

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

19. Edmond Holmes,
20. Gideon Goodrich,
21. Hiram Kinney,
22. Joseph Lee,
23. John M. Jones,

24. Chauncey Mathers,
25. Philip Conrod,
26. Joseph Wagner,
27. Henry Jantzen, and
28. Sebastian Meyer.

Notwithstanding the opinion expressed by the Council in their report of the 24th of December instant, that consideration of any future convictions might properly be deferred until the whole of the cases, arising out of the Prescott invasion, should be placed before your Excellency, the Council see good reasons for making a further selection for capital punishment from the cases now before them, as they do not think it probable that many instances will occur in the course of the trials in which distinguishing marks of aggravation will appear more plainly than in the two cases now selected; and when these are so obvious as to leave no hope of future merciful consideration, the Council are of opinion that the infliction of the penalty ought to follow the conviction with the utmost promptitude.

In the absence of special information respecting the previous history, or individual acts of the convicts, the Council have been obliged to select from the number of criminals those who appear to have been most willingly and advisedly joined in the project of invasion, and who have acted most deliberately and heartily in the cause of the conspirators; and with this view, and referring most carefully to the principles which guided the former decisions of the Government, they feel compelled, by what they consider a due regard to the ends of justice, to advise your Excellency that the sentences passed upon the two under-named prisoners should be promptly carried into execution.

1. Andrew Leeper.

The case made out against this convict appears very clear, upon his own confession. He had, as he states, been frequently in Canada travelling. He was employed for a considerable time at Kingston; he was in communication with an American named Prendergast, who, before the late invasion, resided in the province, and who appears to have been deeply implicated in the conspiracy. The convict came into the province, and took up arms with a perfect knowledge of the object of the expedition; and he fought from the beginning to the end of the contest. He is forty-two years of age, and his appearance and manner before the court are reported to have been unfavourable.

2. Russell Phelps is aged forty years. He landed on Carleton Island previously to the invasion near Prescott, and, besides a clear case of guilt, he appears to have been indicted and tried at the last Kingston assizes, for the offence of inducing Her Majesty's soldiers to desert; and although he was acquitted, a strong impression of his guilt remained. His future conduct in joining in the invasion of the province strongly confirms this suspicion; and although the Council do not desire his punishment for a crime not sufficiently proved against him, they cannot but allow the charge of an offence, which is known to have been in conformity with a most wicked and dangerous part of the conspiracy against the province, to have some weight, when they are seeking for distinctive grounds for the selection from the mass of offenders of the most aggravated cases, and for the criminals most proper for public example.

All which is respectfully submitted.

(Signed)

R. B. SULLIVAN, P.C.

Wednesday, 26th December, 5 o'clock, P.M.

Pursuant to his Excellency's commands, the Executive Council assembled at Government House:

Present, His Excellency the Lieutenant-Governor, the Hon. Robert Baldwin Sullivan, the Hon. Augustus Baldwin, the Hon. Richard Alexander Tucker;

And the Reports of Council of the 24th December instant, and of this day, were submitted.

Whereupon, after examination into, and mature deliberation upon, the proceedings of the Court Martial, his Excellency the Lieutenant-Governor, in Council, was pleased to approve of the recommendation of the Council as contained in the reports of their proceedings of the 24th instant, and of this day; and it was accordingly ordered by his Excellency in Council as follows:—

The Lieutenant-Governor, in Council, approves and confirms the finding and sentence of the Court Martial passed upon Sylvester A. Lawton, Duncan Anderson, Leonard Delino, Christopher Bulkley, Andrew Leeper, and Russell Phelps; and directs that the said sentence be carried into execution upon the said Sylvester A. Lawton, Duncan Anderson, Leonard Delino, Christopher Bulkley, Andrew Leeper, and Russell Phelps, on Friday, the fourth day of January next, between the hours of eight and nine o'clock in the forenoon of the same day, at or near Fort Henry, in the Midland District.

After which, his Excellency was pleased to lay before the Council a letter from the Judge Advocate, stating the probability of one of the convicts, whose cases remain for consideration, named John Thomas, might be identified as having been charged, under strong suspicion, of belonging to a party who entered the province in the year 1837, with the purpose of destroying some of the locks upon the Rideau Canal.