

His Grace is of opinion that it is not necessary at present to add anything to the instructions sent to the officer administering the government of Canada on the 9th instant, a copy of which was communicated to you yesterday.

I am, &c.

(Signed) **FREDERIC ROGERS.**

Inclosure 1 in No. 7.

*Sir E. Head to the Duke of Newcastle.*

My Lord Duke,

*Colonial Office, January 15, 1861.*

I HAVE the honour to inclose a copy of a Memorandum forwarded to me by Mr. Cartier, Attorney-General for Lower Canada, which will explain to your Grace the present position of Anderson's case.

This Memorandum was prepared in the office of the Attorney-General for Canada West, and therefore, I presume, may be relied on.

Your Grace will see that Anderson's case will probably be decided by the Court of Error and Appeal in the first or second week in February, as the Court meets early in that month.

Now it is possible that the Court of Common Pleas in Upper Canada (to whom an application for a writ of *habeas corpus* will be made), as well as the Court of Appeal, may decide against the prisoner, as the Court of Queen's Bench have already done.

Your Grace will therefore see that it is necessary to be prepared for such a decision, and that the views of Her Majesty's Government with reference to the obligations of the Treaty should be, before the end of the first week in February, or even earlier, conveyed to the officer administering the Government of Canada.

If there is nothing in the law of the province to intercept the action of the Executive in the extradition of Anderson, it will at once be necessary to decide in Canada whether the demand made for him by the United States' Government should be complied with or refused; and the discretion of taking so grave a step, involving, as it does, a possible breach of supposed treaty obligations, must, I conceive, rest with Her Majesty's Ministers here.

I know that it is thought possible there may be an appeal from the Court of Error and Appeal in Upper Canada to Her Majesty's Privy Council. On this point of course I am not able to offer an opinion, but I should recommend that the case should be considered irrespective of this question. If such an appeal is found to exist, the necessity for immediate action on the part of the Executive Government would be again postponed.

I have, &c.

(Signed) **EDMUND HEAD.**

Inclosure 2 in No. 7.

*Memorandum.*

THE Court of Queen's Bench has remanded the prisoner to his former custody in Brantford; but it is most probable that the Government will be asked by all parties to allow the prisoner to remain in Toronto jail. Though the Court of Queen's Bench are of opinion that there is not an appeal in this case to the Court of Error and Appeal, yet it seems probable that the Court of Error and Appeal may entertain it, in which case the prisoner would have to appear there when the case is argued.

The present view taken by the prisoner's Counsel is, to have the return made a matter of record in the Court of Common Pleas, and to plead in confession and avoidance, and thereupon obtain the decision of that Court; and if adverse to the Queen's Bench, and if the Government took no action, then to appeal to the Court of Error and Appeal on that record, as it is the peculiarity of the course taken by the prisoner's Counsel, and consequent absence of a record, which, in the opinion of the Chief Justice of the Queen's Bench, prevents an appeal, as it now stands, to the Court of Error and Appeal.