

Enclosure 3 in No. 1.

Toronto, Monday 31st December, 1838.

No. 1.
Sir George Arthur
to Lord Glenelg.
1st January, 1839.
Encl. 3 in No. 1.

Present, His Excellency the Lieutenant Governor; the Honourable Robert Baldwin Sullivan; the Honourable William Allan; the Honourable Augustus Baldwin; the Honourable Richard Alexander Tucker.

His Excellency the Lieutenant-Governor having summoned the Executive Council, the Council met at Government House at nine o'clock, P.M.

His Excellency was pleased to call the attention of the Executive Council to the fact, that a number of criminals are in custody in consequence of the invasion in the western district, out of which, several must be selected for capital punishment; and his Excellency was further pleased to observe, that it may now be a question for serious consideration, whether so large a number as six persons should be left for execution at the same time, at Kingston, as he was not without some apprehension, that the execution of so large a number at once, may, in conjunction with the proceedings at London, go beyond the public feeling, and excite sentiments of commiseration, which would produce an ill effect in the province, and a feeling of indignation in the United States, which, however unreasonable, may hereafter associate to the injury of the province, in provoking war, or in making a war, if it be inevitable, more vindictive and sanguinary than it would otherwise be.

His Excellency was further pleased to say, that, he saw no reason to alter his opinion as to the aggregate number who ought to be executed out of the mass of prisoners, in order to put down, if possible, the dreadful crimes which the American border population were committing; but, under the whole of the circumstances, his Excellency required the opinion of the Council upon the question, whether two of the prisoners, now under orders for execution, might not properly be reprieved.

The Executive Council, after much deliberation, and after an attentive perusal of the cases of the convicts as reported, adhered to their former recommendation, and stated to his Excellency, that although they would, if the question were to be discussed *de novo*, and with the knowledge of the objection, in the mind of his Excellency, to the execution of so many convicts at one time, have modified their recommendation, so as to have divided the number to be executed, into smaller portions, they yet could not advise his Excellency to grant a reprieve to any of those convicts; such a reprieve, in the opinion of the Council, would amount to an assurance of sparing the lives of the persons reprieved, and the measure of their guilt, would necessarily become a new scale by which to judge of future cases.

The Council further stated, that upon the individual merits of each case, they could not make a selection from the six ordered for execution, with which they could feel satisfied. They were of opinion, that those who were ordered for execution, were amongst the most guilty of the prisoners, and that none of their cases offered any distinguishing marks of mitigation, which would enable the Council to recommend any of them to mercy. That the principle upon which the government had hitherto acted, of executing the most criminal, and reserving the less guilty for secondary punishment, must indeed, be entirely departed from, if the lives of any of those six persons should be spared.

The Council further stated that they could discover no reasons sufficient to induce them to alter their recommendation as to the numbers to be executed; that they had concluded upon their advice in that respect, making every allowance for public feeling; and that even supposing those in the immediate view of the executions to be inclined to relent, they conceived that the government was bound by a sense duty to carry public examples, in the way of capital punishment, so far as to prove that it is not intimidated by foreign threats of vengeance, or swayed from its course by sectional demonstrations of feeling.

The Council further remarked that, in advising the course of mercy and forbearance which had hitherto been a prominent character of this government, they had frequently to contend with popular sentiment, notwithstanding which they had advised his Excellency to persevere.

They have had no reason to regret their advice in this respect, and they now do not think the apprehension of popular commiseration, if such should be found to exist, or of foreign indignation, of sufficient moment to induce them to alter the advice which, upon the most mature deliberation, and with a view to the most merciful consideration of the remaining cases of prisoners, they had found it their duty to offer.

The Council were further of opinion, that the invasion of the province was plotted and carried into execution by a number of lawless and wicked conspirators on the frontier, who, taking advantage of the weakness of the United States Executive Government, have trampled upon their own laws with absolute impunity, and so far from the condign punishment of the criminals, when they fall into the hands of justice in Canada, being regretted or resented by the respectable and thinking portion of the American community, the Council believe that this portion of the American people will rejoice sincerely to see that there exists a power in Canada, which can check and punish the disorders and insubordination existing amongst the border and western population, which not only threatens to involve their country in a war with England, but also seems not unlikely to overthrow what remains of obedience or respect to law and order in the American territory itself.