

No. 2.

Lord Glenelg to
Sir J. Colborne,
19 March 1838.

To any change of the tribunal for the trial of offences previously committed, infringing as it would the principles by which the administration of the criminal law is guided throughout the British dominions, Her Majesty's Government are not prepared to give their sanction without previously submitting to a practical test the anticipations as to the issue of trials by the ordinary tribunals.

Her Majesty's Government are gratified to find that you have already been able to release more than 200 prisoners. It does not clearly appear what is the number now awaiting their trial, but it is probably considerable. I presume that, before the arrival of this despatch, a careful scrutiny will have been instituted, for the purpose of ascertaining whether there are others who may safely be discharged. I observe that this course is recommended by the Attorney and Solicitor-general, who "deem it advisable, for the ends of justice, that all the cases of the prisoners now confined should be examined into; and if upon such examination it should be found that any of the prisoners should have erred from ignorance or intimidation, they should be released."

Before the commencement of any trials, it will be necessary to reduce the number of prisoners to those only whose offences could not be overlooked without serious danger to the future tranquillity of the province. Even amongst these there will be distinctions to be made. Some might perhaps be safely arraigned and permitted to plead guilty, if they should be willing to adopt this course, upon an assurance that the judgment recorded against them should not be executed if they would voluntarily withdraw from Her Majesty's dominions in British North America, and continue absent. In such cases, it will be necessary to require some security against their return. This species of exile, not being wholly unattended with hope of restitution to their homes at some future period, might not only relieve Lower Canada from the presence of the offenders, but might afford some security against their plotting against the public peace while resident in the adjacent states.

Supposing this preliminary process to be completed, you will then, from the remaining number, select four or five cases, and bring them for trial before the ordinary courts of the province, with juries convened according to the existing practice. The choice should be made from those prisoners against whom the evidence appears to be free from all reasonable doubt; while, at the same time, it will be desirable to avoid selecting those in whose behalf the greatest degree of the sympathy of the disaffected would be called forth. If the verdicts shall be pronounced impartially, you will then proceed to try the rest in the same manner. If, on the contrary, the juries on these trials shall, in fulfilment of the predictions of the magistrates and Crown lawyers, act under the influence of manifest partiality, it will then be your duty not to proceed further in bringing offenders to trial, but to detain in custody all those untried prisoners whose liberation would, in your judgment, endanger the safety of the province. The law which you have already been authorized to propose to the special council for the suspension of the Habeas Corpus Act will enable you legally to effect their detention.

It appears desirable that the prosecutions which may be brought to trial should be conducted with the utmost possible solemnity, and therefore if the statute law of Lower Canada has not superseded the power of the Crown to issue a special commission for the purpose, addressed to all the judges of the supreme courts of the province, or to the majority of them, that course ought to be taken. If there is any statutory impediment to this mode of proceeding, you will consider of the expediency of removing it by a law to be passed for the purpose by the special council.

The objections to changing the place of trial to any district of the province in which the juries would be drawn exclusively from the political opponents of the accused parties are evident and insuperable. But there would be no valid objection to transferring the trials from Montreal to Quebec, if such a change should afford a reasonable prospect of greater impartiality in the administration of justice.

You will not bring to trial any person charged with murder, in the ordinary sense of the term. Trials for murder committed in cold blood, and not under the incitement