

(No. 87.)



1862.

TASMANIA.

RESIGNATION OF CAPT. LOWES.

RETURN TO AN ADDRESS. (*Mr. Davies, 28 August.*)

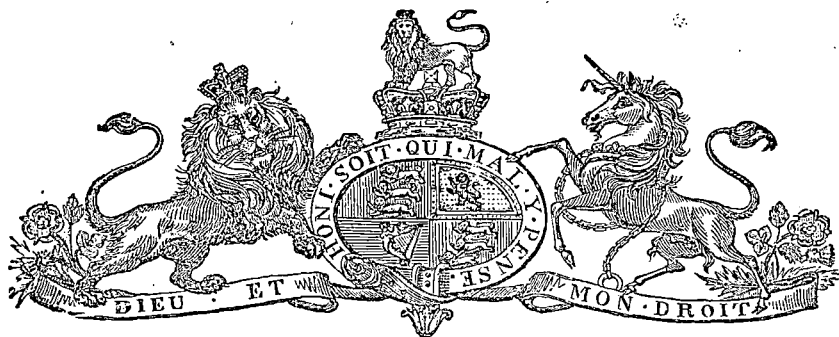
Presented, by command of His Excellency, by Mr. Chapman, and ordered by the House to be printed, 5 September, 1862.

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MEMORANDUM.

SEVERAL Letters have been inserted in "Enclosure B," which were not included in the series forwarded by Captain Lowes for the Governor's perusal. This Enclosure as printed, together with the subsequent Letters from August the 9th to August the 30th, complete the Correspondence.



Glenorchy, 9th August, 1862.

SIR,

HEREWITH I transmit you a Communication addressed to His Excellency the Governor, together with (3) Enclosures, on the subject of my reduction of Sergeant-Major Swan to the Ranks as a Cadet in the Buckingham Volunteer Rifle Company, S.T.V., under my command.

Letter to His
Excellency the
Governor, 9th
August, 1862.
Enclosure A.
Enclosure B.
Enclosure C.

I have to request that this Communication, with its Enclosures, may be transmitted without delay to His Excellency the Governor.

I have the honor to be,
Sir,

Your most obedient Servant,

THOS. Y. LOWES,

Captain Commanding B.V.R.C., S.T.V.

COLONEL RUSSELL, *Commanding Volunteer Force, S.D., Tasmania.*

Glenorchy, 9th August, 1862.

SIR,

IN accordance with my intimation to Colonel Russell, on the 18th ultimo, of my intention "to address Your Excellency direct, in full explanation of the whole matter" of my reduction to the ranks as a Cadet of Sergeant-Major Swan, of the Volunteer Company under my command, I do myself the honor to solicit Your Excellency's most attentive consideration of the circumstances and occurrences connected with, and arising out of, Mr. Swan's conduct and demeanour as Sergeant-Major of the Buckingham Volunteer Rifle Company, which, in my judgment, rendered it my duty, acting under a grave sense of responsibility, to exercise in his case the powers vested in me as a "Commanding Officer" of a Volunteer Company, under the authority and provisions of an Act of the Parliament of Tasmania, 22 Vict. No. 11, intituled "The Volunteer Corps Act."

I have the honor, at the same time, to transmit to Your Excellency herewith copies of the correspondence on the same subject that has taken place between Colonel Russell, Mr. Swan, and myself.

I am perfectly aware that some portion of this correspondence has already been submitted to Your Excellency's consideration. I am also aware that Your Excellency has expressed a military "opinion" adverse to my view of my power as "Commanding Officer" to reduce Mr. Swan to the ranks on my own authority without trial; and I am also officially cognizant that Your Excellency has been pleased to "give your *decision* in accordance with that *opinion*."

I am, therefore, desirous at the outset, and before entering on a statement of the circumstances which I design in this communication to lay before Your Excellency, to indicate respectfully, but explicitly, the position I have assumed on this occasion; and I trust Your Excellency will do me the justice to accept my assurance, that no act or expression of mine, throughout the whole of this very disagreeable business, and in the correspondence to which it has given rise, has been the result, in a single instance, of any intention or disposition on my part to set up my own opinion, *on a military question*, in opposition to Your Excellency's superior judgment in such matters, or to refuse obedience to the Military commands of Your Excellency as Her Majesty's Lieutenant and superior Military authority in all matters affecting the Volunteer Service in Tasmania.

I would, therefore, very respectfully invite Your Excellency's attention to my letter to Colonel Russell, under date 25th April, 1862, in which I have vindicated my reduction of Mr. Swan to the ranks without trial, as an act of authority exercised under the provisions and sanction of a Legislative Enactment. In that letter I have argued the matter simply as a legal question,—it is impossible for me to regard it in any other light,—and I have no additional arguments to offer in support of my position beyond those adduced in that communication.

Your Excellency will, therefore, at once perceive that, while I entertained this view of the matter, it was impossible for me to accept Colonel Russell's interpretation of Your Excellency's "Memorandum of Opinion," or to comply with that Officer's intimated desire that I should cancel the Order I had made for Mr. Swan's reduction. If my act on that occasion was a legal exercise of a statutable authority, Your Excellency's "opinion," I submit with the utmost respect, could not deprive that act of its legal significance and validity; nor should I have been justified in revoking that act, in compliance with a suggestion from Colonel Russell, in the absence of an express intimation of Your Excellency's command that I should restore Mr. Swan to the rank from which I had removed him.

Enclosure B.,
No. 21.
Enclosure B.,
No. 10.

Your Excellency's Memorandum, under date the 21st June, 1862, converts a previously expressed "opinion" into a "decision." I am thus referred to the former Memorandum, in which Your Excellency was pleased to say—"I am of opinion that Sergeant-Major Swan's case should have been referred to a Board of Officers, and that the *Commanding Officer had not the power to reduce him by his own order.*"

It is with the utmost respect and submission to Your Excellency's judgment and authority that I presume to maintain the position, that your Excellency's "opinion," even when pronounced as a "decision," cannot determine the legal question,—“whether or not the Commanding Officer has the power to reduce to the ranks by his own order.” That is a question of judicial interpretation of a Statute; and it is beyond the prerogative of the Sovereign herself to pronounce judicially on the legal validity of the acts of any of Her Servants, or on the construction of the provisions of a Legislative Enactment.

The position I have uniformly assumed in this matter in relation to Your Excellency is distinctly stated in my letter to Colonel Russell of 23rd April last. I then wrote,—“I am perfectly aware that my acts as Commanding Officer are liable at all times to be reviewed and approved or reversed by the Sovereign; or, in this case, by the Queen's Representative. I am prepared to submit my action on this occasion, when officially called upon, for the signification of His Excellency's pleasure; and I shall be able, at the proper time, to justify the *moral* necessity for the course I have pursued.”

Enclosure B.,
No. 13.

And, in my letter to Colonel Russell, under date the 30th June, 1862, I made use of similarly explicit language. I then wrote: “In order to prevent any further misconception on your part of my position and intentions in this matter, I have now to state for your information and guidance, that I have maintained my legal power to order Mr. Swan's reduction to the ranks; that I have admitted the right of the Sovereign to review, and, if necessary, to reverse that order; and that I am ready now, as I have long since intimated to you in writing, to submit the whole circumstances of the case against Mr. Swan (which, as yet, have not been disclosed by this correspondence) for the consideration of His Excellency as the Queen's Lieutenant, and the supreme Military authority in the Colony.” And I expressly stated in the same letter: “It is unnecessary for me to say that I intend no disrespect for His Excellency's 'opinion' on a Military question; and that I shall know how to act when I am officially made acquainted with the Governor's commands as my Military superior.”

I have now, I trust, satisfactorily vindicated my attitude towards Your Excellency in relation to this matter. It is not for me to complain that Your Excellency has not been advised to issue any positive commands for my reinstatement of Mr. Swan to his former rank under my command. I might more reasonably express my regret, not unmingled with surprise, that the official Military medium of communication between Your Excellency and the Commanding Officers of Volunteer Corps should have deemed it his duty to make a peremptory order for the revocation of Mr. Swan's reduction in the absence of such positive commands, and without calling upon me for an official Report of the circumstances under which I incurred the grave responsibility of an exercise of authority which could only be justified by the strongest moral necessity, and the positive exigencies of Military discipline in the Company of Volunteers I have the honor to command.

I now proceed to lay before Your Excellency a succinct narrative of Mr. Swan's conduct, which left me no alternative, in the interests of the Volunteer Service of my own Company, and of my own authority and self-respect, but to deprive him of the rank and title in the Company which he held by my own nomination and appointment.

Enclosure B.,
No. 6.

In a letter dated the 21st April, 1862, Colonel Russell requested me “to have the goodness to at once cancel the order for Mr. Swan's reduction;” stating, at the same time, that “he was not officially cognizant of the circumstances complained of by me.” I replied, “It is precisely, I conceived, to this lack of acquaintance with the case that I must attribute your interposition on behalf of Mr. Swan. That gentleman, appointed by me, under the express authority of the Act of Parliament, 22 Vict. No. 11, to be Sergeant-Major of the Corps I have the honor to command, has for some time past, I regret to say, indulged in conduct of a character calculated to promote disunion and destroy discipline amongst the Members of the Buckingham Rifles.”

I shall leave Your Excellency to judge of the accuracy of this statement from a perusal of the account I am about to place on record of the circumstances which terminated in Mr. Swan's reduction to the ranks. It will then remain with Your Excellency to pronounce a "decision,"—not upon the legal validity, but upon the moral necessity for my authoritative intervention, and upon the discretion and propriety of the act itself.

I submit the following statement, with a confident belief that Your Excellency will rise from its perusal fully convinced that Mr. Swan's removal from the rank of Sergeant-Major was indispensable to the maintenance of the authority of the Commissioned Officers, and of proper discipline and subordination in the ranks of the Volunteer Company I have the honor to command.

The first election of Officers under the Provisional Regulations of the B.V.R. Company took place on the of 1861. Two days before the Election Mr. Swan sought an interview with me at Glenorchy, in which he endeavoured to prejudice my mind against Cadet Smith, afterwards elected First Lieutenant and Adjutant without opposition. It is not necessary for me to do more than record this circumstance; but it affords a clue to much of Mr. Swan's subsequent conduct. Mr. Smith had been most assiduous in his efforts, in conjunction with myself, to promote the formation of the Company; and my observation of his conduct at that time, abundantly confirmed by subsequent experience, had not prepared me to place much reliance on statements made to his prejudice, behind his back, by one who was thought, or known, to aspire to the Commission Mr. Smith now holds. I felt it my duty, however, to check and reprove Mr. Swan's language on that occasion.

Soon after the election of Officers I appointed Mr. Swan Sergeant-Major, the highest rank in the Company in my gift. I knew Mr. Swan's influence was considerable with many members of the Company, and I was anxious to give him as prominent a position as possible next to the Officers. I also constituted him Paymaster, and devolved upon him the entire control and management of the Company's Accounts, with power to sign cheques, &c. Notwithstanding these efforts on my part to conciliate Mr. Swan, and to promote harmony in the Company, I found him on many occasions using his influence to foster a sort of opposition among the Cadets to my wishes and arrangements.

A few weeks after Mr. Swan's appointment as Sergeant-Major, I met him in the street, when, in answer to a suggestion of mine that he should perform some of the duty incidental to his rank in harmony and accord with the Adjutant, who, I knew, devoted a great deal of his time to the affairs of the Company, Mr. Swan gave me to understand, in so many words, that he had become a Volunteer with no patriotic or sentimental design or ideas; that his only object was his own amusement; and that he was not inclined to be at any personal trouble in conducting so much of the Company's affairs as required his attention.

I mention this as a further indication of the spirit and temper which Mr. Swan brought with him as a Volunteer into the Ranks of the Company.

At one or two special general meetings of the Company, subsequently to this conversation, I found that Mr. Swan uniformly and persistently opposed, and sought occasion to affront, Lieutenant and Adjutant Smith; and I could not avoid seeing that the result of his influence, exercised in this direction, was promoting a spirit of discordance and disunion in the Company.

I, therefore, wrote to him privately on the 28th January, 1862, cautioning him that his conduct and its effects had not escaped my notice, and expressing my resolution to support an Officer who had done so much as Mr. Smith to promote the efficiency of the Company.

I beg to refer Your Excellency to the correspondence on this subject enclosed herewith, which will sufficiently show the captious and insubordinate spirit by which Mr. Swan was actuated. I feel confident Your Excellency will agree with me, that the caution conveyed to Mr. Swan in my first letter, 28th January, 1862, addressed to him privately, can by no reasonable interpretation be regarded as "amounting to a charge of insubordination," or "a gratuitous affront." Enclosure A 1
—13.

It certainly could not, legally, have been made the subject of enquiry by a Board of Officers, under the regulations of the B.V.R. Company. But it was open to Mr. Swan to bring my letter under the notice of the whole Company,—the only course by which it could have been ascertained, whether, to use his own words, "the Company considered the accusation true:" in which event, he was "assured by the highest Military authority that his retirement would be advisable." Your Excellency will perceive, presently, that, on a very different and much graver charge, the Company has deliberately expressed its opinion to that effect, though Mr. Swan has hitherto neglected to comply with our recommendation for his retirement.

It was about this time that Mr. Swan projected the formation of a Rifle Club, to be called the "Cornelian Bay Rifle Association"—the effect, or, I fear I ought to say, the object, of which must have been to compete with, rather than to assist, the rifle practice of Volunteer Corps under military

discipline and control, and to interfere most injuriously with the interests and efficiency of Mr. Swan's own Company.

The regular weekly Parades at the Race Course, New Town, were at that time by no means so well attended as I could have wished; and the establishment of a rendezvous for Rifle Matches at Cornelian Bay wore very much the aspect of an attempt on the part of Mr. Swan to set up a rivalry between the new Club, of which he was Secretary, and the Company of Volunteers, of which he was Sergeant-Major.

I shall now call Your Excellency's particular attention to four several instances of gross misconduct of the Sergeant-Major, culminating in the act of outrageous impropriety towards his superior Officer, the First Lieutenant and Adjutant, acting under my own immediate orders and instructions.

1st. On Wednesday, the 12th February, 1862, whilst a party, under command of the Adjutant, was engaged in Target practice at the Butts, Macquarie Point, one of the Cadets present, in uniform, with his rifle, expressed his disinclination to fire on account of the wind. The Adjutant told him, as he was present, he must fall in and fire. The Sergeant-Major, who was standing by, *out of uniform*, advised the Cadet not to fire, who accordingly, disobeying the Adjutant's order, was quitting the ground, until I ordered him to fall in.

Enclosure A.,
No. 1.
Adjutant's
Memo., 14
Feb., 1862.
Enclosure A.,
No. 7.

I refer Your Excellency to the Adjutant's memorandum of this occasion, furnished to me at the time.

2nd. On the 17th of February, 1862, I directed a memorandum to be read on parade by the Sergeant-Major, ordering a squad for "judging distance" drill to meet at the Orderly-room on the 19th of that month, in uniform, with their side arms,—the squad to be in charge of the Sergeant-Major. In open defiance of this order, the Sergeant-Major took charge of the squad on the day named, *out of uniform*, every Cadet who attended being in uniform. In consequence of this irregularity, and the bad example set to the other members of the Company, I made an order, which was duly communicated to Mr. Swan, that, "in future, the Sergeant-Major will attend all drills and parades in uniform."

3rd. On Tuesday, the 18th March, 1862, there was a drill at the Tannery, at half-past 4 P.M. under my own supervision. At about 20 minutes past 5 o'clock the Sergeant-Major entered the Drill Room *out of uniform*, bringing with him 3 dogs, which annoyed and distracted the attention of both the Drill Instructor and the Squad. Mr. Swan stood near the door, looking on with indifference, until I ordered him to take away his dogs. On this occasion the Sergeant-Major came to the Drill-room *out of uniform*, but with his rifle in his hand, when the drill was almost at an end, for the purpose, as he alleged, of excusing himself to the Adjutant for non-attendance, on the plea of having been detained by writing letters. The fact was, Mr. Swan had no expectation of finding me at the Drill-room, and came there *out of uniform*, with his rifle and his dogs, with the design of affronting the Adjutant in presence of the Cadets at the conclusion of the drill; a design of which my presence on that occasion prevented the accomplishment, but which Mr. Swan afterwards carried into effect, in fulfilment of a predetermination, which he has since admitted, to insult his Superior Officer. The Sergeant-Major, by my orders, (conveyed to him, in writing, by the Adjutant) was fined, under the Rules, on this occasion, in the sum of 5s. for "absence from parade," and for being "improperly dressed," in defiance of my express orders.

On the 23rd March last the Sergeant-Major, *out of uniform*, met or joined the Adjutant and several Members of the Company in uniform returning from drill, which the Sergeant-Major had again failed to attend. On this occasion he entered into conversation with the Adjutant, complaining of the fines mentioned above, inflicted by my order. The Adjutant expressing a wish to hold no conversation with him on the subject, the Sergeant-Major used the following language:—"I don't care a damn for your opinion; you have acted in an underhanded, unmanly manner, and I am determined to tell you so." The Adjutant then called his attention to the improperly offensive character of these remarks, made in the presence of other members of the Company in uniform. The Sergeant-Major then said:—"I am not in uniform, but you can take what notice of them (his remarks) you like; I will repeat what I have said anywhere, and in whatever society you please."

Enclosure A.,
No. 11.

The Adjutant reported this occurrence to me in a letter, to which I now entreat Your Excellency's most attentive consideration.

After the most anxious and careful deliberation, I felt it my duty to deprive the Sergeant-Major of his rank and title as a Non-commissioned Officer of the Company.

Enclosure A.,
No. 12.

I accordingly reduced him to the ranks, by a Memorandum inserted in the Orderly Book, read to the Company on parade, and communicated in writing to Mr. Swan.

I refrain from any observations, at this point, upon my motives and object in taking this decisive

step; and I shall proceed to call your attention to the circumstances which have transpired since Mr. Swan's reduction, which will enable Your Excellency to estimate the propriety of insisting on, or the possibility of my being instrumental to, Mr. Swan's restoration to his former position, supposing, which I cannot anticipate, that Your Excellency, after perusing this statement, and the correspondence and memoranda accompanying it, should be of opinion that my reduction of Mr. Swan is unsustained on the grounds of moral necessity, the exigencies of discipline, and the interests of the Company of Volunteers I have the honor to command, irrespectively of any considerations regarding the legal validity of the act itself.

On receiving official intimation of his reduction to the ranks, Mr. Swan, in a letter dated 2nd April 1862, applied, through me, to Colonel Russell for an order directing me to summon the Board of Officers of the B.V.R. Company to take into consideration certain complaints alleged against me in the same letter.

Enclosure B.,
No. 2.

This was the commencement of the correspondence on this subject between Colonel Russell and myself, extending over a period comprised within the 14th April and 8th July, 1862.

I have the honor to transmit herewith copies of this correspondence. I offer no remarks upon it at this point, beyond invoking Your Excellency's most attentive consideration of its contents, and a favorable construction for the motives which, under a strong sense of personal responsibility and legal obligation, have imposed upon me the necessity of insisting upon my statutable authority, in contravention of Your Excellency's Military "opinion," and subsequent "decision" to the same effect.

Enclosure B.,
1—25.

On the 20th June last, (it will be in Your Excellency's recollection) a General Parade of Volunteers, S.D., was ordered to take place in the Government Domain, in honor of Her Majesty's Birthday, at which the Volunteers were reviewed by Your Excellency.

On that occasion, in consequence of the unhappy disunion created among the Cadets by the intrigues and machinations of the late Sergeant-Major, only thirteen rank and file of the B.V.R.C. mustered at the Orderly Room. Preparatory to attending the review, Mr. Swan, *out of uniform*, placed himself in the rear of the Company when formed to the left of the First Rifles, S.T.V., and with an insulting gesture, and in tones loud enough to be heard by many Volunteers of both Companies, made use of this language,—“Just as I expected; only the Survey mob and a few of the Captain's hangers-on!”

It is unnecessary for me to remind Your Excellency of the gross and outrageous impropriety of such conduct; indecent in a Volunteer, inexcusable in a gentleman.

But it was now necessary that I should act decisively. My own sense of what I owed to my Commission, to my Company, to the Volunteer service, and to myself, required that conduct of this kind, in one submitted by law to my Military superintendence, should no longer brave my delegated authority with impunity, or continue to bring contempt upon the Company of Volunteers I have the honor to command.

I was anxious, however, that on this occasion Mr. Swan should be judged by his brother Volunteers. I accordingly convened a Special General Meeting of the Company, in terms of the Regulations, in which I invited the consideration of the assembled Members to Mr. Swan's conduct from first to last.

I apprised Mr. Swan by letter, dated 28th June, 1862, of which I enclose a copy herewith, of my “intention to submit his conduct at the Orderly-room on the 20th June to the consideration of the Special General Meeting;” to which he was also duly summoned by circular. The meeting took place on the 1st July, 1862, and Mr. Swan was present. The Chair, by my desire, was occupied by Lieutenant Boyes.

Enclosure A.,
No. 15.

I then stated to the meeting, that, in consequence of the small muster on the Queen's Birthday, I had convened the Members to ascertain the effective strength of the Company, and whether the Company assembled at that meeting was prepared to approve my action in the reduction of Mr. Swan to the ranks. I stated, at the same time, that my power to make that reduction was questioned by the Colonel Commanding Volunteers, S.D., and by Your Excellency; and I read a portion of the Correspondence with Colonel Russell, in which I maintained my position and authority on legal grounds.

I then stated what had been Mr. Swan's behaviour on the Queen's Birthday detailed above; behaviour so *exceedingly* gross that I should have dismissed him at once, had not that meeting afforded me an opportunity of laying the matter before the Company.

I also stated that, after what had occurred, I could not again appear on public Parade with the Company while Mr. Swan remained in its ranks; and I asked the meeting to decide whether Mr. Swan or myself should retire.

I then called upon Lieutenant and Adjutant Smith to state the circumstances of Mr. Swan's conduct on the occasions already set forth in this letter, and which form the subject of the annexed Correspondence.

Enclosure A.

In reply to a statement to this effect from the Adjutant, Mr. Swan admitted that all that Officer's statements were substantially correct with respect to his (Mr. Swan's) suggestion of disobedience of orders at Target-practice to Cadet Best; and his behaviour to the Adjutant on the 25th March, alleging that he considered himself in no way responsible to the Company, because on those occasions he was *not in uniform*; and admitting that he had designedly and intentionally insulted Mr. Smith.

Mr. Swan made no attempt at denial of my statement of his conduct at the Tannery Drill-room; and at the Orderly-room, Lord's Buildings, on the Queen's Birthday, detailed above.

Enclosure B.,
No. 23.

It is not necessary for me to trouble Your Excellency with any further account of what took place at the Special General Meeting, beyond stating that its proceedings terminated in the adoption of a Resolution condemning Mr. Swan's conduct in very strong terms; upholding my action in reducing him to the ranks; and declaring "that in the opinion of the Meeting Mr. Swan's retirement from the Company was highly desirable."

Two days after this meeting, Mr. Swan again sought me at Glenorchy. He came, he said, to express his regret for what had passed; to apologise for his demeanor towards myself; to admit the impropriety of his conduct towards the Company, and the unjustifiable character of his hostility to Lieutenant Smith. He said he was willing to sign anything to that effect that I might dictate; stating, further, that he was about to reside on the other side of the Island, and had quitted, or was about to quit, the Company. Such was the general tenor and effect of our interview on that occasion. After mature deliberation, I resolved to spare Mr. Swan the humiliation of subscribing any direct apology or confession of the reprehensible character of his conduct as a member of the Volunteer Company he had at one time aspired to command. I accordingly forwarded him a draft letter for his signature, which, without any reference to recent events, made some *amende* to Lieut. Smith and to myself, and took a graceful leave of the Company.

Enclosure C.,
1—3.

I enclose Your Excellency copies of this draft letter, and of a letter to myself from Mr. Swan, and of my reply thereto.

It is not without some reluctance that I append this correspondence to an official paper of this kind; but, in justice to Your Excellency, who is called upon to decide upon the propriety of restoring Mr. Swan to his former rank under my command, after a full knowledge of *all* the facts and surrounding circumstances of the case, and in justice to myself, who have been required to incur a grave responsibility, under somewhat difficult conditions, and in the discharge of an onerous, but thankless public duty, I feel constrained to disclose a correspondence which will scarcely, I fear, redound to Mr. Swan's credit, either as a Volunteer, or as a private member of society.

I have now narrated to Your Excellency, perhaps at too great length, but with the strictest adherence to truth, the circumstances connected with Mr. Swan's reduction from first to last; and I have supplied Your Excellency, in the enclosures appended to this communication, with the means of judging, from the original memoranda and correspondence, of the accuracy of my narrative, of the integrity of my motives, and of the reasonableness and propriety of my action. With a few concluding observations, I shall very respectfully leave the matter in Your Excellency's hands.

1st. With reference to Mr. Swan's conduct, I had become acquainted with his hostility to Lieut. Smith, by his own admissions, before the election of Officers. I could not avoid seeing that Mr. Swan, under the influence of that sentiment, was pursuing a line of conduct detrimental to the best interests of the Company. His dislike of Lieutenant Smith found vent in persistent efforts to thwart his action as the Adjutant of the Company, and to disparage his character and authority with the Cadets. The same feeling prompted his opposition to myself, manifested in a variety of ways. I can only attribute his behaviour to a design to disgust me with the trouble and annoyances arising out of my command of the Company, in hopes that I would retire to make way for *his* election as Captain.

I had for many months previously carefully and anxiously observed his demeanor and conduct, and their effect upon the Company; and, when his last outrageous act towards Lieutenant Smith seemed to reach the climax of intolerable defiance of all authority and discipline, I felt that his removal from his position in the Company, next in rank and authority to the Officers, was absolutely indispensable to the existence of the Company itself as a body of Volunteers.

2nd. Your Excellency, in your first memorandum, seems to suggest that Mr. Swan ought to have been brought to trial before a "Board of Officers." I must remind Your Excellency that the powers of the Board are defined by the Rules and Regulations of the Company. Those Rules expressly limit the powers of the Board to the "investigation of complaints against Members for breach of *any Rule or Regulation*." (Rule 14.) The Board's power of punishment is restricted to fine,

or dismiss in extreme cases, "Members convicted by it of any breach of any Rule or Regulation." (Rule 20.) And it is further provided that "Insubordination of any kind shall be dealt with by the Board as it may think fit, by fine, suspension, or dismissal." (Rule 41.)

It is difficult, in the somewhat anomalous position of Members of the Volunteer Service of Tasmania, to say how far the power of the Commissioned Officers extends over Volunteers under their command *off parade and out of uniform*. It is a question that has not been settled in England. I was called upon to put an interpretation on the Rules as I found them; and, as Mr. Swan had not committed a direct "*breach of any Rule or Regulation*", I was also required to determine whether an act done by him *off parade*, and when *not in uniform*, could be drawn within the meaning of the Rule which empowers the Board of Officers to deal with "Insubordination."

I felt the Rule did not, and could not, apply to Mr. Swan's behaviour to Lieutenant Smith on the 25th March. What Rule had Mr. Swan broken? What order had he actually disobeyed in his conduct towards Lieutenant Smith to constitute "insubordination?" Besides, are the obligations of the Volunteer Service to follow a Volunteer into all the private relations of life? Is he to be esteemed under the Military commands of his Officers in the street, or in the drawing-room, when not wearing the uniform of his Corps, and employed upon no Military duty? I think not. I, at any rate, was bound by the Rules, and had to exercise my judgment and discretion in resorting to them on the occasion in question.

And Your Excellency will not have failed to remark, that the very difficulty, or rather the impossibility, of applying the Rules of the Company to Mr. Swan's conduct had also occurred to Mr. Swan himself. By his own admission, at the Special General Meeting, he had intentionally abstained from open impropriety of conduct when wearing the uniform of the Company. He was *out of uniform*, he said to the Adjutant on the 25th of March; and at the meeting he claimed exemption from responsibility to the Company, because all the acts complained of by the Adjutant and myself had been done *out of uniform*. He relied upon this defence; and he declared that he had designedly so acted, in order that he might affront his superior officer with impunity. This admission was made before the Company assembled in Special Meeting; and I would very respectfully ask Your Excellency if a Volunteer, capable of such conduct and of avowing such motives, is the sort of person a Commanding Officer would wish to appoint, or Your Excellency to re-impose upon myself and my Company, as Sergeant-Major?

Mr. Swan has not appeared in public in the uniform of his Company, except at the Government Rifle Matches, for the last six months; and he has now gone to reside at a distance from Headquarters, without applying for leave of absence. For twelve months he has been striving to create discord and disunion in the Company, and unhappily with only too much success; his Company has passed a deliberate Resolution, describing his conduct as "a deliberate and gratuitous insult to the whole Company in the person of one of its Officers, and to the Captain under whose authority and orders Lieut. Smith was acting," and declaring that his "retirement is highly desirable." He has offered to apologise personally to myself for his conduct, specially refusing to make any "*amende*" to the Adjutant, whom he has grossly and designedly outraged, or to the Company which his machinations have nearly disorganised. And the Colonel Commanding would have me to understand that it is Your Excellency's command that I should restore Mr. Swan to his former rank! In the face of a Resolution of the whole Company demanding his *retirement*, Colonel Russell *threatens* to reinstate him by his own order as Sergeant-Major! I feel confident that, after a careful perusal of this communication, such will not be Your Excellency's wishes or commands. I feel confident that Your Excellency will not propose to any gentleman, commissioned to command a body of Volunteers, to perform an act so subversive of all military discipline,—so destructive of the interests of his Company,—so inconsistent with his own sense of duty and his personal self-respect,—I feel assured Your Excellency will not willingly place an Officer, commanding a Volunteer Company by the Governor's Commission, in a situation where he would be compelled to choose between his retention of that Commission, and the performance of an act repugnant to his conscientious conviction of his duty to himself and to his Company.

3rd. With reference to the attitude assumed by Colonel Russell throughout the whole of this business, I complained, and not without reason, of an evident desire on his part to intermeddle unnecessarily with the internal economy of my Company; of a pre-disposition to uphold Mr. Swan against his Commanding Officer; and of a determination to bring about his restoration to his former rank, by his own unauthorised peremptory order; by an unwarranted use of Your Excellency's name; and now, by a threat to reinstate him by his own order without my intervention.

I regret to be compelled to write in this way of the Colonel Commanding Volunteers, S.D.; but his own letters and acts amply sustain my complaints. My letters were regularly communicated to Mr. Swan from time to time; Colonel Russell speaks of him in his letters as "John Swan, Esq., J.P.;" and throughout the whole Correspondence, Colonel Russell has never once called upon me for an official report upon the circumstances leading to Mr. Swan's reduction. On the contrary, although I had distinctly declined to discuss the question with Colonel Russell in any other way

than by letter, that Officer was in almost daily personal communication with Mr. Swan, placing my official letters publicly in his hands, and insisting, all the while, upon his peremptory reinstatement.

I submit that Officers commanding Volunteer Corps had reason to expect a different mode of treatment from an Officer in Colonel Russell's position. I, at any rate, acting under a strong sense of duty, and finding my own powers pretty accurately defined by an Act of Parliament, must confess myself unable to discover any similar definition of Colonel Russell's authority which would warrant his interference in the internal arrangements of a Volunteer Company, when not brigaded or called out on actual service.

The position of Commanding Officer of a Volunteer Company in this country is a difficult and delicate one; and I venture to believe that my acquaintance with the Colony, my knowledge of every man in the Company, acquired by long residence in the county of Buckingham, and my practical experience as a Commanding Officer, elected by the unanimous choice of my Volunteer comrades, qualify me to judge of the interests and requirements of my Company far better than Colonel Russell, with his "24 years' regimental experience, and 12 more as Staff Officer of Pensioners."

If the Colonel Commanding had thought a little less of his own dignity and authority, and a little more of the interests and the existence of a Volunteer Company,—which his interference has gone far to disorganise,—he would have called upon me for an Official Report in the first instance, and left Mr. Swan to justify his conduct to his comrades. The same appeal to a Special General Meeting of the Company was open to Mr. Swan as myself; but the former was scarcely likely to resort to it, so long as he found himself backed by Colonel Russell's promises of peremptory restoration.

I am unwilling to detain Your Excellency any longer with these matters, I cannot blame myself for the necessity that has arisen for Your Excellency's intervention. The whole affair, but for Colonel Russell's interference, might have been settled long ago by the Company without any extraneous assistance. I can only regret that Your Excellency has been needlessly troubled with this complicated and troublesome question.

It only remains for me to ask Your Excellency to consider carefully the effect upon the interests of the Volunteer Movement, if the attitude assumed by Colonel Russell relatively to the internal arrangement of Companies is to be sustained by authority, in opposition to the wishes of Commanding Officers and the interests of their Corps. I ask Your Excellency to consider the effects likely to be produced upon the Company I had the honor to originate, of which I have been unanimously chosen Captain, and which I have the honor to command by virtue of the Governor's command, if the honor and self-respect of myself and my Officers, and the discipline, the interests, and the publicly expressed wishes of my Company are to be outraged and disregarded by the reinstatement of a Sergeant-Major, whose retirement from the ranks of the Company has been demanded by the deliberate resolution of his comrades.

For me to make such an order would be a crime against the Company, for whose honor and interests I am personally responsible to the Crown; against the Volunteer Movement, which, I may be allowed to say, I have always cordially and disinterestedly striven to advance and promote to the best of my humble judgment and ability. For *Colonel Russell* to make such an order, without my intervention, would, I believe, be an excess of authority for which the law affords no warrant.

For Your Excellency to issue a command to the same effect, would be to require me to decide whether I should prefer the retention of the Governor's Commission to the loss of my own self-respect. I feel assured that Your Excellency will spare me the necessity of deliberating upon such an alternative.

I now leave the matter in Your Excellency's hands, confident that it will be dispassionately considered and impartially judged.

Awaiting your Excellency's commands,

I have the honor to be,
Sir,

Your Excellency's most obedient humble Servant,
THOS. Y. LOWES,
Captain Commanding B.V.R. Company.

ENCLOSURE A.

No. 1.

Glenorchy, 28th January, 1862.

DEAR SIR,

KNOWING your disposition towards Lieut. Smith at the time of appointment, I have anxiously watched every movement to ascertain its effect; and I regret to say that no doubt exists in my mind that it has operated most prejudicially to the Company by creating disunion. It is my duty to check this, and support an Officer to whose exertions the Company is mainly indebted for its present efficiency.

I very much regret the necessity, but I feel it an imperative duty to make this Communication.

I have, &c.,

THOS. Y. LOWES, *Captain.**To Sergeant-Major SWAN.*

No. 2.

Hobart Town, 30th January, 1862.

SIR,

I THIS morning received your Communication dated the 28th instant, which had been directed to New Town in error. I am much surprised, as well as grieved, at the contents, which appear to convey a charge of insubordination against me, as well as an intimation of your opinion that my conduct has prejudiced the interests of the Corps.

I cannot, of course, rest under a charge of so serious a nature; and have now most respectfully to beg, that my conduct may be brought at once under the notice of the Board of Officers, as I should of course consider my resignation to be imperatively required, were I not conscious that the reprimand was unmerited.

I have, &c.,

JOHN SWAN, *Sergeant-Major, B.V.R.C.**Captain T. Y. LOWES, B.V.R.C.*

No. 3.

Glenorchy, 31st January, 1862.

DEAR SIR,

IN reply to yours of the 30th instant, I beg to say that I am not prepared with any charge to lay before the Board of Officers. My communication was intended as a caution. That you organise an opposition party, is evident to the whole Company at our Public Meetings.

I am, &c.,

T. Y. LOWES, *C. C. &c.**Sergeant-Major SWAN.*

No. 4.

Hobart Town, 7th February, 1862.

SIR,

I TAKE the earliest opportunity, since my return to Hobart Town, of acknowledging the receipt of your note of the 31st of January.

I regret that you do not recognise the justice of submitting my conduct to the decision of a Board of Officers.

If I have committed any fault, I should deserve a reprimand. If I have not, your note of the 28th January was uncalled for, and a gratuitous affront.

I cannot, Sir, be held responsible for your impressions or convictions; but I can most distinctly deny the truth of the imputation conveyed in your first note; viz.,—that the disunion which you say exists in the Corps, or in other words the evident dislike to Mr. Smith, is to be attributed to my influence.

The interpretation put upon your first communication by the gentlemen to whom I referred it, was, that it contained a grave charge against me; and I am borne out by the highest Military Authority in the opinion, that should the Company consider the accusation true, my retirement would be advisable.

I must, therefore, still respectfully urge my demand either of an investigation of my conduct, or the withdrawal by you of the charges you have preferred.

With respect to organising an "opposition at the Meetings of the Company," I have only to say, that you must be labouring under a mistake, as no such thing as an organised opposition to any thing exists in the Corps, as far as I have ever heard.

I am, &c.

JOHN SWAN.

Captain T. Y. LOWES.

No. 5.

Glenorchy, 10th February, 1862.

SIR,

IN reply to yours of the 7th instant, I shall only briefly observe, that my convictions are the result of my own knowledge and observations, and that my correspondence with you on that subject is now closed.

I am, &c.,

T. Y. LOWES, *Captain, &c.*

Sgt. Major SWAN, B.V.R.C.

No. 6.

MEMORANDUM.

ON Wednesday, the 12th February, 1862, Cadet Best came down to the Butts in uniform, and said, "I won't fire to-day, because it is too windy." I told him, as he had come down in uniform, he must fire. Sergeant-Major Swan, who was standing by, out of uniform, remarked, "I would not fire if I were you, Best; you need not do so unless you like." I said, as he had come down to fire, he would have to do so; and reported it to the Captain Commanding, that Cadet Best did not wish to fire because it was windy. In the meantime Mr. Best left, and was in the act of getting over the fence, when I called him back, and the Captain Commanding ordered him to fall in, which he did at once.

H. E. SMITH, *Lieut. and Adj., B.V.R.C.*

14th February, 1862.

No. 7.

Orderly Room, 17th February, 1862.

THOSE members who have gone through the first period of their Target practice are requested to meet in uniform, with their side-arms, at the Orderly Room, on Wednesday next, the 19th instant, for judging distance drill. The squad to be in charge of the Sergeant-Major.

By Order,

H. E. SMITH, *Adjutant, B.V.R.C.*

No. 8.

MEMORANDUM.

Orderly Room, 21st February, 1862.

IT having been reported to me by the Adjutant that the Sergeant-Major took charge of a Squad (in uniform) for judging distance on Wednesday last without appearing in uniform, although he had previously read the Order on parade that members were to be in uniform, I must request that in future the Sergeant-Major will attend *all* drills and parades in uniform.

T. Y. LOWES, *Captain Commanding.*

Sergeant-Major SWAN.

No. 9.

MEMORANDUM.

A COPY of an Order I have received is herewith forwarded to the Sergeant-Major; and perhaps he will be good enough to forward the fines (five shillings) to the Captain Commanding within ten days from this date, in accordance with Rule 42.

H. E. SMITH, *Lieut. and Adjutant, B.V.R.C.*

Sergeant-Major SWAN.

No. 10.

MEMORANDUM.

THE Adjutant will fine Sergeant-Major Swan Five shillings; viz., 2s. 6d. for being absent from Parade, on Tuesday, the 18th instant, "without notice or good reason shown;" and 2s. 6d. for being "improperly dressed," inasmuch as he appeared on the Parade Ground, on that afternoon, out of uniform, in defiance of an express order conveyed to him by Memo. dated 27th ultimo.

T. Y. LOWES, *Captain Commanding B.V.R.C.**Orderly Room, 20th March, 1862.*

No. 11.

Orderly Room, 26th March, 1862.

SIR,

I REGRET that I am compelled to bring the conduct of Sergeant-Major Swan under your notice.

I will simply content myself with a plain statement of facts.

After Target practice yesterday afternoon, the 25th instant, I was walking up Elizabeth-street, in company with several Cadets of our Corps, when the Sergeant-Major, who was not in uniform, commenced a conversation about his being fined. He stated that he would not pay the fine, but would appeal to the Board; and added that, if I had not been satisfied with his excuse, I should have fined him when he made it, and not got the Captain to do it afterwards.

I remarked that, in my opinion, the Rule required the excuse to be given before drill and not afterwards; and told him that I declined to hold any conversation whatever on the subject. He replied, "I don't care a damn for your opinion; you have acted in an underhanded, unmanly manner, and I am determined to tell you so." I told him that his remarks were studiously offensive before members of the Company (Sergeant Fletcher, and Cadets John Pearce and McClusky, were walking immediately behind us in uniform), and I would consider what notice I should take of them. He said, "I am not in uniform, but you can take what notice of them you like. I will repeat what I have said anywhere, and in whatever society you please." His language and demeanor were exceedingly offensive. The above is the substance of our conversation. Indeed, I believe I have given the exact words used by him on the occasion.

The only course left open to me, under these circumstances, is to prefer the following charges against Sergeant-Major Swan:—

1st. That Sergeant-Major Swan did, on Tuesday, the 25th instant, make use of insulting and disrespectful language to his Superior Officer, Lieutenant and Adjutant Smith, in the presence of Sergeant Fletcher, and Cadets John Price and McClusky, who were also in uniform; and

2nd. That Sergeant-Major Swan, in the presence of the Cadets above mentioned, on the afternoon in question, did impute unmanly and improper conduct to the Adjutant in reference to a fine inflicted by order of the Captain Commanding.

It is true Sergeant-Major Swan was not in uniform, but this can scarcely be deemed a sufficient excuse for his availing himself of that opportunity of insulting his Superior Officer, (in uniform) who declined to hold any conversation with him in reference to his being fined; and this, too, in the presence of other Members of the Company who also were in uniform.

I should not have felt myself at liberty to discuss the question with Mr. Swan even had I not been in uniform, and will make no remark on the manner in which he thought proper to allude to it,—the conversation speaks for itself.

It perhaps will be unnecessary for me to add that such conduct, if allowed to pass unnoticed, would be subversive of all discipline, and detrimental to the best interests of the service. Indeed, it is almost impossible to estimate the injury likely to accrue, if a Non-commissioned Officer of any Company is permitted, when out of uniform, to say just what he pleases to any of his Superior Officers, in the presence of those who naturally expect that their Non-commissioned Officers will set them an example of obedience and proper respect to their own Officers.

I have the honor, &c.,

H. E. SMITH, *Lieut. & Adjutant, B.V.R.C.*

*The Honorable T. Y. LOWES,
Captain Commanding B.V.R.C.*

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No. 12.

Orderly Room, Lord's Buildings, 29th March, 1862.

MEMORANDUM.

THE Adjutant has made a formal complaint to me of the Sergeant-Major's conduct to him on Tuesday, the 25th instant, in Elizabeth-street, in the presence of other members of the Company, who were in uniform. This, taken in connection with Sergeant-Major Swan's conduct on previous occasions, when I have had reason to be extremely dissatisfied with him, has left me no alternative but to reduce him to the ranks.

I regret therefore to be compelled to inform Sergeant-Major Swan that he is hereby reduced to the ranks accordingly from this date.

T. Y. LOWES,
Captain Commanding Buckingham Volunteer Company.

Copy sent by me to Mr. Swan, 29th March, 1862.
T. Y. LOWES, C.C., B.V.R.C.

No. 13.

Orderly Room, 28th June, 1862.

SIR,

I BEG to acquaint you with my intention to submit your conduct at the muster of the Company at the Orderly Room, Lord's Buildings, on Friday, 20th instant, to the consideration of the Special General Meeting, advertised to be held at New Town, on Tuesday, the 1st July next.

T. Y. LOWES, C.C., &c.

To Cadet SWAN.

ENCLOSURE B.

No. 1.

Hobart Town, 2nd April, 1862.

SIR,

I HAVE the honor to request that you will be good enough to forward the enclosed communication to the Colonel Commanding Volunteers, S.D., at your earliest convenience.

I am, &c.,

JOHN SWAN, *Sergeant-Major B.V.R.C.*

*The Honorable T. Y. LOWES, M.L.C.,
Captain Commanding B.V.R.C.*

No. 2.

Hobart Town, 2nd April, 1862.

SIR,

I HAVE the honor to beg that you will direct the Hon. T. Y. Lowes, Captain commanding B. V. R. C. to summon the Board of Officers of that Company to take into their consideration the following complaints:—

On the 28th of January last, Capt. Lowes accused me of "creating disunion" in the Corps. I respectfully demanded an enquiry, which Capt. Lowes refused to grant, at the same time repeating the charge in other words.

I again requested to be allowed the opportunity of clearing myself from this imputation before that tribunal which Capt. Lowes and myself have alike undertaken to respect, but regret to say that Capt. Lowes peremptorily refused to comply with my demand.

On the 29th March last, Capt. Lowes issued a Memorandum, informing me that I was reduced from my position of Sergeant-Major to that of a Cadet in the ranks of the Company, without trial or enquiry.

There are other matters of complaint, having reference to arbitrary conduct on the part of Capt. Lowes, which I shall be prepared to lay before the Board on its assembling.

I have, &c.

JOHN SWAN, *Sergeant-Major, B.V.R.C.*

To the Colonel Commanding Volunteers,
Southern Division, Hobart Town.

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No. 3.

MEMORANDUM.

THE Captain Commanding B.V.R.C. herewith returns Cadet Swan his letter, under date the 2nd instant, covering a communication for transmission to the Colonel Commanding Volunteers, S.D.

The Captain Commanding declines to entertain the communication from Cadet Swan, which asserts on behalf of that Cadet a rank and title in the Corps of which he has been deprived by the proper military authority.

The Captain Commanding will be ready at all times to forward to the Colonel Commanding any communication from any Member of the Buckingham Rifle Corps, couched in respectful language and subscribed with the correct designation of the writer.

Orderly Room, 5th April, 1862.

No. 4.

THE Colonel Commanding the Volunteers, Southern District, having received the accompanying documents from Mr. Swan, B. V. Rifle Company, has now the honor to enclose the same to Captain the Honorable T. Y. Lowes, Commanding said Company, with a request that he will have the goodness to make such observations thereon as may appear to him proper.

FREDK. RUSSELL, *Colonel Commanding Volunteers, S.D.*
Volunteer Office, Military Barracks, April 14, 1862.

No. 5.

CAPTAIN Lowes, Commanding B.V.R. Company, has no observations to offer upon the correspondence forwarded by the Colonel Commanding Volunteers, S.D., beyond remarking that the action complained of by Cadet Swan was taken by Captain Lowes in the exercise of the authority and discretion vested in that Officer by his Commission as Captain of the "Buckingham V. R. Company," and in the due administration of the discipline and internal economy of that Corps, under the powers conferred upon the "Commanding Officers" by the "Volunteer Corps Act," (22 Vict. No. 11.)

Captain Lowes begs to state, for the information of the Colonel Commanding Volunteers, S.D., that, by the "Rules and Regulations of the B.V.R. Company," which have the force of law, the matter complained of by Cadet Swan cannot, under any circumstances, form the subject of investigation by a "Board of Officers" of that Company.

At the same time, the "Rules and Regulations" provide a mode of proceeding by which matters affecting the interests of the Corps can be brought legally under notice of the collective body of its members, and this course of proceeding is open at all times to any member of the Corps.

Orderly Room, Lord's Buildings, 17th April, 1862.

T. Y. LOWES, *B.V.R.C., S.T.V.*

No. 6.

Volunteer Office, S.D., Hobart Town, 21st April, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your Memorandum dated the 17th instant, which did not reach my hands until 10 o'clock last evening, at which time it was delivered to me with my English letters at the Post Office.

I regret this delay the more inasmuch as I had requested an early reply, it being my wish to have the matter properly settled before the firing for Prizes commenced. However, as the Buckingham Rifles will not, in all probability, fire till to-morrow, there will still be time to act upon the decision that I am now about to give as regards the reduction of Mr. Swan from Sergeant-Major to Cadet without trial.

I have carefully perused both the Rules of the Buckingham Volunteer Rifle Company, and the amended Volunteer Corps Act for Tasmania; and, after mature consideration, am of opinion that neither the one nor the other confers authority on the Captain Commanding the Company or Corps to reduce any Non-commissioned Officer to the ranks without a regular trial by a "Board of Investigation." I must, therefore, request you to have the goodness to at once cancel the order for Mr. Swan's reduction, which cannot be sustained; after which it will be competent for you to bring his conduct before the "Board of Investigation," should you conceive that you have grounds for so doing; on which subject I offer no opinion, not being officially cognizant of the circumstances complained of by you.

I beg to suggest that, in the event of the Board sitting for the purpose alluded to, it would be desirable that the President of it should be totally unconnected with whatever may have gone before, and that the same remark should hold good as regards members of the Board; to this end I would suggest that Dr. Benson be the President, and that Lieutenant Smith and Sergeant-Major Swan (the ordinary members of the Board) take no part in the proceedings, except as regards witnesses and defendants.

I have the honor to be,

Sir,

Your obedient Servant,

F. B. RUSSELL, *Colonel Commanding Volunteers, S.D.*

*The Hon. T. Y. LOWES, Esq.,
Captain Commanding Buckingham Rifles.*

No. 7.

Orderly Room, Lord's Buildings, 25th April, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter, under date the 21st instant, in which you state that, having carefully perused the Rules and Regulations of the B. V. R. Company, and the amended Volunteer Corps Act of Tasmania, and after mature consideration, you are of opinion that neither the one nor the other confers authority on the Captain Commanding a Company or Corps to reduce any Non-commissioned Officer to the ranks without a regular trial by a "Board of Investigation," and request me to have the goodness to at once cancel the order for Mr. Swan's reduction, which (you assert) cannot be sustained.

Before proceeding to reply to this portion of your letter, I am anxious to call your attention to what you state at the close of the paragraph to which I have already referred; viz., that "you offer no opinion upon the question whether or not I have ground for bringing Mr. Swan before a 'Board of Investigation,' as you are not officially cognizant of the circumstances complained of by me."

It is precisely, I conceive, to this lack of acquaintance with the circumstances of the case that I must attribute your present interposition on behalf of Mr. Swan. That gentleman,—appointed by me, under the express authority of the Act of Parliament (22 Vict., No. 11), to be Sergeant-Major of the Corps I have the honor to command,—has for some time past, I regret to say, indulged in conduct of a character calculated to promote disunion and destroy discipline amongst the Members of the Buckingham Rifles. His own acts have brought upon himself the inevitable consequences of such a course of procedure; and now, when he finds himself deprived of the rank and authority for which he has proved his unfitness, he professes to have "matter of complaint" against myself for an expression of mine in a private letter to himself so long ago as 28th January last; and further declares he has "other matters of complaint referring to arbitrary conduct on my part." Mr. Swan has, nevertheless, neglected to avail himself of any of the legal means of obtaining redress which are open to him, as to every Member of the Corps, in the Rules and Regulations by which, under the statutable sanction of the Governor, the Corps is governed, and must be bound.

It is not for me to indicate the course which was open for Mr. Swan: it is sufficient to say that, so far from having exhausted the legal means for obtaining redress for any grievance of which he complained, he has hitherto failed to take a single step in that direction, but has at once, and most incorrectly in my judgment, sought relief *ab extra*; and has invoked the intervention of the authority entrusted with the military command of the Volunteers of the Southern Division—as a *collective body of Corps*—for the settlement of a question relating simply to the internal economy of a single Corps, for the discipline and government of which the Commanding Officer, guided by the Rules and Regulations, and under the authority of the Act of Parliament, is immediately responsible to the Governor alone as Her Majesty's Lieutenant in the Colony.

In arriving at the "decision" upon which you request me to act, you profess to have been guided by a "careful perusal of the Rules and Regulations of the B. V. R. Company, and the amended Volunteer Act of Tasmania." I am therefore called upon to deal with the question of Mr. Swan's reduction to the ranks, without a regular trial by a Board of Investigation, as one depending simply upon the construction of an Act of Parliament, and of Rules and Regulations made and confirmed under the authority of the same Statute.

I regret to be compelled to state, that an attentive consideration of "The Volunteer Corps Act" (22 Vict. No. 11) has led me to the conclusion that the step I have taken is strictly within the powers conferred by that statute upon "Commanding Officers." By the 3rd Section of that Act it is expressly enacted that Non-commissioned Officers shall be appointed by the Commanding Officers of each Company or Corps." The Act itself, and the Rules and Regulations of my Company, made and confirmed under its authority, are silent on the subject of the mode by which an incompetent or otherwise objectionable Non-commissioned Officer is to be removed, so as to make room for the appointment, by the "Commanding Officer," of a competent and trustworthy successor.

The power of appointment involves the right of deprivation. The Legislature has vested in Commanding Officers a power requiring the exercise of judgment and discretion, in a matter nearly affecting the

discipline and general interests of their Corps. The "Commanding Officer" is constituted the sole judge of the fitness of the persons to be appointed Non-commissioned Officers; and since the same authority has omitted to prescribe the conditions, and the mode of procedure, under which a Non-commissioned Officer, proved to be unfitted for his duty, is to be replaced by another more qualified person, it remains for the Commanding Officer to exercise his judgment and discretion in a matter for which the Legislature has made him responsible to the Crown.

Referring to your allusion to a "Board of Investigation," I beg to call your attention to the fact, that the Rules and Regulations of the B.V.R. Company have not constituted any tribunal with that designation. By the 14th Rule the Commissioned and Honorary Officers of the Company are to form a Board, to be called the "Board of Officers," for receiving and investigating complaints against Members of the Company *for breach of any Rule or Regulation*. By Rule 15 the Commanding Officer is constituted "President of such Board;" and by Rules 20 and 41 the Board is empowered "to fine any Member duly summoned, tried, and convicted by it *for any breach of any Rule and Regulation of the Company*;" and, in extreme cases, to dismiss the offender, and to deal with insubordination of any kind as it may think fit, either by fine, *suspension*, or *dismissal*.

The Rules are significantly silent on the question of dealing with Non-commissioned Officers who may have conducted themselves as Mr. Swan has, yet contrived to avoid any direct "breach of any Rule or Regulation." The Commanding Officer, who is legally responsible for their original appointment, is thus left to exercise his judgment and discretion in cases where the maintenance of discipline and the interests of the Corps require their deprivation of rank and authority over their Volunteer comrades.

It is obvious that the maintenance of "discipline" within the Corps is the proper province and duty of the Commanding Officer. The Rules and Regulations have not been framed with that object; and the "Board of Officers" can only investigate and punish *breaches* of those rules, and *insubordination* of any kind, when brought under its cognizance. Mr. Swan's case comes not within either of these categories; and I felt myself called upon, in the exercise of a responsible authority vested in me by the Legislature, to act as I have done in the interests of discipline, and of the Corps which I have the honor to command.

Hitherto I have been content to vindicate my action in this matter by a reference to the same authorities on which you rely for an opposite opinion; and I feel bound to express my conviction that, in the present state of the law as affecting Volunteer Corps in Tasmania, it is within the four corners of the 22 Vict. No. 11, that we must seek for the *Legal powers and authority of Commanding Officers of Corps or Companies*. At the same time, I would invite your attention to the law in analogous cases of the United Kingdom, and in the Yeomanry and Volunteer Corps constituted under the 44th Geo. III. Cap. 54.

By Her Majesty's Articles of War (1860), Section 140, it is provided, "that a Non-commissioned Officer may be reduced to the ranks by the sentence of any Court Martial, or by order of the Commander-in-Chief, or of the Colonel," or in the Militia, "*of the appointed Commandant of the Regiment or Corps*;" and by Section 27 of the 44th Geo. III., Cap. 54, it is provided, "that any Commanding Officer of any Corps of Yeomanry or Volunteers, *when not summoned or assembled upon actual service, may discharge any Member of the Corps under his command*, not being a Commissioned Officer, for (inter alia) *any misconduct or improper behaviour as a Member of the Corps, or for other sufficient cause, the existence and sufficiency of such several causes being to be judged of by such Commanding Officer*."

I think the analogy of these cases is complete. I believe I could have legally struck Mr. Swan off the Roll of the Company; but, in the exercise of a legitimate discretion, I thought the necessities of the case sufficiently met by depriving him of the rank and authority which he had derived from my own appointment, made under the express provisions of legislative enactment.

Impressed with this view of my own position as a Commanding Officer of a Volunteer Company under the authority of an Act of Parliament, and honored with His Excellency's Commission as Captain of the B.V.R. Company, I am reluctantly compelled to state that I cannot conceive it to be incumbent upon me to cancel the order I have made for the reduction of Sergeant-Major Swan to the ranks as a Cadet; and that it will therefore be out of my power, consistently with what I believe to be my duty to His Excellency and to the Corps I have the honor to command, and to the country, to comply with your request to that effect.

On parade or on actual service I am prepared to recognise and submit to the Military authority of the Officer commissioned to command the Volunteers S.D.; but in the present position of public affairs, and of the Volunteer Service, I hold myself responsible immediately to Her Majesty's Lieutenant in the Colony for the internal economy and discipline of the B.V.R. Company.

I am perfectly aware that my acts as Commanding Officer are liable at all times to be reviewed and approved or reversed by the Sovereign, or in this case by the Queen's Representative.

I am prepared to submit my action on this occasion, when officially called upon, for the signification of His Excellency's pleasure; and I shall be able, at the proper time, to justify the *moral* necessity for the course I have pursued, as readily as I have vindicated the *legal* propriety of the act of authority which has formed the subject of this communication.

In conclusion, I am anxious to assure you that I am actuated in this matter by a single desire to discharge what I conceive to be my duty as legally responsible to the Crown and to the Country for the exercise of a statutable authority; and I must entreat you to believe that my non-compliance with the request

conveyed to me in your letter to which I have now replied is not to be attributed to any want of respect on my part for yourself personally, or for your Military position as Colonel Commanding Volunteers, S.D.

I have the honor to be,

Sir,

Your most obedient Servant,

THOS. Y. LOWES,

Captain Commanding the Buckingham Volunteer Rifle Company.

No. 8.

Volunteer Office, Hobart Town, April 28th, 1862.

Sir,

Not having been as yet favored with an acknowledgment of the receipt of my communication, dated 21st instant, may I request you will have the goodness to inform me what steps you have taken relative thereto?

I have the honor to be,

Sir,

Your most obedient Servant,

FRED. B. RUSSELL,

Colonel Commanding Volunteers, S.D.

The Hon. T. Y. LOWES, Esq., Captain Commanding B.V.R.C.

No. 9.

Volunteer Office, S.D., April 30th, 1862.

Sir,

I AM at all times loath to trouble the Government relative to matters connected with the discipline and management of the Volunteers; nor should I have done so on the present occasion, had it not been that the Captain Commanding the Buckingham Rifle Company, some time since, fell into the error of reducing his Sergeant-Major to the ranks without any trial whatsoever, and when requested by me to cancel the order on account of its manifest illegality, refused to comply, on the ground that he had a perfect right to do so by virtue of some imaginary authority supposed to be vested in him by the present "Volunteer Corps Act," which, having carefully perused, I consider contains nothing whatever to justify any such opinion; but, as the object of this communication is more to obtain the decision of His Excellency the Governor than to convey my own opinion on the subject, I will, as briefly as possible, state in what way the matter came before me, which was as follows:—

At the commencement of the present month, Mr. John Swan, the Sergeant-Major of the Buckingham Rifle Company, called upon me officially, at my office in the Military Barracks, and earnestly desired to be informed by me as the "Commanding Officer of the Volunteer Force, S.D.," whether or not Captain Lowes, the Captain Commanding the said Company, possessed the power of reducing him to the ranks as a private without first arraigning him before the "Board of Officers," agreeably to the "Rules" of the Buckingham Volunteer Rifle Company, approved by the Governor? To this question I at once, without the slightest hesitation, replied in the negative; and when asked what steps ought to be taken to bring the matter forward, I informed him of the mode invariably adopted in the Service; viz., to state his case through his immediate Commanding Officer, which he did, as will be seen by the papers herewith forwarded; but, as he signed himself still as "Sergeant-Major," his letter was returned to him, on which he lodged it with me, together with another addressed to myself; but, as these letters speak for themselves, I will not take up your valuable time by repeating their contents here.

Before concluding, I should wish to allude to the case of Sergeant-Major Hortle, formerly of the Longford Rifles, N.D., who, when guilty of gross insubordination towards Captain Charles Arthur, his Commanding Officer, could not be punished without the intervention of the "Board of Investigation," as per the Rules, so that if Captain Lowes can reduce his Non-Commissioned Officers at his pleasure, why could not Captain Arthur, (an experienced Police Magistrate, accustomed to Acts of Parliament) do so likewise? Or, is it that Captain Lowes possesses more power under the "Volunteer Corps Act" than the other Captains?

Again, Military authority invariably *increases* according to the rank of the Officer; whereas Captain Lowes allows me none, although holding three grades in the Army superior to his own, and four in the Volunteer Service, including the "Command" of the Force of which his small Company forms but a very insignificant part. Still, I lay claim to no such power as that insisted upon by Captain Lowes. As for the cases quoted by that Officer respecting the Yeomanry and Militia, I submit that they have nothing to do with the matter under consideration, which can only be judged by the "Volunteer Corps Act," and the "Rules" of the Buckingham Volunteer Rifle Company, which confer no such power as that laid claim to, in my humble opinion.

Awaiting His Excellency's decision,

I have the honor to be,

Sir,

Your most obedient Servant,

FRED. B. RUSSELL,

Colonel Commanding Volunteers, S.D.

The Honorable the Colonial Secretary.

Colonial Secretary's Office, 6th May, 1862.

SIR,

I AM directed to acknowledge the receipt of your letter of the 30th ultimo, with its enclosures, relative to the reduction of Sergeant-Major Swan by the Captain Commanding Buckingham Rifles, and to inform you that the matter will receive due consideration.

I have, &c.

B. T. SOLLY.

The Colonel Commanding S. T. Volunteers.

Colonial Secretary's Office, 14th June, 1862.

SIR,

WITH reference to the subject matter of your letter of the 30th of April, viz., the reduction of Sergeant-Major Swan to the ranks, the Ministry felt some difficulty in dealing with the question, as involving one of military law or prerogative not provided for specially in the Volunteer Corps Acts; but as Captain Lowes himself, in his letter, refers to his responsibility to His Excellency for the internal economy and discipline of his Company, the papers were referred to him; and I have now the honor to forward a copy of the Governor's Minute, which I have to request you will communicate to Captain Lowes for his guidance.

I have, &c.

WM. HENTY.

Colonel RUSSELL, Commanding S.T. Volunteers.

No. 10.

MEMORANDUM.

The Rules and Regulations of Volunteer Corps are generally framed on those of the Royal Army, and are adapted to the special circumstances of the Volunteer Service. If, therefore, any special case is not provided for by the Volunteer Rules, reference is necessarily made to those of the Royal Army.

By the Regulations of the Royal Army the Colonel of the Regiment can alone reduce a Non-commissioned Officer to the ranks.

The Colonel is always a General Officer, and is never present with the Corps except as an inspector or a visitor.

The Officer commanding the Corps, although he may have the rank of Colonel in the Army, is never Colonel of the Regiment, and consequently he has not power to reduce a Non-commissioned Officer.

But Captain Lowes may urge that he has the power he claims under the Volunteer Rules. I have perused the Rules carefully, and cannot find that such a power is entrusted to any Officer.

The Rules are not very clear, but they provide that most cases shall be referred to a Board of Officers; and I am of opinion that the case of Sergeant-Major Swan should have been referred to a Board of Officers, and consequently that the Commanding Officer had not the power to reduce him by his own order.

T. GORE BROWN.

Government House, 9th June, 1862.

Volunteer Office, Military Barracks, 16th June, 1862.

SIR,

I do myself the honor to forward for your information and guidance copy of His Excellency the Governor's decision on the case of Sergeant-Major Swan, belonging to the Company under your command, and shall feel obliged by your having the goodness to acknowledge the receipt of the same at your earliest convenience.

I have the honor to be, &c.,

FRED. B. RUSSELL,

Colonel Commanding Volunteers, S.D.

*Honorable T. Y. LOWES, Esq.,
Captain Commanding B.V.R.C., S.T.V.*

No. 11.

Glenorchy, 18th June, 1862.

SIR,

I BEG to acknowledge the receipt of your communication dated the 16th instant, with a copy of His Excellency the Governor's opinion in the case of the late Sergeant-Major Swan.

And have the honor to be,

Sir,

Your most obedient Servant,

T. Y. LOWES, *Captain Commanding B.V.R.C.**Colonel RUSSELL, Commanding Volunteers, S.D.**Volunteer Office, S.D. 18th June, 1862.*

SIR,

AGREEABLY to your request, I herewith forward to you a copy of the decision of His Excellency the Governor relative to your reduction from Sergeant-Major to Cadet without trial by the Board of Officers, provided for by the Rules of the B. R. Company, S. T. V. to which you belong.

I have to add, that the Captain commanding the B. V. R. C. has also been furnished with a copy of the same for his information and guidance; from whom, doubtless, you will receive the same information in due course.

I have the honor to be,

Sir,

Your obedient Servant,

F. B. RUSSELL, *Colonel Commanding.**JOHN SWAN, Esq. J.P. Sergeant-Major B.V.R.C.*

No. 12.

Volunteer Office, S.D., Military Barracks, 26th June, 1862.

SIR,

I do myself the honor to inform you, that I have received a communication from Mr. Swan of the Company under your command, wherein he expresses much disappointment that the "decision" arrived at by His Excellency the Governor on his case had not, up to the period of his writing (24th instant), been promulgated by you; and calling upon me, as the Colonel commanding the Southern Tasmanian Volunteers, to relieve him from the unsatisfactory position in which he feels himself placed.

Under these circumstances, it becomes my duty to invite your immediate attention to the necessity that exists for your cancelling the Order for Mr. Swan's reduction from Sergeant-Major to the ranks, which you, doubtless, inadvertently issued under an erroneous impression as to the powers vested in Captains commanding under the Volunteer Corps Act, leaving it to you to exercise your discretion as to whether you will or will not bring any improper conduct or behaviour, of which you may conceive Mr. Swan to have been guilty, before the "Board" provided for by your "Rules."

I feel assured that the delay that has taken place in your making officially known the Governor's decision in this unpleasant affair has not arisen out of any want of consideration or respect for His Excellency's authority or opinion; but I should altogether fail in my duty did I not express my disappointment and regret that you did not as soon as it was made known to you by me, "for your information and guidance," promulgate the same in the Order Book of your Company; and when I further inform you that it would be a grave Military error on my part were I to continue to have a full knowledge that no action had been taken by you in the way of giving effect to the Governor's decision in the matter without taking the necessary steps to correct the omission, I feel assured you will see the necessity of at once taking the steps I have indicated; indeed, I have little doubt that His Excellency fully counts upon this having been long since done, and, should he by any accident learn the contrary, it would most certainly lay me open to his grave censure for what would doubtless appear to him in the light of a dereliction of duty on both our parts.

Feeling assured, after what I have said, that you will lose no further time in giving effect to His Excellency the Governor's decision as conveyed to you by me, and write to say that you have done so,

I have the honor to be,

Sir,

Your most obedient Servant,

F. B. RUSSELL,
*Colonel Commanding T.V.R., S.D.**The Hon. T. Y. LOWES, Esq., Captain Commanding B.V.R.C.*

Orderly Room, B.V.R., Lord's Buildings, 30th June, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter, under date the 26th instant, informing me that "Mr. Swan, of the Company under my command, had expressed to you much disappointment that the decision arrived at by His Excellency the Governor on his case had not, up to the 24th instant, been promulgated by myself; and that Mr. Swan had called upon you, as the Colonel Commanding S.T. Volunteers, to relieve him from the unsatisfactory position in which he finds himself placed."

The expressions you have used in some portions of your letter, and the general tone of the whole communication, require that I should offer you some observations, by way of reply, corrective of the construction you have thought proper to put on the facts that have given occasion to this correspondence.

I desire in the first place to state to you distinctly that, up to this moment, I am not in possession of any intimation of His Excellency's "decision" on Mr. Swan's case.

In your letter of the 16th instant you forwarded me a copy of a Memorandum purporting to be signed by the Governor, which, after the most careful and attentive perusal, I can discover to contain no "decision," but simply an expression of "opinion"—that word being used by His Excellency himself. This Memorandum you described as the Governor's *decision*. You acquainted me that it was designed "for my information and guidance;" and you stated that I should "oblige you by acknowledging the receipt at my earliest convenience."

But I may be permitted to say that my conceptions of what constitutes a military command, and my experience of official correspondence, have not enabled me to recognise the receipt of that Memorandum, so communicated to me by you, as an intimation that the Governor has commanded you to signify His Excellency's order to myself to reinstate Mr. Swan as Sergeant-Major.

In your last letter you again speak of that Memorandum as His Excellency's "decision;" and you "invite my immediate attention to the necessity which exists for my cancelling the order for Mr. Swan's reduction to the ranks, which," you are pleased to say, "I doubtless issued inadvertently under an erroneous impression, as to the powers vested in Captains Commanding" (you probably mean Commanding Officers) "under *The Volunteer Corps Act*."

I cannot allow this observation to pass unnoticed; and I feel compelled to express my unqualified astonishment that you should now pretend to look upon my order for Mr. Swan's reduction as "issued inadvertently under an erroneous impression," when you are in possession of my views on the matter expressed at considerable length, to which you have, up to this moment, found it impossible to offer any reply, justifying my order on that occasion as an act deliberately performed by myself, in the legal exercise of a power vested in me by an Act of the Colonial Legislature, and sustained by the provisions of an Imperial Statute.

I may remark here in passing, that the Memorandum of "opinion," which you designate "His Excellency's decision," avoids any allusion to the legal aspect of the question, and rests entirely upon the "Rules" of the B.V.R. Company, which are silent upon the subject involved in this discussion; while the Volunteer Corps Act, by obvious implication, sustained my view of the powers of "Commanding Officers."

Under these circumstances I do not feel called upon to discuss or notice further the 3rd and concluding paragraphs of your letter of the 26th instant, beyond remarking that I cannot pretend to know to what extent you have laid yourself open to grave military censure by your conduct in this matter. I am only conscious that none can be justly due to myself. Nor is it for me to understand what "His Excellency fully counts upon" in the absence of any definite statement from any official source of the orders promulgated by the Governor in the matter of Mr. Swan's reduction to the ranks.

But, in order to prevent any further misconception on your part of my position and intentions in this matter, I have now to state for your information and guidance, that I have already declared to you in writing my reasons for declining to reinstate Mr. Swan, in accordance with your own "decision" on that point; that I have maintained my legal power to order Mr. Swan's reduction to the ranks; that I have admitted the right of the Sovereign to review, and if necessary to reverse, that Order; and that I am ready now, as I have long since intimated to you in writing, to submit the whole circumstances of the case against Mr. Swan (which has yet not been disclosed by this correspondence) for the consideration of His Excellency, as the Queen's Lieutenant and supreme Military authority in the Colony.

But I must repeat that I am at this moment unsupplied with any official intimation that His Excellency has pronounced any "decision," or issued any orders, that I should reinstate Mr. Swan as Sergeant-Major. I gather from your letter that such is your own interpretation of the Governor's Memorandum; while you studiously abstain from conveying to me categorically that His Excellency has made such an order, or commanded you to intimate the same to myself.

On the receipt at any time of such an intimation, I trust I shall need no suggestion from you as to the course which Military duty, and my own self-respect, will then require me to follow.

It is unnecessary for me to say, that I intend no disrespect for His Excellency's "opinion" on a Military question, and that I shall know how to act when I am officially made acquainted with the Governor's commands as my Military superior.

I have the honor to be,

Sir,

Your most obedient Servant,

T. Y. LOWES, C.C., &c.

COLONEL RUSSELL, *Commanding Volunteers S.D. Tasmania.*

No. 14.

Orderly Room, B.V.R.C., Lord's Buildings, 8th July, 1862.

SIR,

I HAVE the honor to acquaint you, that at a recent meeting of the Company under my command, specially convened under the Regulations by myself, Cadet Swan produced and read to the Meeting a portion of the correspondence which has recently passed between you and myself on the subject of his reduction to the ranks; and was also in possession of a copy of the Memorandum on the same subject signed by His Excellency the Governor.

I gather from this circumstance that Mr. Swan has been in correspondence with yourself direct, instead of communicating, in accordance with Military rule, through his own Commanding Officer with the superior Military Authorities.

I have, therefore, to request that you will furnish me with copies of any such correspondence between Mr. Swan and yourself, which I need scarcely remind you has taken place most irregularly, and in contravention of a rule of universal application in military and official affairs.

It is also necessary that I should be made acquainted with such correspondence, in order to a correct apprehension on my part of the precise light in which position I have maintained in my recent correspondence with yourself has been represented, without my official privity, to His Excellency the Governor.

I am, Sir, &c.

T. Y. LOWES, C.C., B.V.R.C.

To Colonel RUSSELL.

No. 15.

Volunteer Office, S.D., Military Barracks, 15th July, 1862.

SIR,

IN reply to your letter of the 8th instant, which my absence on the northern side of the Island, and constant employment in the performance of my Military and Volunteer duties since my return, has necessitated my delaying answering until the present time.

I have now the honor to forward, as you request, copy of the correspondence that has taken place between John Swan, Esq., J.P., and myself, owing to your having sent back to that gentleman the papers he forwarded to you for transmission to me, on the plea that he had signed himself as "Sergeant-Major" instead of "Cadet."

You must be aware that had you forwarded Mr. Swan's letter of remonstrance to me, as he wished, he would have had no occasion to address me direct; and although you have been pleased to animadvert on the irregularity of my communicating with Mr. Swan except through you as the Captain, I am enabled to inform you, from 24 years' experience as a Regimental Officer (besides 12 more as Staff Officer of Pensioners, which reckons as full pay, and carries with it the liability to the performance of Courts Martial duties, on which duty I have no later than this day been employed), that, when an Officer cannot get his letters forwarded through his immediate Commanding Officer for the consideration of higher authority, he is perfectly justified in writing direct to the Senior Officer.

The only correspondence, as far as I can recollect, that has passed between Sergeant-Major (not Cadet) Swan and myself consists, first, of the papers that he sent to yourself and had returned to him, as already stated.

2ndly. A letter of mine to him giving cover to the "decision" of His Excellency the Governor (and to which unquestionably Mr. Swan had as great a right as yourself), and the letter of the Government that the same should be sent to you "for your guidance."

3rdly. A letter from Sergeant-Major Swan to me complaining that you had never published the Governor's decision, or communicated with him in the way of reinstating him in orders, (as was evidently the intention of His Excellency and the Government that you should do), with my reply, informing him that I had written to you, inviting your attention to the omission without further delay.

These letters I will endeavour to look up, and get copied, as far as I am able; but, as I have no Adjutant or Private Secretary to do what is requisite, I shall make no apology for the papers being in an imperfect state, if they turn out to be so.

The whole correspondence is in the hands of the Government, however, and I dare say can be seen on a proper application being made.

I purposely refrain from commenting on the impropriety of your persisting in designating Sergeant-Major Swan a Cadet, after perusing the Governor's Minute on the subject. Your mode of expressing yourself when addressing me (considering our relative positions as Captain Commanding a Company, and Colonel Commanding the Volunteer Force, S.D.), I also purposely refrain from animadverting upon here, as the whole matter must ere long be definitely settled by His Excellency the Governor in Council, before whom your last letter will be laid the moment I have time (amongst other pressing business) to forward it.

I have the honor, &c.,

FRED. B. RUSSELL.

Hon. T. Y. LOWES, Esq. Captain Commanding, B.V.R.C.

No. 16.

MEMORANDUM.

My short covering letter transmitting copy of the Governor's Minute to Mr. Swan is temporarily mislaid; but it was to the effect, that in all probability he would receive a similar communication from yourself, but in the mean time he was furnished with it agreeably to his own verbal request made to me in Hobart Town, when asking me for information as to what progress the matter had made.

F. B. RUSSELL, *Colonel Commanding Volunteers, S.D.*

Volunteer Office, 15th July, 1862.

No. 17.

Hobart Town, 24th June, 1862.

SIR,

I RECEIVED your communication, dated 27th June, 1862, enclosing copy of the decision of His Excellency the Governor on the case of my reduction by Captain Lowes.

I regret the necessity of informing you that no steps whatever have been taken towards reinstating me by Captain Lowes, and that I have had no communication from him on the subject.

I therefore beg to request, that you will issue such instructions as may relieve me at once from my present position. Requesting the favor of an early reply.

I am, &c.,

JOHN SWAN, *S.M., B.V.R.C.*

To the Colonel Commanding Volunteers, S.D., Hobart Town.

No. 18.

Volunteer Office, S.D., Military Barracks, 27th June, 1862.

SIR,

IN reply to your letter of the 24th instant, which a press of business has caused me to delay answering until the present moment, I have now the honor to inform you that soon after its receipt I addressed a communication to the Captain commanding the B.V.R. Company, explaining to him that the Governor having decided that your reduction to the ranks without any trial whatsoever was illegal, and the Government having forwarded a copy of His Excellency's "Minute" to me for Captain Lowes' "information and guidance," it became necessary that the same should be officially notified in orders, and promulgated for the information of the Company.

Having also requested Captain Lowes to lose no further time in following the course thus indicated, I can have no doubt that the same will be done, if only out of respect to the opinion of His Excellency thus officially conveyed to him.

I beg to add, that the cancelling of the order for your reduction will not deprive Captain Lowes, the Captain commanding the B.V.R.C., of the undoubted right which he possesses of laying before the "Board," provided for by the Rules of the B.V.R. Company, whatever charge he may conceive he has to bring against you after your reinstatement as Sergeant Major; on which subject I offer no opinion, not being officially cognisant, as I have before stated, of what has occurred between you.

I have, &c.,

FRED. B. RUSSELL, *Colonel Commanding Volunteers, S.D.*

JOHN SWAN, *Esq. Sergt. Major, B.V.R.C.*

Volunteer Office, S.D., Military Barracks, July 17th, 1860.

SIR,

I HAVE the honor to forward, for the information of His Excellency the Governor, the accompanying letter received by me from Captain Lowes of the Buckingham Rifle Company, by which it will be seen that that Officer persists in designating Sergeant-Major Swan as a "Cadet," notwithstanding His Excellency the Governor's recent decision that the reduction by him of the gentleman in question to the ranks, without any trial whatsoever, was not warranted by the "Volunteer Corps Act," or by the "Rules" of the B.V.R. Company, and which decision was communicated to him by me, agreeably to the directions contained in your letter of the 14th ultimo, for his guidance.

Captain Lowes' remarks relative to my having maintained a correspondence with Sergeant-Major Swan, without the same coming through him as his immediate Commanding Officer, are not by any means warranted by the circumstances, on account of his having declined to receive and forward Mr. Swan's appeal to me as the Colonel Commanding the Volunteers of the entire District; which circumstance left Mr. Swan no option but to appeal to me direct, and which appeal it would have been in opposition to, and at variance with, military usage to have refused to entertain.

In my letter of the 3rd instant, forwarding a communication from Captain Lowes, wherein he declines to consider the "Minute" by His Excellency the Governor in Sergeant-Major Swan's case as a "decision," but rather in the light of an "opinion," although the same was by your orders to be transmitted to him "for his guidance," I did myself the honor to request further instructions in the matter.

To this communication I have received no reply up to the present time; probably the Government may have considered that I ought to have offered some suggestions as to what I considered necessary to be done in the matter; I now, therefore, beg to advise that I may be empowered specially to assemble the Buckingham Rifle Company, read to the members the "Minute" by His Excellency the Governor, and then inform Captain Lowes and the members generally that His Excellency fully intended his "Minute" to be viewed in the light of a "decision," and desired now that it might be so received; after which I conceive there could be no further misapprehension on the part of Captain Lowes or any other member of the Company.

I need not say that, in the event of the slightest sign of insubordination on the part of any member of the Company, I should advise that the person, no matter what his rank or social position might be, should be brought to immediate trial; and, in the event of the same being at all general, I do not scruple to say that the Company ought to be in that case disbanded: but I have no reason to imagine for a moment that anything of the kind would be necessary, feeling assured that the "decision" of His Excellency the Governor in Chief, as Captain-General, would be received by every member with the respect due to the Governor's exalted position.

I have the honor to be,

Sir,

Your most obedient Servant,

FRED. B. RUSSELL, *Colonel Commanding Volunteers, S.D.*

The Honorable the COLONIAL SECRETARY.

P.S.—I beg to forward my reply to Captain Lowes' letter of the 8th instant, by which my views will be seen.

Buckingham Volunteer Rifle Company.

MEMO.

THE accompanying communication from Colonel Russell, relating to previous correspondence on the subject of Captain Lowes' reduction of Sergeant-Major Swan, is submitted for the consideration of His Excellency the Governor.

WM. HENTY.

Colonial Secretary's Office, July 18th, 1862.

No. 19.

Orderly Room, Lord's Buildings, 18th July, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter dated the 15th instant, together with a memorandum forwarding me, in accordance with my application to that effect, copies of a portion of the correspondence that has passed between yourself and Cadet Swan, B.V.R.C., on the subject of his reduction, by my order, from Sergeant-Major to the ranks, and promising to "endeavour to look up and get copied" other portions of the same correspondence, which I gather from your memorandum are "temporarily mislaid," adding "that, as you have no Adjutant or Private Secretary to do what is required, you shall make an apology for the papers being in an imperfect state if they turn out to be so."

I should feel called upon, under these circumstances, to express my regret that my application should have occasioned so much inconvenience, did I not remember that the necessity for that application has been created by the official irregularity which sanctioned a direct correspondence between a Member of the Volunteer Company under my command and the Colonel Commanding Volunteers, S.D., with no portion of which was I made acquainted, nor even with the fact of the occurrence, by any intimation from yourself,—although the subject of that correspondence formed, at the same time, a matter of protracted official communication between us, and is now, as you acquainted me, officially in the hands of the Governor.

And here I must take leave to correct a misstatement on your part which is calculated to make me appear answerable for the necessity of this irregular correspondence.

I can make no pretension to the "Military knowledge acquired by 24 years' experience as a Regimental Officer, besides 12 more as a Staff Officer of Pensioners, which (I am extremely happy to learn) reckons as full pay;" but I am sufficiently acquainted with official rules to understand when they are violated. And I have not forgotten circumstances of such recent occurrence as Mr. Swan's application to you for a Board of Officers to reverse my order for his reduction to the ranks.

You are pleased to say that I "must be aware that, had I forwarded Mr. Swan's letter of remonstrance to yourself as he wished, he would have had no occasion to have addressed you direct." It is necessary that I should recal your attention to the fact that, at that stage of the correspondence between us, you retransmitted Mr. Swan's remonstrance when it reached you direct (Memo. dated 14th April, 1862), requesting me "to have the goodness to make such observations as might appear to me proper." Mr. Swan's object was gained; his remonstrance had reached the "higher authority,"—and there was thenceforward no necessity, but rather unquestionable impropriety, in any further official correspondence on the same subject between Cadet Swan and yourself.

I have also to remark that you state, in the 4th paragraph of your letter of the 15th instant, that you forwarded to Mr. Swan a copy of the "Governor's Memorandum," and the letter from the "Government" directing that the same should be forwarded to me "for my guidance." This last you did not think proper to forward to me at all.

You, in effect, by this omission, placed Mr. Swan in a more advantageous position (so far as you could be aware) than myself. And, in a matter where you take upon yourself to reprove me for not doing what (you say) it was evidently the intention of His Excellency and of the "Government" that I should do, you neglected to supply me with a document from which I might have learnt those "intentions of His Excellency and of the 'Government,'" which your own letters have failed to convey to me. With a copy of this letter, however, you thought it your duty, as "Colonel Commanding Volunteers, S.D.," to supply "John Swan, Esq., J.P.!" I venture to express my belief that there is not another Officer in H.M. Service, who can boast 36 years' military "experience," that would have so far forgotten military etiquette and official propriety as to speak of a Member of a Volunteer Company, when writing on Service to its Commanding Officer, as John Swan, Esq., J.P.

I am unable to share this obsequious reverence for social rank or official titles; though, I presume, it is to this sentiment on your part that I am to attribute the fact that, not only the few letters mentioned in your last Memorandum, but the whole of the correspondence that has passed between us on this matter, has been from time to time placed in the hands of "John Swan, Esq., J.P.,"—who was thus enabled to exhibit himself at the Government Rifle Matches, publicly reading that correspondence almost by your own side; and was further enabled to produce and read to a General Meeting of the Volunteer Company under my command the same correspondence then, and still, unconcluded between us, and matter which I learn from yourself "is in the hands of the Government," and which (you state) "must ere long be definitely settled by the Governor in Council."

I cannot but express my regret, while I feel compelled to record the fact, that, throughout the whole of this business, your conduct towards myself has evidenced a predetermination to uphold Mr. Swan's position on the strength of *ex parte* statements from himself; for you have admitted in your letters to myself, and to Mr. Swan, that of what had occurred between us "you were not officially cognisant." I am unable to attribute to any other cause the position you have assumed in this matter, your peremptory order for Mr. Swan's reinstatement, your violent distortion of His Excellency's simple memorandum of opinion into a positive command to the same effect, your irregular correspondence with Mr. Swan without my privity or intervention, and your last intemperate letter to myself.

I feel convinced that, had you made yourself fully and officially cognisant of the circumstances under which I was reluctantly compelled to reduce Mr. Swan to the ranks, your Military experience would have led you to the irresistible conclusion that his removal from the post of Sergeant-Major was indispensable to the maintenance of discipline of the B.V.R.C., if not essential to the existence of the Company as a body of Volunteers; and that his retention of that office must have necessitated the retirement of myself as Captain, and of Lieutenant and Adjutant Smith.

For this information you were not at the pains to apply to me; but, availing yourself of your assumed Military knowledge and "superior authority," you peremptorily and officiously ordered me to cancel an order which I had made in the exercise of a statutable authority vested in me as a "Commanding Officer" of a Volunteer Company; and finding yourself unequal to the task of answering the arguments adduced in support of my position, or perhaps comprehending the legal question involved in the controversy, you endeavored to over-ride law by a mere exercise of authority.

When I consented to fill the onerous and responsible duty of a "Commanding Officer" of a Volunteer Company, I accepted the honorable trust with the single desire of forwarding the interests of a great National movement to the best of my humble ability, and determined to spare no pains to maintain the efficiency and discipline of my own Company, without favour or affection, regardless alike of flattery or intimidation.

I hoped, on the appointment of a Military Officer to command the Volunteer Force in this Colony, that the Commanding Officers of the Corps would receive the moral and substantial support of that functionary in their endeavours to advance the movement by promoting the internal efficiency of their several Corps. I can only express my individual disappointment that these hopes have not been realised; and I am driven unwillingly to the conclusion that something more than regimental experience and Staff Officer appointments in charge of Pensioners are required to qualify Officers of Her Majesty's Regular Forces for the delicate duty of commanding a body of Volunteers in a free British Colonial Dependency.

In your letter of the 15th instant you acquaint me that my last letter will be laid before the Governor the moment you have time (amid other pressing business) to forward it.

As I am anxious that the Governor should be placed, without delay, in possession of all the circumstances of this case, and of the correspondence that has already passed between us on the same subject, I have now to acquaint you that it is my intention to address His Excellency direct, in full explanation of the whole matter, without troubling you to transcribe my communications amidst the many exigencies of your multifarious avocations.

I have the honor, &c.,

T. Y. LOWES, *Captain Commanding B.V.R.C.*

To Colonel RUSSELL, *Commanding Volunteers, S.D., Tasmania.*

P.S.—I think it desirable, at this stage of the correspondence, to acquaint you that the whole of the subject of Mr. Swan's conduct was recently brought by myself under the consideration of a Special General Meeting of the B.V.R.C., convened by me in accordance with the Rules. At that Meeting a Resolution was passed, of which I herewith enclose you a copy.

T.Y.L.

No. 20.

Volunteer Office, S.D., Military Barracks, 25th July, 1862.

SIR,

I HAVE the honor to forward you the accompanying copy of a letter, received by me this day from the Honorable the Colonial Secretary, giving cover to the decision of His Excellency the Governor in the case of Sergeant-Major Swan of the Company of Volunteers under your command, and shall feel obliged by your having the goodness to give effect thereto at your earliest convenience.

I have further to request you will do me the favour of acknowledging the receipt of this communication.

I have, &c.,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

Hon. T. Y. LOWES, *Esq., Captain Commanding B.V.R.C.*

Colonial Secretary's Office, 24th July, 1862.

SIR,

IN reply to your letter of the 17th instant, forwarding a copy of a letter from Captain Lowes, commanding the B.V.R. Company, relating to the reduction of Sergeant-Major Swan to the ranks, I have the honor to inform you that the documents have been submitted for the consideration of His Excellency.

I now beg to place you in possession of the Governor's Memorandum thereon; and you will be good enough to carry His Excellency's decision into effect in such manner as your knowledge of the ordinary custom of the Military Service may point out as most appropriate.

I have the honor to be,

Sir,

Your very obedient Servant,

WM. HENTY.

Colonel RUSSELL, *Commanding Volunteers, S.D., Tasmania.*

No. 21.

MEMORANDUM.

THE subject of this Correspondence was referred to me by the Colonial Secretary, who asked my opinion on it; and Captain Lowes is perfectly correct in saying that hitherto I have only expressed an opinion.

I hoped, however, that my opinion would have been accepted and acted on by those whom it concerned; as this has not been done, I now give my decision in accordance with that opinion, which Ministers may use in the manner they think proper.

T. GORE BROWNE.

Government House, 21 July, 1862.

No. 22.

Orderly Room, B.V.R.C, Lord's Buildings, 28th July, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your communication, dated the 25th instant, forwarding me a copy of a letter received by you that day from the Honorable the Colonial Secretary, giving cover to the decision of His Excellency the Governor in the case of Sergeant-Major (now Cadet) Swan of the Company of Volunteers under my command, and stating that "you shall feel obliged by my having the goodness to give effect thereto at my earliest convenience."

I shall not affect to misunderstand the meaning you wish me to attach to this request. It is therefore necessary that I should acquaint you, that it will be out of my power, consistently with my ideas of my duty to the Volunteer Service, to my own Company, and to myself, to make an order for the reinstatement of Cadet Swan as Sergeant-Major.

I have already intimated to you, in my last letter, my anxiety "that the Governor should be placed, without delay, in possession of all the circumstances of the case;" and stated to you my "intention to address His Excellency direct in explanation of the whole matter."

I have now to acquaint you that I have prepared a statement of the whole case for His Excellency's consideration, which will be submitted to the Governor before the end of the week. On the receipt of that statement I have no doubt that I shall be honored with His Excellency's express commands; and it is my intention to take no further steps in the matter until those commands are directly and specifically communicated to me.

In the meantime I think it unnecessary and undesirable that this correspondence should be any further extended.

I cannot, however, refrain from expressing my sense of the impropriety of the advice, by whomsoever tendered, under which His Excellency has been induced to pronounce a decision, which yourself, and I presume the Government, expected me to act upon as a direct command to reinstate Mr. Swan, when you were aware that the circumstances connected with that gentleman's reduction have never been officially communicated to the Governor, and that I was on the point of submitting a statement of those circumstances for His Excellency's information.

I am unable to believe that the Governor could have been made aware of the intention I communicated to you in my last letter when His Excellency signed the memorandum you have now forwarded to me. Had that circumstance been disclosed by the Governor's advisers on this occasion, I feel confident His Excellency would have abstained from pronouncing a decision that, pending the receipt of my official report, must necessarily prejudice the case.

I have to request that this letter may be brought under the Governor's notice.

I have the honor to be,
Sir,

Your most obedient Servant,

T. Y. LOWES, *Captain Commanding B.V.R.C.*

*Colonel Commanding Volunteers, S.D.,
Tasmania.*

No. 23.

EXTRACT from Minutes of a Special General Meeting of the B. V. R. Company, held at New Town on the 1st July, 1862.

Resolved—That the Buckingham Volunteer Rifle Company, in Special Meeting assembled, having heard the statements made by Lieutenant and Adjutant Smith, and Mr. Swan's explanations, considers that Mr. Swan has exhibited a desire to bring the authority of the Officers into contempt and disrepute: that his conduct towards Lieutenant and Adjutant Smith on the 25th of March last amounted to a deliberate and gratuitous insult to the whole Company in the person of one of its Officers, and to the Captain under whose authority and orders Lieutenant Smith was acting: that this conduct, unbecoming any Member of the Company, was doubly improper in the Sergeant-Major; and that this Meeting is therefore of opinion that Captain Lowes was only actuated by a desire to uphold the dignity and honor of the Company in reducing him to the ranks, and can come to no other conclusion than that the retirement of Mr. Swan from the Company is highly desirable.

HY. BOYES, *Lieut. B. V. R. C., Chairman.*

IN accordance with Captain Lowes' request, I beg to forward this letter for the perusal of His Excellency the Governor; but as the question at issue is not the amount of provocation given by Sergeant-Major Swan, but the illegality of Captain Lowes' Order reducing Sergeant-Major Swan to the ranks without any trial whatsoever, and which point has already received the decision of His Excellency the Governor, I really cannot see that the merits of the case have been disturbed in the least possible degree.

FRED. B. RUSSELL,

July 31, 1862.

Colonel Commanding Volunteers, S.D.

To prevent the possibility of Captain Lowes having any after grievance to complain of, I propose to allow him the time required by him to lay the whole of his case before His Excellency.

F. B. R.

No. 24.

Volunteer Office, Military Barracks, August 7, 1862.

SIR,

IN your letter of the 28th ultimo, acknowledging the receipt of mine dated the 25th July, giving cover to His Excellency the Governor's decision in Sergeant-Major Swan's case, you acquainted me that it would be out of your power to make an order for the reinstatement of "Cadet Swan" as Sergeant-Major; and that you had prepared a statement of the whole case for His Excellency's consideration, which would be submitted to him before the close of the week.

As the close of another week is not far distant (this being Thursday afternoon), I have now the honor to inform you that I cannot, consistently with what I consider my duty, defer giving effect to His Excellency's decision beyond Saturday next; and if your statement does not reach my hands on or before that day by 4 P.M., I shall feel that I have no other alternative than to issue a General Order giving effect to His Excellency the Governor's decision.

I take this opportunity of referring you to the Government Notice, No. 56, dated Colonial Secretary's Office, 17th March, 1862, contained in the *Hobart Town Gazette* of the following day, wherein it is notified, by direction of His Excellency, that I am to be the medium of communication with the Government in all matters connected with the Volunteer Force of the Southern Division of the Island, and that any infringement of the same would be a breach of Military discipline, and could lead to no good result.

I make this remark, as your letter seems to convey the impression that you had, at the time of writing it, an idea of addressing His Excellency direct; and expected that His Excellency's commands would be directly and specifically communicated to you, without in either case passing through me as the Commanding Officer of the Force of which your Company forms a part.

I need not say, that any statement that you may wish to submit for His Excellency's consideration, if sent through me in the usual way before Saturday afternoon, shall be forwarded without the least delay.

I have, &c.,

FRED. B. RUSSELL, Colonel Commanding Volunteers, S.D.

The Honorable T. Y. LOWES, Esq.,
Captain Commanding B.V.R.C.

No. 25.

Orderly Room, 8th August, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter under date the 7th instant.

In reply, I have to state, that the statement I am preparing for the consideration of His Excellency the Governor will, in all probability, be ready for presentation through you to the Governor on Monday, the 11th next.

If you are of opinion that your duty requires you to precipitate matters, by the issue of any orders relative to Mr. Swan, knowing that such a statement is about to be submitted to the Governor, it is not for me to interfere.

The statement to which I refer, accompanied by such documents and correspondence as, I conceive, essential to a full and correct understanding of the whole matter between Mr. Swan and myself, will, in all probability, be placed in your hands for transmission to the Governor on Monday next at furthest.

I am, &c.

T. Y. LOWES.

To Colonel Commanding Volunteers, S.D., Tasmania.

ENCLOSURE C.

No. 1.

[Draft copy of a letter prepared by Captain Lowes for Sergeant-Major Swan's signature, but which the latter declined to sign.—F.B.R.]

Hobart Town, 4th July, 1862.

SIR,

BEING about to quit Hobart Town and to reside permanently in a distant part of the Colony, I find myself under the necessity of resigning my Cadetship in the Buckingham V.R. Company, S.T.V., in which, at one time, I had the honor to hold the rank of Sergeant-Major.

I cannot sever the connexion with the Corps under your command without expressing my sense of the deep interest you have always taken in its welfare and progress, and of the impetus your active and energetic example has given both to the Buckingham Rifles and to the Volunteer movement generally on the southern side of the Island.

I am also anxious to express my appreciation of the efforts made, under your directions, for the progress of the Company by the other Officers, and especially Lieutenant and Adjutant Smith, whose assiduous attention to his difficult and often invidious duty, and whose honorable conduct and gentlemanly demeanour on all occasions in his official relations with the Non-commissioned Officers and Cadets, have done so much to promote the efficiency and maintain the discipline of the Company.

To yourself, to the Officers, Non-commissioned Officers, and Cadets with whom I have so long been associated, I desire to say farewell with the most kindly and sincerely earnest wishes for their advancement as a body of Volunteers, and for their future success and happiness as individual members of society.

I cannot conclude without expressing my unfeigned regret that circumstances, to which your kindness spares me the necessity of any further allusion, should at any time have marred the harmony and union of the Buckingham Rifles; and I hope I may believe that I now part with my brother Volunteers with no unkind memories of the past, and with mutually friendly aspirations for the future.

I now beg, in accordance with the 12th Rule, to give you 14 days' notice of my intention to resign my Cadetship in the B.V.R. Company; and as I am anxious, in accordance with the same Rule, to resign "clear" on the books of the Company, may I request that you will inform me of the exact amount of subscriptions or fines, which I will at once pay to the Quartermaster?

I have, &c.

*To Captain the Hon. T. Y. LOWES, M.L.C.,
Commanding B.V.R. Company, S.T.V.*

No. 2.

Bona Vista, Avoca, 8th July, 1862.

DEAR SIR,

ON Monday evening, just before leaving Hobart Town, I received from Mr. Arthur Swan a letter prepared for my signature, addressed to you, and forwarded by your desire.

There is a mistake altogether in this matter.

I felt that I had caused you a great deal of irritation and annoyance; indeed I knew it from your own admission. I was conscious also that you had entertained friendly feelings towards me personally, and believed you to be actuated by a warm desire to promote the prosperity of the Company.

I considered it my duty to express my regret for having inflicted pain upon one whose conduct towards me, I thought, had arisen from his misunderstanding my motives, and whose age, while entitled to more consideration than I had bestowed upon it, at the same time prevented him from adopting any means of obtaining redress.

I apologised to you, Sir, for my private demeanor; and you will recollect that I distinctly disclaimed my apology was not in any way to influence the case at issue between us, and you accepted my apology free of any conditions.

I should be sorry to write anything that would renew a personal misunderstanding between us; and therefore abstain from saying anything more of the letter sent for my signature than that it is not at all such a letter as I should have written, and contains opinions and statements to which I cannot subscribe.

I am,

Dear Sir,

Yours truly,

JOHN SWAN.

The Honorable T. Y. LOWES, M.L.C.

Hobart Town, 16th July, 1862.

DEAR SIR,

I AM in receipt of your letter of the 8th instant, and must confess my surprise at its contents:

It is necessary that I should now remind you of what took place on the occasion of your late unexpected visit to myself at Glenorchy.

On my coming out to you in my verandah you used, to the best of my recollection, the following words:—"I have no doubt you are greatly surprised to see me. I come to make an apology for my conduct. I have been under an infatuation for some time past; and it was not until your observations at the last meeting brought me to reflection that the impropriety of my conduct became apparent to me." You went on to say you "thought it unnecessary to go into details;" that "you would not attempt to justify yourself, and that you would sign any document I thought proper to dictate or indite; that you had retired from the Company, and were about to live on the other side of the Island; and that it was more than likely we should never meet again."

I replied, "that with regard to myself individually, after what you had stated, I forgave you; but that on the part of the Company, and particularly Lieutenant Smith, I thought something more would be required, although at that moment I was not prepared to say what; I suggested that before leaving town you should take an opportunity of speaking to those members of the Company who had been acting under your influence, and endeavour, to some extent, to repair the injury your conduct had inflicted on the Company."

To the propriety of this course I understood you to assent, and that your hostility to Lieut. Smith had been unjustifiable. My concluding observation to you was to the effect, "that the contrition and proper feeling were a great relief to my mind, as I had previously (under mature deliberation) come to the conclusion that you were a very bad man."

The impression left on my mind was,—that your apology was offered to me and the Corps without qualification or reserve; and that you were ready to sign any written statement to the same effect that I might suggest as proper to the occasion.

After deliberation, I prepared for your signature a document which was studiously designed to spare you the humiliation of a direct apology, or repudiation of your previous language and conduct. It was a document, I do not hesitate to say, that any honorable man in your position would have been only too glad to subscribe. I may add, that it was couched in terms which must have appeared to yourself to constitute a very different *amende* from that which the occasion demanded. If there was any sincerity in your expression to myself of the regret and self-condemnation,—terms which would have proved gratifying and satisfactory to the Company (I put myself entirely out of the question) and creditable to yourself, as at one time one of its most prominent and responsible Members.

Actuated now by the same friendly feelings that dictated my immediate forgiveness at our last interview, and writing to you privately, I earnestly counsel you to reconsider once more your previous conduct; your expressions of contrition and regret; your position relatively to the Company after its Resolution adopted at its last Meeting; and then weigh carefully whether you will still adhere to your declaration in your last letter, "that the document I submitted to you is not at all such a letter as you would have written, and contains opinions and statements to which you cannot subscribe."

I purposely refrain from noticing now the interpretation you have put upon your language to me at Glenorchy: I am not without hopes you will entertain my present suggestion in the same spirit that it is offered. As members of the same Volunteer Service and Company, united in a common allegiance to our Most Gracious Sovereign for the defence of the country which we both call our home, I see no necessity, after what has passed at our last personal conference, for angry discussion or protracted correspondence.

I have no wish for apologies personal to myself, but earnestly desire to uphold the integrity, to promote the harmony, and to maintain the character and *esprit de corps* of the Company, in which, at their own suggestion, I am honored with His Excellency's Commission as their Commanding Officer.

If you demur to the language suggested for your adoption in my former communication, write yourself such a letter (irrespectively altogether of this correspondence) as shall at once express the sentiments you gave utterance to at Glenorchy, and serve in some measure to heal the breach which your conduct has unfortunately occasioned in the Company it is still my duty, and was your ambition, to command.

I remain,

Dear Sir,

Faithfully yours,

T. Y. LOWES.

JOHN SWAN, Esq., J.P., New Town.

Volunteer Office, S.D., 9th August, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 8th instant; and, in reply, to say that I shall have much pleasure in waiting until Monday next for the arrival of the papers you wish to have laid before His Excellency the Governor.

I have, &c.,

FRED. B. RUSSELL,

Colonel Commanding Volunteers, S.D.

*Honorable T. Y. LOWES, Esq.,
Captain Commanding B.V.R. Company.*

Volunteer Office, S.D., Military Barracks, 13th August, 1862.

SIR,

DOUBTLESS it will appear to you somewhat strange that I should forward to you, for the perusal of His Excellency the Governor, additional papers in the case of Sergeant-Major Swan, belonging to the Buckingham Rifle Company, S.T. Volunteers, after having received from you a letter dated 24th July, giving cover to His Excellency's decision in the matter alluded to.

It becomes therefore necessary for me to explain that on my furnishing Captain Lowes, Commanding the Company in question, with a copy of the Governor's "decision" (the same being in accordance with His Excellency's previously expressed "opinion"), Captain Lowes addressed a letter to me, dated 28th July, intimating that it was his intention to make a "direct" appeal to His Excellency the Governor, feeling assured that after receiving the full particulars of the circumstances which led him to reduce Sergeant-Major Swan to the ranks, without trial by a Board of Officers in the usual way, His Excellency would cancel his previous opinion and decision, and endorse his, Captain Lowes', proceedings.

After waiting for Captain Lowes' statement, which he led me to expect would reach me on Saturday last, the 9th instant, I addressed to him a communication setting forth that, as another week (less two days) had expired without my hearing from him, I felt that it would not be consistent with my duty to delay giving effect to His Excellency's decision further; and that if I did not receive the statement by Saturday, at or before 4 o'clock P.M., I should feel it my duty to issue a General Volunteer Order giving effect to His Excellency's decision at once.

To this letter I received a reply, to the effect that the statement in question should be in my hands by the time above specified, but that he (Captain Lowes) was not to be "menaced."

On the following Monday the statement had not arrived; but Lieutenant Smith (the Acting Adjutant of the Company) informed me it would, in all probability, reach me the next day, which it did; and I now beg to forward the same, with its enclosures (3), and covering letter to me, for His Excellency's perusal.

As I have stated my opinion in this case before, and as His Excellency the Governor has already given his decision in the matter, I have nothing further to say, than that I can see nothing in the papers now sent on, (in accordance with Captain Lowes' wish), to disturb the decision already arrived at by His Excellency, except to remark that the other Captains Commanding lay claim to no such power as that assumed by Captain Lowes; on the contrary, clearly give it against him; and as for the Non-commissioned Officers, I am justified in saying that they claim to be protected from the exercise of any such arbitrary power, feeling that it would be a most dangerous precedent to establish; in which I most fully concur.

I have the honor to be,

Sir,

Your obedient Servant,

FRED. B. RUSSELL,

Colonel Commanding Volunteers, S.D.

The Honorable the Colonial Secretary.

Forwarded for the perusal of His Excellency the Governor,

WM. HENTY.

14 August, 1862.

Returned to the Colonel Commanding Volunteers, S.D., with the Governor's Memorandum for his guidance.

B. TRAVERS SOLLY.

18 August, 1862.

MEMORANDUM FOR THE COLONIAL SECRETARY.

I HAVE perused Captain Lowes' letter and the other documents, forwarded to me by the Colonial Secretary, with much regret.

The question at issue is, not whether Mr. Swan did or did not commit an offence deserving punishment, or whether (to use Captain Lowes' own words) "moral necessity, the exigencies of discipline, and the interests of the Company of Volunteers," required that he should be reduced to the ranks, but whether Captain Lowes had legally the power to reduce him by an order inserted in the Orderly Book.

I am of opinion that Captain Lowes had not, and has not, that power.

I cannot assent to the conclusions arrived at in the last page of Captain Lowes' letter: on the contrary, as an Officer in Her Majesty's Service, I consider it to be his duty to submit to superior authority, even when not in accordance with his own opinion; and although I should much regret the loss of an Officer who has shown so much zeal in the service as Captain Lowes, I must submit to that loss, rather than permit an assumption of power on his part for which I can find no legal sanction or precedent.

I must also observe, that though Captain Lowes disputes my decision, he [does so in most courteous and appropriate terms; and I cannot but regret that he has permitted himself to use language of so different a description to his own immediate Commanding Officer, Colonel Russell.

Sergeant-Major Swan must be at once reinstated.

Government House, 15th August, 1862.

(Signed) T. GORE BROWN.

Volunteer Office, S.D., Military Barracks, 19th August, 1862.

SIR,

I do myself the honor to forward for your information and guidance copy of His Excellency the Governor's decision on the case of Sergeant-Major Swan, belonging to the Company of Volunteers under your command; and shall feel obliged by your having the goodness to give effect thereto without further delay, reporting to me that you have done so,

I have the honor to be,

Sir,

Your obedient Servant,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

*Honorable T. Y. LOWES, Esquire,
Captain Commanding B.V.R. Company, S.T. Volunteers.*

Glenorchy, 20th August, 1862.

SIR,

I AM in receipt of your communication, under date the 19th instant, enclosing me a copy of a Memorandum of His Excellency the Governor on my letter of the 9th instant, addressed to His Excellency, explanatory of the circumstances under which I reduced Sergeant-Major Swan of the Buckingham Volunteer Rifle Company under my command to the ranks as a Cadet, by my own order, under the provisions of the "Volunteer Corps Act," for gross misconduct to his immediate superior Officer acting under my orders.

I have now to request that you will place the accompanying letter in the hands of His Excellency the Governor.

I am, Sir,

Your obedient Servant,

THOS. Y. LOWES.

Colonel RUSSELL, Commanding Volunteers, S.D., Tasmania.

Glenorchy, 20th August, 1862.

SIR,

I do myself the honor to acknowledge the receipt of Your Excellency's Memorandum, ordering the reinstatement of Mr. Swan as Sergeant-Major of the Buckingham Volunteer Rifle Company under my command.

In my original acceptance of the command of that Company, in all my relations with the Volunteer Service, and throughout the whole of the transactions which have arisen out of Mr. Swan's misconduct, I can conscientiously declare that I have been actuated by a sincere desire to promote to the best of my ability the advancement of a great National movement; and to maintain the efficiency, and to uphold the honor and integrity, of the Company I was commissioned by the Governor to command upon the unanimous election of my Volunteer Comrades.

I regret that my humble efforts in this direction have been thwarted by the action of an Officer who has proved himself unable to appreciate the sacrifices or second the efforts of Captains commanding Volunteer Corps.

Your Excellency now requires me to reinstate as Sergeant-Major a person whose conduct my official report has demonstrated, beyond all question, to be utterly unfit for any position of authority or responsibility in a Volunteer Company. My knowledge and experience of the affairs of my own Company convince me that Mr. Swan's reinstatement would prove seriously detrimental to the interests of the Company, if not destructive of its existence as a body of Volunteers.

This opinion I have already very respectfully communicated to Your Excellency.

The responsibility which I undertook to the Crown, to the Public, and to the Volunteer Service, when I accepted the command of the Buckingham Volunteer Rifle Company, forbids me to become a party to an act which I know must prove ruinous to its interests, and which I feel to be, at the same time, inconsistent with my own sense of personal honor.

It only remains for me, under these circumstances, very respectfully, and with all due submission to Your Excellency's authority and command, to resign the Commission I had the honor to receive from Your Excellency's predecessor, as Captain of the Buckingham Volunteer Rifle Company, Southern Tasmanian Volunteers.

I have the honor to be,

Sir,

Your Excellency's most obedient humble Servant,

THOS. Y. LOWES.

*His Excellency the Governor-in-Chief,
&c. &c. &c., Tasmania.*

August 22nd, 1862.

CAPTAIN LOWES' resignation now forwarded for the acceptance of His Excellency the Governor.

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

The Hon. the Colonial Secretary.

SUBMITTED for the Governor's acceptance.

WILLIAM HENTY.
22nd August, 1862.

RESIGNATION accepted. The Colonial Secretary will convey to Captain Lowes my thanks for his zeal and activity in promoting the Volunteer Service. I regret that his views of subordination are such as to render it impossible for him to obey the orders of his superior Officer.

T. G. B.
August 23rd, 1862.

Colonial Secretary's Office, 25th August, 1862.

SIR,

I BEG to return, herewith, Captain Lowes' letter containing his resignation as Captain of the B.V.R.C.

The Governor, in accepting Captain Lowes' resignation, desires me to convey to that gentleman, through you, His Excellency's thanks for his zeal and activity in promoting the Volunteer Service; and to express His Excellency's regret that Captain Lowes' views of subordination are such as to render it impossible for him to obey the orders of his superior Officer.

I have, &c.,

WILLIAM HENTY.

COLONEL RUSSELL, *Commanding Volunteers, S.D., Military Barracks.*

Volunteer Office, S.D., Military Barracks, 27th August, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter, dated 20th instant, forwarding your resignation as the Captain Commanding the B.V.R. Company, which has been duly laid before His Excellency the Governor, and regarding the acceptance of which not the slightest obstacle will be raised; but, inasmuch as it is an invariable rule to require that the Arms, Accoutrements, &c., in charge of the Officer about to retire shall be handed over to the next in command, before he can be absolved from his responsibility, I now beg to request that you will do me the favour to furnish me with a Certificate, either from Lieutenant Smith or Lieutenant Boyes, that he has received over the whole of the aforesaid Arms and Accoutrements complete and in good order, after which I shall have much pleasure in gazetting you out in the usual manner.

I have the honor to be,

Sir,

Your very obedient Servant,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

*The Hon. T. Y. LOWES, Esquire,
Captain Commanding B.V.R.C., Glenorchy.*

Volunteer Office, S.D., Military Barracks, 30th August, 1862.

SIR,

WITH reference to my letter of 28th instant, wherein I did myself the honor of informing you that, so soon as you had furnished a Certificate from the next Officer in command of the B. V. R. C. relative to the Arms and Accoutrements, I would at once proceed to insert your resignation as Captain Commanding in the Government *Gazette*, I now beg to say that I find it desirable not to defer doing so, as the delay would cause inconvenience to the Public Service; and, as you have as recently as the month of July certified at the foot of your Monthly Return that the Arms were in good order, and would not, I feel assured, raise any difficulty in accounting for the full number, should any by chance have since gone astray, (a most unlikely circumstance to have occurred), I do not see any absolute necessity for further delay.

I shall, therefore, insert the usual notice in next Tuesday's Government *Gazette*, both as regards yourself and Mr. Smith; feeling assured you will see that the Arms and Accoutrements are as correctly accounted for as though they had been handed over to Lieutenant Boyes previous to your being gazetted out.

In another letter of this date, I beg to forward the usual intimation of the acceptance of the resignation of your Commission by the Governor, with copy of His Excellency's Minute on the occasion.

I have, &c.,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

Honorable T. Y. LOWES, *Esq.*,
Captain Commanding B.V.R.C.

Volunteer Office, S.D., Military Barracks, 30th August, 1862.

SIR,

I HAVE the honor to inform you that your letter containing your resignation as Captain of the Buckingham Volunteer Rifle Company has been laid before the Governor; and that His Excellency has been pleased to accept the same.

I beg also to furnish you with a copy of His Excellency's Minute on the occasion, together with copy of the Honorable the Colonial Secretary's letter giving cover thereto.

I have, &c.,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

The Hon. T. Y. LOWES, Esq., M.L.C., &c.

Burnett-street, 23rd August, 1862.

SIR,

I HAVE been informed by Captain Lowes, that he has received a peremptory order from His Excellency the Governor for the reinstatement of Mr. John Swan as Sergeant-Major of the Buckingham Volunteer Rifle Company; and that, feeling himself unable, consistently with his sense of duty to the Company, and to his own self-respect, to give effect to that order, he has placed the resignation of his Commission as Captain of the Company in the hands of His Excellency the Governor.

You are aware, from the Correspondence which has passed between yourself and Captain Lowes, that the immediate act of misconduct for which Mr. Swan was reduced to the ranks, was an affront offered to myself as Adjutant of the Company, acting by the authority and under the orders of the Captain Commanding; and that it was upon my Official Report of the circumstances that Mr. Swan's reduction was ordered.

You are also, I believe, in possession of the fact, from the same source, that the Buckingham Volunteer Rifle Company, assembled in Special General Meeting, has passed a Resolution declaring, "That the conduct of Mr. Swan amounted to a deliberate and gratuitous insult to the whole Company in the person of one of its Officers, acting under the authority and orders of the Captain; and that the retirement of Mr. Swan from the Company was highly desirable."

Under these circumstances it seems to me, that an order for Mr. Swan's restoration to his former rank implies a direct censure upon myself, who officially reported,—upon the Captain, who punished,—and upon the Company, which has emphatically condemned the conduct of Mr. Swan.

As the Officer responsible to the Captain Commanding for the maintenance of the internal discipline of the Company, I feel that it is impossible for me to discharge my duty with satisfaction to the Company, or to myself, with a Sergeant-Major, whose intentional disregard for my authority has been so plainly manifested, who has forfeited the confidence of the Commanding Officer, and whose conduct has incurred the formal disapproval of the Company, to the extent of an intimation "that his retirement from the Company is highly desirable."

Nor can I overlook the fact, that my influence and authority as a Commissioned Officer must necessarily be diminished, if not altogether destroyed, by this apparent approval of conduct in my immediate subordinate, which the decision of my Captain, the voice of my comrades, and my own judgment, have already condemned, as calculated "to bring the authority of the Officers of the Company into contempt and disrepute."

I have, therefore, to request that you will be good enough to convey to His Excellency the Governor my resignation of the Commission I have the honor to hold as First Lieutenant of the Buckingham Volunteer Rifle Company.

I have the honor to be,

Sir,

Your very obedient Servant,

H. E. SMITH, *First Lieutenant & Adjutant*
Buckingham Volunteer Rifle Company.

The Colonel Commanding Volunteers, S.D.,
Military Barracks.

Volunteer Office, S.D., Military Barracks, 27th August, 1862.

SIR,

In acknowledging the receipt of your letter of the 23rd instant, wherein you request me to forward your resignation for His Excellency the Governor's acceptance, (which will of course be done,) I beg to express my dissent from the position you have taken up in the communication in question; inasmuch as the point under consideration was not the amount of provocation given by the Sergeant-Major, but the illegality of his reduction to the ranks without trial.

As this circumstance has been clearly pointed out to Captain Lowes, I am surprised that you again reiterate that which has been so often disclaimed; for it must be within your knowledge that I have, from the first, refrained from entering into the merits or demerits of the Sergeant-Major's case, having confined myself strictly to the legality or illegality of his reduction without trial.

I desire to avail myself of this opportunity of thanking you for the attention you have evinced in the performance of your various duties, being well aware that all the Returns have been prepared by yourself, and that you have in reality been, up to the present time, the working Officer of the Company; having also usually commanded it at the Battalion Drills under me; I have, therefore, no hesitation in saying, that I have looked on you as a promising young Officer.

For these reasons I regret that you also have fallen into the Military error of attempting to defend an untenable position.

I have the honor to be,

Sir,

Your obedient Servant,

FRED. B. RUSSELL,
Colonel Commanding Volunteers, S.D.

Lieut. H. SMITH, Buckingham Rifles, S. T. V.

Burnett-street, 30th August, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 27th instant, to which I would not have replied but for the paragraph in which you are good enough to "thank me for the attention I have evinced in the performance of my duties." Had you stopped there, I should have felt grateful for this acknowledgment of my services.

As it is, I must be permitted to disclaim the compliment which conveys a covert imputation on my Captain. You are pleased to say, that "I have in reality been the working Officer of the Company, and have usually commanded it at the Battalion Drills under you."

I avail myself of this opportunity to acquaint you that Captain Lowes has, from first to last, been the "working Officer" of our Company. He originated it; and his only object has been to further and promote the interests of the Volunteer movement, and to uphold the dignity and honor of his own Company.

His exertions, I am glad to think, are known and appreciated by the Members of every Volunteer Corps in the Island, by whom his retirement is sincerely deplored.

I beg to add, that Captain Lowes almost invariably commanded the Company at our Parades and Drills; and the Returns now in your hands show that the Captain Commanding has failed to attend very few Drills since our formation; and I can remember only one or two Battalion Drills at which he was not present.

You are kind enough to state that "you regarded me as a promising young Officer;" I may perhaps be allowed to flatter myself that Captain Lowes entertained a similar opinion, which would justify, while it accounts for, his anxiety to retain me, even at the sacrifice of the Sergeant-Major he was desired to reinstate,—the immediate cause of whose reduction to the ranks "was a deliberate and gratuitous insult offered to the whole Company in the person of one of its Officers."

I am sorry to be obliged to address you in this manner; but mature deliberation has convinced me that your acknowledgment of my services does serious injustice to the generous and disinterested exertions in behalf of the Buckingham Company, and of the Volunteer movement, of a gentleman for whom, both personally and officially, I entertain the highest esteem and respect.

I trust I shall be pardoned for adding, that the conclusion I have arrived at would seem to be borne out by your letter to Captain Lowes, in which you observe, that when the arms and accoutrements have been delivered over, either to myself or Lieutenant Boyes, "you shall have *much pleasure* in gazetting Captain Lowes out in the usual way."

May I be permitted to express my sincere regret, that an Officer holding your high position should have indulged in such ungenerous exultation?

I have the honor to be,
Sir,

Your very obedient Servant,

H. E. SMITH.

*The Colouel Commanding Volunteers, S.D.,
Military Barracks.*

Hobart Town, 26th September, 1862.

SIR,

I HAVE been permitted to peruse the Correspondence relating to the resignation of his Commission by Mr. Lowes, late Captain of the Buckingham Volunteer Rifle Company; and have now the honor to request that you will forward the following observations thereon to the Honorable the Colonial Secretary, that they may be added to the Correspondence on that subject already laid upon the table of the House of Assembly.

It would have been unnecessary for me to comment on these letters had Mr. Lowes confined himself to a statement of facts; but, as he has systematically endeavoured to give a false colouring to the whole question of the differences between us, I am compelled in self-defence to reply.

Mr. Lowes has entirely omitted to mention the original cause of our misunderstanding, which arose in this way.

The Rules of our Company were considered defective; and at a General Meeting a Committee was appointed for the purpose of revising them.

This Committee was composed of the Board of Officers, assisted by two additional members of the Corps.

The Captain notified to the Committee that he could not efficiently perform his duties without the assistance of an additional Commissioned Officer.

In accordance with this notification, the Committee deliberated upon the subject, both Lieutenants being present, and recommended the appointment of a second Captain, subject to the approval of the Government and the Company.

The Committee also considered it advisable to remove the exclusive power of summoning the Board of Officers from the hands of the Captain.

At a Special General Meeting of the Company, convened for the purpose of receiving the Report of the Committee, Mr. Lowes strenuously and violently opposed these suggestions, urging that he would consent to place no one over the head of Mr. Smith, and that it was not likely he would refuse to summon the Board of Officers when necessary. In spite of his influence, however, both Resolutions were carried, after discussion, by a very large majority.

The Resolutions of this Meeting were placed in the hands of the Captain as Chairman; it was supposed they would be immediately forwarded to the Government; but, as they did not suit the views of Mr. Lowes, that gentleman suppressed them.

From this time the discoveries of my faults commenced; and immediately after the Meeting, while smarting under the sense of his defeat, Mr. Lowes wrote his first letter of complaint, dated 28th January, 1862, and commenced a system of petty annoyance, with the apparent design of driving me to some act of insubordination. Circumstances long passed, of the most trivial character, are suddenly remembered, distorted, and arrayed against me,—motives are freely attributed,—and the most liberal drafts made upon the imagination, for the purpose of establishing the “moral necessity” for my removal.

By the Rules of the Buckingham Company, the power of regulating and fixing drills and parades, as well as deciding upon all important offences against the Rules, is vested in the Board of Officers. (See Rule 20 to 29.) Mr. Lowes usurped the power of fixing drills, and wished to decide all matters without troubling the Board of Officers.

I pass at once from that part of Mr. Lowes' letter to His Excellency the Governor, dated 9th August, 1862, which treats upon the legality of my reduction without trial,—that having been settled finally, and I do not wish to draw these observations to much greater length; but I cannot refrain from contradicting some of the misstatements which Mr. Lowes has put forward.

I am first charged with “endeavouring to prejudice” Mr. Lowes against Mr. Smith, because I expressed an opinion as to his unfitness for the position of Adjutant. Mr. Smith was then a candidate for our votes, holding the same rank as myself; it was surely no crime to discuss his qualifications.

Mr. Lowes then informs His Excellency the Governor that all the honours in his gift were showered upon me,—still I opposed him.

It is true that I did so when he infringed upon the privileges of the Board of Officers, and endeavoured to override the Rules of the Company.

The next statement is a fiction founded very slightly on fact. Mr. Lowes had, with extreme kindness, given me the appointments of Sergeant-Major and Paymaster; and was so well satisfied with me that he desired to increase my obligations to him by imposing upon me some of the duties of the Adjutant.

I expressed my readiness at all times to perform the duties belonging to my station in the Company, but was not disposed to undertake those of the Commissioned Officers.

I fear I must plead guilty to having treated the patriotic and sentimental feelings of Mr. Lowes with a slight degree of levity.

Mr. Lowes next alludes to his first letter to me, which he is quite mistaken in calling private; he

addressed me as Sergeant-Major, franked the letter, and signed as Captain Commanding Buckingham Volunteer Rifle Company. I referred this to some Officers of the Garrison, asking if I might treat it as a private communication, and was informed that I could not. I am content, however, that this Correspondence should speak for itself.

Mr. Lowes, in his allusion to the Rifle Club, first indulges in an unfounded assertion as to its object, then falsifies the date of its formation, saying "about this time" (viz., 28th January, 1862, the time of our quarrel) "Mr. Swan projected the formation," &c.

The Rifle Association was in operation in August, 1861, when I was taking a most active part in the affairs of my Company.

Mr. Lowes had expressed himself in the most flattering terms as to the value he would attach to my services as an Officer, and expected me to fill the first vacancy among the Commissioned Officers.

The want of confidence in the existing state of things, implied in the demand for a Second Captain, was perhaps not flattering to the Commanding Officer; and as I was supposed to be destined for that Office, I found myself suddenly deprived of the advantage of Mr. Lowes' good will.

I must now proceed to the four instances of misconduct with which I am charged, all amounting to insubordination, and for which I should have been tried in any well regulated Company.

It is an apparent fallacy to say, such conduct would have been no infringement of the Rules; why then was I not tried?

The occurrence at the Butts on 12th February is not fairly stated; Mr. Best had been firing in my presence, before the arrival of the Squad under the charge of the Adjutant, and his Rifle was foul; he expressed a desire not to shoot, and I told him it rested entirely with himself whether he would do so; I was the Musketry Instructor of the Company, and had a right to an opinion.

The second charge is true.

With respect to the third. My reason for seeking Mr. Smith on the 18th March, 1862, as he very well knows, was on a matter of duty.

Many Members had been unable to complete their Judging Distance Drill; I offered to assist them by taking charge of Squads at six o'clock A.M. on various mornings, until all had finished their course.

I wished it notified on Parade for the information of Members that I should be ready to commence next morning.

At this time I had no complaint or cause of quarrel against Mr. Smith, and had neither then, nor at any other time, the design of affronting him before the Company.

It is a mere flight of the imagination to say that I ever admitted such an intention, or that the presence of Mr. Lowes operated as a protection to Mr. Smith.

The feeling of Mr. Lowes towards me is betrayed in selecting me alone, out of all the absentees, to be fined. It was not a compulsory Drill, and I had given an excuse which would have been sufficient reason for absence at any time.

I refused to pay the fine; Mr. Lowes was unable to enforce it.

The fourth charge is made with the same careful suppression of every palliating circumstance, and is merely Mr. Smith's one-sided version of what took place. I was never furnished with any copy of the letter of complaint sent by Mr. Smith to the Captain; no enquiry was ever made,—I was asked for no explanation, but at once reduced.

On the 23rd March I met the late Adjutant at the Orderly Rooms, and enquired why I had been fined, explaining that I had given an excuse in accordance with the Rule. Mr. Smith told me that he had given my excuse to the Captain, leading me to believe that he had adopted my view of the question. I said, "Oh, very well, I must settle it with the Captain; I don't wish to draw you into it." We went down to the Butts, and it was when returning up Elizabeth-street that I observed, it was scarcely worth his while to write a "Memorandum," which could not be acted upon; this led to a conversation which convinced me that I had been deceived by Mr. Smith.

At this time we were walking in front of three Members of the Company, at such a distance as to render it impossible for them to hear my remarks.

In the discussion which ensued Mr. Smith became extremely offensive, when I used words similar to those attributed to me, and even went a little farther. Mr. Smith waited until the three Members before mentioned came up, and then asked me if I would repeat what I had said to him before these gentlemen.

I did so, but at his request. I had no idea of using the expressions a moment before their utterance, but I adhered to them, and expressed the opinion that I held myself personally responsible.

At the last Meeting of the Company these charges were read to the assembled Members; no copies had

been furnished to me; I denied them, as I have done now, yet Mr. Lowes falsely asserts that I made no attempt at denial of his statement of my conduct.

I denied it as strongly as it was possible, and so indignantly that I afterwards regretted the more violent of my expressions.

The remaining portions of this voluminous letter to His Excellency are of the same character as those to which I have alluded.

Mr. Lowes hazards an opinion as to the propriety of my conduct as a Volunteer, and a gentleman; on what grounds he assumes the right of judgment on such matters I am at a loss to imagine, he has certainly not set me a good example of obedience to constituted authority.

My time will not permit me to go at greater length into this subject. I must in conclusion, however, allude to a circumstance subsequent to the expression of His Excellency's opinion.

Mr. Lowes forwarded to His Excellency the Governor two letters for his perusal, as though with the object of showing, how much he was above the laws which regulate the conduct of other people in dealing with private communications.

I am told expressly in the second of these letters by Mr. Lowes that he is actuated by "friendly feelings," and is writing to me privately.

In the heat of discussion, and under great provocation, I had applied language to Mr. Lowes which I afterwards regretted having used to a person of his age.

At this time I was in possession of His Excellency's opinion on the question of my reduction, and only awaited my reinstatement to retire from the Corps.

On the occasion of my interview with Mr. Lowes, at Glenorchy, I apologised for my personal demeanor, but went no farther. I said no single word respecting my conduct towards the Company, having nothing on that score to regret.

Anything more unfounded than the impression that I desired to apologise to Mr. Smith cannot be conceived; on this occasion I mentioned his name once only, Mr. Lowes spoke of him at some length. I observed that I had come there to apologise, not to justify myself, and did not wish to speak of Mr. Smith.

I told Mr. Lowes that I thought a private apology was scarcely an "amende" for language applied to him publicly, and that I was willing to write him a note, which he might read to the assembled Company; the idea of writing from his dictation never occurred to me, nor was it even suggested by him.

Mr. Lowes most distinctly declined any further apology, adding, that he freely forgave me, as far as he was concerned, which was all I required.

I undertook to serve under the Rules of the Buckingham Volunteer Rifle Company, and Mr. Lowes admits that I have never violated them; he had no authority over me beyond that which I had surrendered to him in those Rules, the purport of which he has so signally failed to comprehend.

I much regret, Sir, having unwittingly caused you so much trouble in this business, but I was not disposed to allow Mr. Lowes to indulge his arbitrary tendencies at my expense.

I am, Sir,

Your obedient Servant,

JOHN SWAN, *Serjeant-Major B.V.R.C.*

*Colonel RUSSELL, Commanding Volunteers,
S. D. Tasmania.*