

The council proceeding upon the plan already adopted of selecting from the number reported, the cases in which capital punishment seems decidedly to be called for, leaving the remaining cases undecided, until the whole of the proceedings of the court shall be concluded, have, out of the list of prisoners now before them, selected four, upon whom they are of opinion the sentence passed, should be executed without delay, and if your Excellency should concur in the advice of the Council, they think that further consideration of the remaining cases, may be postponed until the whole of the proceedings of the court shall be concluded.

No. 1.
Sir George Arthur
to Lord Glenelg.
1st January, 1839.
Encl. 2 in No. 1.

The selected cases are as follows:—

1. Sylvester A. Lawton, aged 23, appears to have been sworn in a "Hunter," and acted as an officer; as far as the Council can perceive, from the evidence, and the letter of the Judge Advocate, there is no foundation for any pretence that he was forced; or misled into the invasion; and the Council think that under all circumstances, he cannot properly be considered an object of mercy.

2. Leonard Delino, aged 25, was sworn in a hunter on the first of October, he sent his rifle before him from home, and belonged to a company, who seem to have been particularly active, headed by a Captain Kemble, he fought from beginning to ending, and there seems to have been a deliberation in his conduct; amongst a mass of prisoners, of whose individual share in the transaction little is known, sufficient to mark his case for selection for capital punishment.

3. Duncan Anderson, aged 48, denies being a hunter, but he also joined Kembles company, and was one of those on Carleton Island, his pretence of not knowing the object of the expedition is perfectly inconsistent with his own statements, and his age precludes him from the benefit of any supposition of his having been deceived, or misled, as to the object for which he took up arms; the Council have, therefore, selected him for capital punishment from amongst the list of convicts before them.

4. Christopher Bulkley, aged 27, appears beyond doubt to have been captain of a regularly enrolled company, he denies it himself, but after his trial, a book is found in the woods, dropped by himself, or some one of the party, in which the names of a body of men are mentioned, who pledge themselves to follow him; the Council think there can be no question as to his case, and they have therefore selected him, as a fourth convict, out of the number whose cases are now under consideration for capital punishment.

The Council desire to pause upon the case of Luther Darby, until they shall have received further intelligence of the proceedings of the Court-Martial. The remaining cases may, in the opinion of the Council, be deferred for final determination, when the whole of the cases arising out of the expedition near Prescott, shall be reported.

The Council have had before them, and considered the opinion of the judges of the King's Bench, and the subsequent opinion of the Attorney-General, respecting the case of William O'Neill, convicted by a majority of less than two-thirds of the members of the court present at the trial, and concurring fully in these opinions, the Council respectfully recommend that the conviction be not approved, and that William O'Neill be discharged from custody as acquitted.

The same opinion will apply to the case of Martin Van Slyke, who was convicted in the same manner, by a majority consisting of less than two-thirds of the members present, it is therefore respectfully recommended, that he be discharged from custody as acquitted.

All which is respectfully submitted.

(Signed)

R. B. SULLIVAN, P. C.

Executive Council Chamber, Toronto,
Wednesday, 26th December, 1838.

Present, The Hon. Robert Baldwin Sullivan, Presiding Councillor, the Hon. William Allan, the Hon. Augustus Baldwin, the Hon. Richard Alexander Tucker.

To His Excellency Sir GEORGE ARTHUR, K.C.H., Lieutenant-Governor of the Province of Upper Canada, Major-General Commanding Her Majesty's Forces therein, &c. &c. &c.

May it please your Excellency,

THE Executive Council have perused with great attention the proceedings of the Court Martial assembled at Kingston, detailing the trial and conviction of the under-named prisoners:—

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| 1. Sampson Wiley, | 10. Daniel D. Hustis, |
| 2. Joseph Stewart, | 11. Lawton S. Peck, |
| 3. Alson Owen, | 12. Thomas Baker, |
| 4. Chauncey Bugbie, | 13. Solomon Reynolds, |
| 5. Andrew Leeper, | 14. Joseph Drummond, |
| 6. John Berry, | 15. David Allen, |
| 7. Hiram W. Barlow, | 16. Hiram Sharp, |
| 8. Orren W. Smith, | 17. Russell Phelps, |
| 9. Ethel Penney, | 18. Samuel Washburn, |