the demands made in my letter of the 14th August.

Sir Donald McLean now instructs me to say that he requires you forthwith to withdraw your highly improper letter of the 29th June, reflecting on the Hon. Major Atkinson, and at the same time fully and amply apologize for having written it; and also withdraw your letter of the 30th June, No. 35.

I expect your reply by return mail.

I have, &amp;c.,

WILLIAM C. LYON, Lieut.-Colonel,  
Acting Under Secretary Defence.

Major Gordon, Auckland.

## No. 12.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 14th September, 1875.

I have the honor to acknowledge the receipt of your letter No. 270, of the 8th instant, and, with reference to its closing words, I have to observe that as the whole subject of the recent Court of

Inquiry on Captain Rowe has now become one which should result in my complete exoneration, or in my equally complete discomfiture, I cannot prepare a reply to your letter for despatch by the return mail of to-morrow morning; but I hope by that which leaves on Saturday next, the 18th, to transmit such an one as so necessary a period for consideration will alone enable me to record.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

I have, &c.,  
WM. GORDON, Major.

### No. 13.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 17th September, 1875.

I have the honor to acknowledge the receipt of your letter No. 270, of the 8th instant, and to state, in answer, that the nature of the correspondence with respect to the inquiry on Captain Rowe, late of the Engineer Volunteer Militia, and the action to which the proceedings of the Court have been subjected in the House of Assembly, is such that I feel there remains to me no alternative but to ask that His Excellency the Governor, as the Commander-in-Chief of Her Majesty's auxiliary forces in this colony, may be moved or advised to direct that my conduct shall be submitted to investigation by a Court of Inquiry, or by any other tribunal which will have power to acquit or convict me of the offences laid to my charge; and to that end I have transmitted for submission to His Excellency the accompanying preliminary statement of facts in connection with this unhappy case, which I will thank you to beg of the Hon. Sir Donald McLean to forward to the Private Secretary of His Excellency, and I will be obliged by your transmitting at the same time the proceedings of the Court, and the attendant correspondence.

If I may be permitted to make such a request, I would desire that the investigation may take place in Wellington. The evidences upon whom I would propose to call are the Hon. Sir Donald McLean, the Hon. Major Atkinson, Lieut.-Colonel Lyon, N.Z.M.; Lieut.-Colonel Reader, N.Z.M.; Lieut.-Colonel St. John, N.Z.M.; Major Paul, late of Imperial Army; Captain Stack, N.Z.M.; Captain Rowe, N.Z.M.; Mr. F. Stevens, clerk in Militia and Volunteer Office.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

I have, &c.,  
WM. GORDON, Major.

### No. 14.

Lieut.-Colonel LYON to Major GORDON.

Native and Defence Office (Militia and Volunteer Branch),  
Wellington, 23rd September, 1875.

SIR,—

I have submitted to the Hon. the Native Minister your letter No. 92, of the 17th instant, and am instructed to inform you that it can in no way be accepted as a reply to my letters No. 250 of the 14th August, and No. 270, 8th September.

Sir Donald McLean further instructs me to say that he regrets you still persist in evading the demands made in the letters above quoted, and I am now to make a last application to you to comply therewith by return mail. Should you fail in giving me an answer "Yes" or "No," you will be suspended forthwith from duty.

Major Gordon, Auckland.

I have, &c.,  
WILLIAM C. LYON, Lieut.-Colonel,  
Acting Under Secretary Defence.

### No. 15.

Major GORDON to the UNDER SECRETARY for DEFENCE.

SIR,—

Auckland, 28th September, 1875.

I have the honor to acknowledge the receipt of your letter of 23rd instant, and to state, in reply, that, conceiving that I am not guilty of the offences of which I have been accused by the Hon. the Native Minister, and the whole question having been placed before His Excellency the Governor, I am bound to abide by the award of the tribunal which His Excellency will doubtless accord, and which, I ardently trust, the Hon. the Native Minister will see fit to advise.

I avail myself of this the last opportunity I may have of doing so, of saying that I sincerely appreciate the feeling of solicitude and good feeling which the Hon. the Native Minister has given expression to so frequently in desiring me to withdraw and apologize for what is written in certain of my letters which are construed into letters of disrespect to the Hon. Major Atkinson; but he is somewhat infelicitous in his language when, in transmitting his sentiments, he imputes to me that my not apologizing for the tone of these letters is a "persistent evasion of the demands which he makes." Having recourse to evasion or subterfuge is a propensity which cannot be attributed to me, and is therefore intolerable, and is not borne out by the communications which I have at any time made to him. On the contrary, my letters are candid, respectfully outspoken, and clear in their meaning; so much so are they that they have very unfortunately led him to believe that I have been actuated by a feeling of disrespect to the Hon. Major Atkinson; and when these letters are analyzed by that tribunal for which I have appealed to His Excellency, I intend that they shall be pronounced by it to present an aspect quite consistent with the respect which I am required to hold, and which I do hold, for the Hon. Major Atkinson, as one of Her Majesty's Ministers.

The Under Secretary for Defence,  
(Militia and Volunteer Branch,) Wellington.

I have, &c.,  
WM. GORDON, Major.

## No. 16.

EVIDENCE TAKEN BY THE PUBLIC PETITIONS COMMITTEE, HOUSE OF REPRESENTATIVES, 1876.

*In the Petition of James Atormont Small and John Barlow.*

Lieut.-Colonel MOULE examined.

1. *The Chairman.*—Can you give any information to the Committee with respect to this petition?—Yes.

2. State as briefly as you can what you know about it.—As the petition does not give names, it is rather difficult to understand, but I gather from it that the petitioners claim credit for having brought to the notice of the Government certain frauds, irregularities, &c., on the part of the officers of the Engineer Volunteer Militia Companies, Waikato; also that they have caused the conduct of two of these officers to be inquired into before a Board of Officers. Further, the petitioners say or complain rather of loss of office; and one of them (Barlow) that before the loss of office, he had been degraded by the guilty officer—I presume he means Captain Schofield. They say that in doing all this they were put to great personal expense, for which they petition here. I will take the case of Captain Schofield first. That officer was brought before a Court of Inquiry in March 1, 1875, and two charges were preferred against him by a sapper of the name of Fawcett. The first charge was that of being drunk, and the second charge was that of indecent exposure. The Court of Inquiry found that he was not guilty of being drunk at the time stated in the charge, though he was intoxicated at a later hour in the evening. The second charge the Court did not think it necessary to go into, as it was a matter for another Court. Now, in this case it does not appear that the petitioners were in any way concerned, either in preferring the charges or in giving evidence. I will now take the case of Captain Rowe. He was brought before a Court of Inquiry in March, 1875, on two charges preferred against him by a man of the name of Craig, who had previously been dismissed from the Engineer Volunteer Militia for misconduct. The first charge was for selling a mare, the property of the Government, for £35, and only giving credit for £30, thus pocketing £5 himself. The second charge was for falsifying accounts, and thus obtaining seven days' working pay for two men who were absent. The Court found, on these charges, that Captain Rowe was not guilty of either of them, and that the charges had been preferred in a vindictive and malicious spirit. From the correspondence, it does not appear that either of the petitioners was in any way concerned in preferring these charges. They were both called as witnesses by Mr. Craig, and the evidence they gave was against their officers. Therefore I am at a loss to conceive how they were put to any personal expense. They were not instrumental in preferring the charges in either case, and only in the latter did they give evidence; and at this time they were both on duty and in the receipt of pay from the Government. With regard to loss of office, the petitioner Small resigned shortly after the Court of Inquiry. Barlow was shortly afterwards discharged on a reduction being made in the force. With regard to being degraded by the guilty officer, I presume he means the removal from the orderly room to works on the railway line. Now, according to the correspondence, there seems to be some slight reason for removing him from the orderly room. Sergeant Cook, in his evidence at the Court of Inquiry into the case of Captain Rowe, states that he was invited by the petitioner Small to assist him and Barlow in "ousting" their officers. These were the words they used, and that Small had informed him that he had been at the Captain's quarters and obtained important documents, and that Barlow and Craig were taking care of them. These seem to me very good reasons for removing him from his position as sergeant on the railway works; and all things considered, I am at a loss to know on what grounds they apply for relief or compensation.

3. Was Captain Schofield retained in the Government service?—Yes; he was kept on to the last, until the corps was finally disbanded. I may say there was no action taken with regard to the Court of Inquiry.

4. The Government were satisfied that he was not guilty of the charges made against him, of being drunk and indecent exposure?—The Court said he was not guilty of being drunk at the time stated in the charge, though he was intoxicated at a later hour of the evening.

5. And being intoxicated at a later hour of the evening, the Government were satisfied with his conduct?—There was no further action taken. He was in command of the force afterwards, and until its final disbandment.

6. Notwithstanding it was proved to the satisfaction of the Court that he had been drunk while in charge of a particular corps?—Just so.

7. How long did he remain an officer of the colony after that?—Some months.

8. Was not that a sufficient cause for an officer being discharged at once?—The Government could have discharged him at once.

9. Is it not usual, where a charge of drunkenness is proved against an officer, to inform him that his services are no longer required?—That is the custom.

10. Can you state to the Committee why it was not done in this case?—I cannot say. There is nothing in the correspondence to show why. I was in England at the time.

11. Supposing you had been here, what would have been done?—The force was under the Public Works Department. We had nothing to do with them in the organization in the first instance, and little or nothing afterwards. The Public Works Department made the appointments, and they were paid and promotions made without our knowledge.

12. Was not your department responsible for the discipline of the corps?—I may say to a certain extent. The proceedings of the Court of Inquiry came into the Defence Office.

13. Under whose instructions was the Court held?—Sir Donald McLean ordered it.

14. As Defence Minister?—Yes.

15. Supposing you had been present, and in the same position as now, what would your recommendation have been?—It is hard to say.

16. What would you have done in the case of an officer being proved to be drunk?—As a rule I should recommend his removal from the force.

17. Then, with respect to this Captain Rowe. Is he still in the employ of the Government?—No. Immediately after the Court of Inquiry, the Hon. Major Atkinson, acting in the absence of the Defence Minister, was not satisfied with the proceedings of the Court, and at once dispensed with the services of Captain Rowe as a paid officer.

18. On what ground?—Simply that he was dissatisfied with the proceedings of the Court. He did not consider the officer fit to remain in that force. His commission was not cancelled. He was simply dispensed with as a paid officer.

19. What part of the evidence was it that gave dissatisfaction to Major Atkinson with respect to Captain Rowe?—I think the proceedings generally.

20. The charge made, as I understand it, was that he had sold a mare for £35 and credited the Government with £30, and falsified certain accounts?—Yes.

21. Did it appear that there were any grounds for these charges?—There appeared to be grounds certainly.

22. Was the mare sold for £35, and did the Government only receive £30?—It is very difficult for me to say. The Investigating Officer said he was not guilty.

23. From perusing the evidence, what conclusion did you come to in your own mind? Did you think that the mare had been sold for £35, and that the Government did receive only £30?—The evidence is very complicated for and against. The Investigating Officer was the best person to judge. There certainly appears to be good grounds for preferring the charges.

24. These persons were justified in making a charge?—Yes; but I am unable to say whether the officers were guilty or not.

25. Do you think these persons were deserving of commendation for making these charges?—Certainly; but the petitioners had nothing to do with it in either case.

26. I understand the Court of Inquiry constituted on that occasion came to the conclusion that Captain Rowe was not guilty of the charges preferred against him?—Yes; and further, that the charges were vindictive and malicious.

27. But the Government did not come to the same conclusion after reading the evidence?—Major Atkinson came to the conclusion that Captain Rowe was unfit to remain in the force, and dispensed with his services.

28. *Mr. Swanson.*] I think you said that Small was dismissed from the service before these charges were made?—No, I did not. Mr. Craig was dismissed for misconduct before he brought these charges against Captain Rowe.

29. You said that Major Atkinson perused the evidence, and was not altogether pleased with it?—Yes.

30. Did he not state that he was very much disgusted with the whole proceedings. In his letter to Major Gordon, he wonders very much how Major Gordon could have come to the conclusion he did, and wants some explanation. Is not that so?—The Minister was not satisfied with the proceedings, said the officer was not fit for the service, and dispensed with his services.

31. Major Atkinson, so far from being satisfied, was satisfied that the Court was corruptly held, that the officer had been favoured, and that the inquiry was loosely and badly conducted?—That is the difference between the Investigating Officer, who had an opportunity of seeing the demeanour of the witnesses, and Major Atkinson. That difference I cannot explain.

32. Was it not true that these men were ever locked up by these officers on a charge of stealing?—There was one of them placed in arrest about some missing papers, and brought before the Resident Magistrate in Waikato.

33. What was the result of the inquiry?—As far as I recollect, it was not proven.

34. If these men can show that they have been put to any loss in consequence of laying these informations against these officers, or as witnesses in this matter of bringing this conduct home to this officer, do you not think they ought to be paid?—Both were in the pay of the Government at the time, and were simply called in as witnesses by Craig to give evidence, and they gave evidence.

35. If they can show that they have sustained any loss, or incurred any expense about this matter, in trying to bring the attention of the Government to a case of this sort, ought they not to be paid?—If they can fairly prove that they were put to any particular expense, it would be fair to do so; but there is nothing in the correspondence to show that they were put to any expense whatever.

36. This man who was locked up seems to have been put to some expense?—That has nothing to do with this case. I do not think Major Gordon had anything to do with that.

37. Where is Captain Rowe now—still in the Government service?—No; his services were dispensed with at the time.

38. Is he not in the Government service in some other capacity?—He is an officer of Militia.

39. *The Chairman.*] But not in the service of the Government?—Not on pay.

40. Is Major Gordon still in the Government service?—Yes.

41. And is he usually employed in these Courts of Inquiry?—Not usually. He has been employed several times.

42. Since then?—Not since, that I am aware of.

43. Do I understand you to say that if these men can show that they have been at any loss or cost over this matter, they ought to be paid?—I think so.

44. *Mr. Murray.*] Do you know of any motives that the witnesses might have—any animosity—to induce them to prefer those charges against Captain Rowe?—The petitioners had nothing to do with preferring the charges.

45. Had Small and Barlow any animosity, that you are aware of, against Captain Rowe?—None, except what is stated by Sergeant Cook in his evidence, that they seemed desirous to get rid of their officers.

46. *Mr. Swanson.*] If these things were true, do not you think it was high time such officers should be dispensed with?—Certainly.

47. *The Chairman.*] Do you think the question of whether there was a motive or not, or what that motive was, ought to influence the Court if the charges were proved to be true?—I certainly

think that if it could be shown to the Court that there had been a conspiracy to oust the officers it would influence the Court. Certainly, men guilty of base charges ought to be dismissed at once, no matter what the motives were. If a man was guilty of falsifying accounts, and selling a horse for £35 and only accounting for £30, he ought to be dismissed at once.

48. Therefore it does not matter to the Government what the motives of these men were?—Not at all. If those two charges were proved, motives would have nothing to do with it. I look upon the matter in this light: The petitioners want compensation for being, as they say, put to a great personal expense and loss of office, and one being degraded. There is nothing to show that they were put to expense. They merely gave evidence in the last case of Captain Rowe; and while the inquiry was going on they were in the receipt of pay as sergeants, and the degradation merely meant removal from one employment to another. With regard to loss of office, one resigned, and the other was discharged when a reduction was made in the force.

49. *Mr. Dignan*]. You know nothing of the case personally, except what you glean from the records?—Nothing more.

50. From the knowledge you have gleaned from the records, was it on the information of the petitioners that Captain Rowe was brought to trial?—No; there is nothing in the correspondence to show that they had anything to do with preferring these charges.

51. *The Chairman*]. How was this corps constituted?—Three companies were raised to make a railway, and at the same time to serve in the field if required.

52. Raised by the Defence Department?—No; it was arranged between Dr. Pollen and the Minister for Public Works.

53. Is it usual to raise Defence Corps without the knowledge of the Defence Minister?—It was done in this case.

54. Then it is a Public Works corps?—Yes; they were paid, appointed, and promoted by the Public Works Department.

55. What I want to know is this: This being a corps raised for the purpose of carrying on public works, under what rules and regulations was discipline maintained?—You can raise companies to serve as Volunteer Militia, and then they come under the Militia Act.

56. Was this company under the Militia Act?—I believe they were.

57. How?—They were enrolled as Volunteer Militiamen.

58. What officers were put over them?—Captain Rowe and Captain Schofield were two of them.

59. Who instructed them?—The Government.

60. Have you got their instructions?—No.

61. How do you know that they were under the Militia Act?—From the name—Engineer Volunteer Militia.

62. Can you say of your own knowledge that they are under the Militia Act or any Volunteer Act now in force?—I cannot.

63. How was this Court of Inquiry constituted?—It was ordered by Sir Donald McLean when in Auckland. I fancy these men were enrolled as Volunteer Militiamen, and as such they would be subject to the Militia Act. [Instructions to Major Gordon *re* Court of Inquiry read.]

64. If it was an inquiry into the conduct of an officer of the Colonial force, it would have to be done under the authority of the Militia or Volunteer Act. Was this Court of Inquiry a military Court, or simply an ordinary inquiry in a department of the Government. Was not the inquiry conducted technically as if a military Court of Inquiry?—Yes; it has that appearance.

65. Was the officer called upon by the Government to inquire into these charges justified by the instructions he received to make it a military inquiry?—Yes. There are no rules laid down. He could follow any rules he thought proper. In holding a Court of Inquiry, you are not bound by any rules.

66. Then what rules do they follow in Courts of Inquiry?—I think, as a rule, they follow the rules of the Imperial service.

67. Did not Major Gordon conduct this inquiry in the usual manner? Did not he constitute a regular Court of Inquiry?—It appears to me to be carried out in the same way as a Court of Inquiry in the Imperial service.

68. But would not his instructions be given in a different manner if it was intended that a military Court of Inquiry should be held?—No; except that three officers would be appointed.

69. Would not it be done by an officer who would be requested to conduct it under a certain Act or regulations?—I do not see that that was absolutely necessary. I do not think there is anything wrong in the manner the order was given in this case.

70. Supposing instructions were given to him to make an inquiry into the conduct of certain officers, he might, if he thought proper, conduct it under regulations in force in the Imperial service?—He would be safe in doing so. I have seen many Courts of Inquiry, and no two are conducted alike. The object is to get as much evidence as you can.

71. But you are not bound by any regulations?—No.

72. Did not Major Gordon conduct this inquiry in a technical manner?—It appears to have been conducted in a very regular manner.

73. Did he summon all the necessary witnesses?—The Hon. Major Atkinson says not.

74. I suppose you have made yourself acquainted with the whole case?—I have read the papers.

75. It appears that one witness wished Major Cooper to be examined, and the officer conducting the inquiry did not summon him, and it does not appear that his evidence was taken?—It does not appear that the man who preferred the charges called Major Cooper. It was not for Major Gordon to hunt up all the witnesses. If he thought Major Cooper could give good evidence, it was in his power to summon him.

76. Under the circumstances, was it not the duty of the officer conducting the inquiry to call all witnesses who could throw light on the subject?—He should make a full inquiry, no doubt, about it.



77. Supposing the person who made the charge called no witnesses, is the case to collapse on that account?—It is usual for the person making the charges to call witnesses.

78. If names transpired during the course of the evidence, and it was necessary to call them in order to elicit the truth, do not you think that the person holding the inquiry, Major Gordon, should have called all witnesses he thought necessary to give evidence?—I think so; but it appears to me that Major Gordon made up his mind, and did not think further evidence necessary. I think it would have been very much better if Major Cooper had been called.

79. To make the inquiry as exhaustive as possible?—Just so.

80. Has the Government made any further inquiry into this matter?—None that I am aware of.

81. *Mr. Hislop.*] Do you think these men have been wrongly treated?—It astonishes me to find that these men claim anything.

82. You said something about the advantage Major Gordon had in seeing the demeanour of the witnesses in the box. Putting aside this advantage altogether, do you think the evidence given by these witnesses supports the charge?—It is a question which I do not think I should be called upon to answer. It is the opinion of the Minister that Captain Rowe was not fit to remain in the force. I have already come to the conclusion that they are both right; that Major Gordon, from what he heard and saw, came to an opinion, and that Major Atkinson read over the papers and came to another opinion.

83. Do you think, after reading over the papers, that the charges were proved?—They look strong against the officer.

84. On what ground do you think these men would be entitled to any consideration, even supposing they were put to expense? Was it upon their evidence that Captain Rowe's services were dispensed with?—On numerous evidence.

85. Was it consistent to say at the same time that their evidence was untrue, and the charges were not proved?—I should be very sorry to say their evidence was not true.

86. Would you positively come to the conclusion that the charges were not proved, and, at the same time, say that their evidence was not true?—I should not like to say that. There are a great many witnesses besides.

87. To what extent does their evidence go? Does it go towards proving any charges?—Their evidence alone would be useless. That is what I think of it.

88. You say that one of the men resigned. Was it in consequence of the disagreeable position he was in through the charges falling through?—There is nothing in the papers to show it.

89. Wouldn't he be justified in looking at it in this way: Major Gordon has branded me as a liar; I must resign?—I do not see that the Major has branded him as a liar. They give evidence to the best of their belief, and, on theirs and others', he comes to the conclusion that the officer was not guilty.

90. *The Chairman.*] Could they have remained in the corps with any comfort to themselves after that inquiry took place?—It might be made warm for them, as Mr. Swanson says. They could have waited for that.

91. When Major Gordon was appointed, was he considered in the light of a Magistrate, or not there as a person to investigate the proceedings of the officers, and to get the evidence in the best way he could?—Yes, and he was ordered to report.

92. If he saw that any evidence was required, ought he not to have got it?—I think so. It was his duty to get as full information as he could for the Government.

93. Do you agree with Major Atkinson, that he ought to have investigated a number of points arising in the evidence which he did not do?—It would have better if he had done so.

94. *Mr. Swanson.*] Is it not a fact that officers, as a class, look with very great disfavour on non-commissioned officers or privates who endeavour to oust an officer; he does not like him?—I do not see why he should like him.

95. Might not the demeanour of a witness be influenced by the officers trying the case?—Possibly.

96. If there is any bias in the demeanour of the officers who try the case, is it not wholly in favour of the officers, and not the privates?—That I cannot say. I think it would have been better to bring forward all persons who could give any information, so as to make the matter full and clear to the Government.

97. If there is any bias at all, is it not in favour of the officers?—I should not like to say so.

98. *Mr. Murray.*] Are you aware of any irregularity in the conduct of business by Captain Rowe in the Waikato?—Not that I am aware of.

99. Are you aware that Captain Rowe had occasion to advance money to procure tools for the men to work with, owing to the Public Works Department having failed to provide these tools; that he did this at his own expense, and was never repaid by the department?—I have never heard that.

100. Then you think the department has been conducted in a regular and businesslike way?—I simply know nothing about it.

101. *The Chairman.*] How are military Courts of Inquiry constituted?—If charges are preferred against an officer, and further inquiry is thought necessary, the General Officer directs his Brigade-Major—

102. But in New Zealand?—In New Zealand, if charges are made against an officer, I would be very likely instructed to assemble a Court of Inquiry, under the authority of the Minister. I would order the Court to be assembled of three officers under the Act, to inquire into the charges. I would constitute the Court in accordance with the Act.

103. Are there no rules in existence in the colony?—No.

104. Then a military Court of Inquiry would be conducted in the same way as in the Imperial service?—They would be left pretty much to themselves.

105. As a matter of practice, how is a military Court of Inquiry in New Zealand conducted?—They endeavour, as a rule, to follow the English rules.

106. As a matter of practice, if the officer has been an officer of the Imperial forces, he conducts the inquiry in the manner in which inquiries are usually conducted under the Imperial regulations; and in this special case, though rather informally constituted, it has been conducted as it would be under Imperial rules?—Yes.

107. Do you think that is the best way?—I think so. In this case, Major Gordon was instructed to report.

108. With respect to the Constabulary Force, how are Courts of Inquiry conducted?—I have the power to assemble a Court of Inquiry to investigate anything brought against an officer.

109. Under what rules?—In the same way as it has been done in this case.

110. Then an inquiry conducted by an officer of the Imperial service would be conducted under the rules and regulations of the Imperial service?—Yes. I do not see any other way of doing it.

111. Do you think it desirable a provision should be made?—I don't think so.

112. Is not a form always adhered to in conducting these inquiries?—No, Sir; because a person can make a voluntary statement.

113. Is not the mode of taking evidence the same as in a Court?—It is just as in a Court-martial, only the witness is not sworn.

114. Is the Presiding Officer bound to give the verdict on his own opinion or on the evidence?—Major Gordon was justified in giving his opinion as he did.

115. Irrespective of the evidence?—No; I do not say that.

116. Is he bound to give a report in accordance with the evidence, or according to his own opinion?—I think in accordance with his own opinion on the whole case, after considering the evidence.

117. Is the officer bound, in making his report or forwarding his conclusions, to base it on the evidence or on his own opinion?—On the evidence.

118. Do you think the officer who conducts the inquiry ought to report his opinions, or the evidence only as it appeared before the Court?—I can only say that he ought to be guided by the evidence.

119. In this particular case do you think the report of the officer was justified by the evidence that was given at that Court?—I really cannot say.

120. Are the Committee to understand that you came to no conclusion after reading the evidence?—I cannot answer. It is asking me to decide between the Hon. Major Atkinson and Major Gordon. I think Major Gordon had reasons for coming to the conclusion he did, and that Major Atkinson also had equal reasons for coming to the conclusion he did.

The Hon. Major ATKINSON examined.

121. *The Chairman.*] Certain charges were preferred against two officers of the Colonial Militia, Captains Schofield and Rowe, and an inquiry was instituted into the charges against Captain Rowe. It appears that the inquiry was conducted by Major Gordon, in command of the Militia District of Auckland. Were the Government satisfied with the manner in which that inquiry was conducted, and with the report of the officer who had charge of the inquiry?—No; thoroughly dissatisfied.

122. In what respect?—I have gone into the particulars in the letter which I wrote to Major Gordon, and I have pointed out that he has not done his duty in one single respect.

123. Was any further inquiry made into that question by the Government?—No. I was temporarily acting for the Defence Minister, and when the report of the proceedings came down, I immediately suspended Captain Rowe, and relieved him of all duty, and called upon Major Gordon for an explanation.

124. When the Government constituted the Court of Inquiry, was it the intention that it should be conducted as a military tribunal?—I am not able to answer that, except that the letter convening it was not the letter which would be written convening a military Court. Of course, in convening a Court, you can direct the officer either merely to inquire into the circumstances, or direct him to inquire into the circumstances, and report his opinion. This letter, directing Major Gordon to inquire into the circumstances, says nothing about his expressing any opinion. Major Gordon, as a military officer, must have known that he had no authority, upon his instructions, to report his opinion.

125. Then, in the manner in which the Court was convened, what had the Presiding Officer to do? Simply to arrive at a verdict in accordance with the evidence?—I should have understood by the letter that it was not a military Court at all. That is the view I have taken all through. He was simply sent up to inquire and ascertain the truth for the Government to act upon, and report the evidence, giving his opinion, if he liked. But, of course, the Defence Minister would be able to give you definite information. That is the view I took when I had to deal with the case. It did not seem to me to be a matter for military inquiry, and as a rule I have a great objection to make these matters of military discipline. It seems to me to be most objectionable, and I have always resisted it.

126. If it had been the intention to constitute a military inquiry, it would have been explicitly stated that it was to be conducted under some Act of the Legislature—the Militia or some other Act?—So I understand it, and by a Court consisting of several members, not one single man. A Court-martial would be the next step to a Court of Inquiry. The thing is absurd on the face of it. We do not want all that paraphernalia with an officer employed there to do road work.

127. Is there no fixed mode of proceeding with reference to inquiries into the conduct of Civil servants?—Yes. You generally obtain two or three officers of equal or higher standing to inquire into any charge against an officer of the Civil Service. That is the ordinary way.

128. Are the proceedings conducted in the same way as in a Court of law? Are the witnesses sworn?—No; I do not think there is any power to swear witnesses ordinarily.

129. Then, if the proceedings are conducted according to the rules of the Imperial service, are witnesses sworn in that case?—I think not in a Court of Inquiry. I think there is no power in a Court of Inquiry to swear witnesses.

130. After reading the evidence in this case, do you think the persons who made the charges were justified in making them?—Yes, quite. I believe the charges were true. In fact, one or two of the

charges, as I showed in my letter, were substantiated, and any officer knowing anything as to how military accounts are kept must have known that the accounts could be cooked in the way they were.

131. If there was good ground for the charge made, would not it have been desirable that proceedings should have been taken in the Court against him? The charge is that he sold a Government horse for £35, and only gave £30 to the Government. If there were good grounds for a charge of that sort, would not the ordinary Court of law be the best tribunal to try it?—It might or might not. There is very considerable difficulty in obtaining a verdict if the Government prosecute. I do not know whether a verdict could have been obtained in a Court of law upon that charge. Upon the other—taking possession of the men's pay—in my opinion it could. It is perfectly certain he drew this pay without authority, kept it, and used it until he had notice of the inquiry, and then he cooked the accounts to get it back again. There is no question of that.

132. Are you of opinion that Major Gordon called all the witnesses necessary to a full investigation of the case?—No.

133. Were there witnesses he could have summoned who could have given information of use to the Court?—Yes; I think I remarked that in my letter. I said he ought to have called Major Cooper notably.

134. What reason did he give for not calling Major Cooper?—He never answered any of my remarks, as far as I know. He made a long rambling statement about military Courts of law, but never answered my queries.

135. He maintained that he was perfectly right according to the usages of the Imperial service?—That was the defence, which, in my opinion, would not bear looking into at all. On the merits of the case he never entered.

136. Were any subsequent proceedings taken?—Not that I know of.

137. *Mr. Richmond.*] You dismissed Captain Rowe?—Yes; I at once struck him off pay.

138. Has he ever been reinstated?—Oh, no; but his commission was never cancelled. There is this difference, which I always draw: I do not know what the Defence Office does, and never inquired. The Governor alone has authority to give and cancel commissions; but the question of employing a particular officer rests with the Ministry. It would be on our advice that any particular man would be employed. I should always dismiss any man whom I was not satisfied with. That would strike him off pay.

139. What was done with Major Gordon? Was he dismissed?—No; nothing was done. The Governor thought he had to have the inquiry he applied for. I called upon him for a certain explanation, which he did not give, and I did not at all think that the country should be put to the expense of £300, £400, or perhaps £500, to know whether he had done his business satisfactorily. If he did not do his business to my satisfaction, I would get rid of him if he belonged to my department. It seems to me we are the judges whether he does our work satisfactorily or not. He did not, in my opinion; and had he been in my department, I should have removed him immediately.

140. He is still on full pay?—Yes. I think there was a great deal of ill-feeling in the Court as far as I can judge, and these men were working against their officer and their officer against them.

141. *Mr. Hamlin.*] Did not Major Gordon demand a Court-martial?—Yes.

142. Upon what grounds was he refused it?—Because it did not appear to me to be a case calling for an inquiry by Court-martial. The matter did not relate to his commission at all. He performed a certain act for the Government, which was not satisfactorily performed in the opinion of the Government. He was therefore called upon for an explanation, and, instead of doing that, he demanded a Court-martial or Court of Inquiry, which he would have had a perfect right to demand if it were a question of cancelling his commission, but not his employment.

143. Was he not sent up there as an officer of considerable experience, and whose military knowledge eminently fitted him to inquire into the conduct of junior officers?—I could not say. I suppose Sir Donald McLean sent him because he considered him a fit and proper person.

144. In that case, were you not justified in giving him the privilege of clearing himself, or of substantiating the statements you made, if you were not satisfied with the way in which he conducted the inquiry, and stated so in a letter to him, and he demanded a Court-martial?—Not in my opinion. It is not for any junior officer to call in question the conduct of the Minister of his department. I would not submit to have my conduct inquired into by a Court of Inquiry. If I were not satisfied with him I would remove him at once, and would be responsible to the House for what I had done.

145. Was he acting in a military capacity at all when he went up?—In my view, no. I do not know what view the Defence Minister takes. Whether he was acting in that capacity or not, I do not think he has a right to put the country to great expense, merely on his own opinion. The Minister deals with him, and is responsible to Parliament. If I deal wrongly with him, Parliament will deal with me. I was bound to impugn his decision, because it was clearly against the evidence, and I think it is pretty evident that my verdict was right. We have not heard a word from Captain Rowe since.

146. *Mr. Swanson.*] You say that you thought this man was unsuitable for the public service, and you dismissed him?—Yes.

147. Do you think that the man who pronounced him innocent was equally unfit?—Not equally. Upon his refusing to give a satisfactory explanation, I should have removed him from the public service at once, if he had been in my department.

148. Would you explain how it is that a subordinate refuses to give an explanation of such extraordinary conduct, and manages to remain in the service, if he shows such a contempt for authority as that?—That is hardly a matter that I should answer. I can only say what I would do in my department. I cannot say what other departmental heads would do. The Committee see how I acted until Sir Donald McLean came back, and I had no longer charge of the department.

149. What is the cost and expense to the country of getting up a Court-martial?—I think it is absurd that, while in a state of peace, any officer, because a Minister finds fault with him, should demand a military Court. I would not listen to it for a moment. Major Gordon's notion is, not that Sir Donald McLean is a Minister, but his superior officer. He looks upon Sir Donald McLean,

under his Excellency the Governor, as his military superior, as he terms him here “the convening officer.” He looks upon him as his military superior, thinks that he has been found fault with for a breach of military law, and demands to be tried by military law. I should not submit to it for a moment. I refused it altogether. If I had continued to act, I should have removed Major Gordon, and let him appeal to Parliament. He considers he acted under military law, under the Militia Act I suppose.

150. *Mr. Swanson.*] I see by their petition these persons say that they have been put to a good deal of expense in proving the case. Is that so?—I believe the burden of proof was put upon them, and they now claim compensation for the expense they were put to in getting witnesses together. I think it would be but reasonable to reimburse them their expenses.

151. *Mr. Dignan.*] Was it owing to the action of petitioners that this matter was brought under the notice of the Government?—Yes; entirely.

152. Then surely it is right they should be compensated? Have you any idea of the amount of expense to which they were put?—I have not; but I quite agree that it would be fair to recompense any expense they were put to.

153. Any actual expense?—Yes; and a reasonable allowance for loss of time. There is no doubt they did a great public good in routing out what was really a nest of corruption.

154. *The Chairman.*] The total amount is put down at £15 18s. 4d?—Well, that is a very small amount.

155. *Mr. Dignan.*] Did you dismiss the man, or merely suspend him?—I had no power to dismiss; I merely put him on one side; did not want him on pay any longer.

156. *The Chairman.*] It seems that during the inquiry Craig was paid?—If so, he should not be paid again for lost time. The pay sheets would show whether that was the case or not.

157. The petitioners were on pay at any rate?—That might be, but I do not think Craig was. My impression is, that Craig was dismissed before the inquiry commenced. I only speak from recollection, though no doubt Craig did good public service.

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