

THE BOOKS OF THE POLITICAL  
PRISONERS AND EXILES  
OF 1838

By  
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### Part I—Introduction.

Earl Durham, when he came here in '38 as High Commissioner, thought—and we cannot but feel with him—that the Lower Canadian rebellion prisoners of '37 should have had their punishment settled upon and meted out before he came into his busy, brief lease of undefined colonial power.

However, they were easily persuaded to plead “guilty.” He was anxious, for humanitarian and political reasons, to avoid the death penalty; and believing he had the power, he exiled them (temporarily, he hoped) to “pleasant” Bermuda, a country over which he had no jurisdiction, nor even on his order could its governor legally detain them.

When Durham learned, as he did through New York newspapers, that the British Cabinet who had appointed him, giving him large powers and the promise of full support, did not legalize his humane action, they nervously paying too much attention to the pettifogging comments of Brougham and similar opposition party cavillers, he resigns and sails for home before the somewhat similar cases in Upper Canada have to be settled. It is some of the experiences and indignant feeling shown in the now scarce books of these prisoners that this paper attempts to group, the bibliography being its last part.

(1) The first author is Wm. Gates, “one of the Canadian Patriots.” As he tells his story, he is an American, 22 years of age, unmarried, and apparently a farmer. Says he actively sympathized with the Patriot Movement “which had for its object the liberation of the Canadas from British misrule and oppression.” . . .

Gates joins the “Hunters’ Lodge” at Lyne, Cape Vincent (south of Kingston), and in November, 1838, in a schooner, is with other members towed across and down the St. Lawrence to Prescott, and there takes part as a private in the battle of Windmill Point, of which he gives a clear description. The numbers in action are not given in Sir John Colborne’s report sent to England, but Gates says: “The 83rd Regiment, numbering one thousand veterans, supported by twelve hundred provincial soldiers, aided by an unknown number of militia, composed the force. We were a small band of about two hundred and fifty souls, with but four days’ provisions at the most, and a very scanty supply of ammunition.” Though beaten, he is proud of American fighting capacity, and says, “thus ended this brief, unequal struggle, which had resulted in a loss of near six hundred killed and wounded on the part of the British, while on that of the patriot side, if I remember aright, but fourteen were killed and twenty-seven wounded.”

In the endeavour to boat across to Ogdensburgh to get the doctor’s forgotten instruments and medicines, he is caught by the steamer *Cobourg*, and is eventually imprisoned at Fort Henry, Kingston, and with others is tried by court martial, about which he is sarcastic.



"Our indictment being read, we were severally asked, 'Guilty or not guilty?' 'Not guilty,' was our response. The Queen's witness was asked if he recognized us, to which he replied, 'I do not.' No other questions were asked, and we were remanded back to our prison room, wondering what the sentence of the court would be on such overwhelming testimony! In a similar manner were all our comrades tried, often a dozen or fifteen at a batch, whilst the whole time occupied, from the moment they left the room till their return to it again, would not exceed generally over one hour. All that seemed necessary was to bring the culprit into the presence of the court (?) to hear his indictment, and to give him the opportunity of repeating 'guilty' or 'not guilty,' either of which repetitions was sufficient to warrant a condemnation."

Different as was the case of these invaders, caught red-handed, from the native rebels of Lower Canada, who, indirectly, so deeply influenced Durham's life and political usefulness, the then British Executive seems worried in deciding what to do with them. After a lapse of ten months—28th September, 1839—they, unsentenced, sail in the *Buffalo* from Quebec for a port not announced to them, which proves to be a convict camp in V. D. L. (Van Dieman's Land, or Tasmania).

Gates' life there is pitiable enough for six years. Pardon comes the 13th September, 1845, but that meant he was turned adrift without means, eventually getting to Australia, and thence home by a whaling ship to New Bedford, Mass., the 31st May, 1848.

(2) The second book is by Ben Wait and his courageous, active wife. Of his offence he talks ambiguously. From Schlosser, N.Y.: "Consequently, twenty-six, all Canadians, daring fellows, ready to be sacrificed in the field or on the scaffold, penetrated, doubly armed, without hope of return, to the heart of the enemy's country, surrounded on every side by the regular infantry, lancers, volunteers, and Indians (where a few Americans came to us) on a secret mission—the object of which I am not yet at liberty to detail—to which, however, let it suffice that I declare there was nothing in the slightest degree dishonourable or disreputable attached, notwithstanding subsequent surmise and evil report.

"After a trifling, successful irruption upon a company of insulting Orange lancers, etc., far outnumbering us, whom we took, detained a short time, then dismissed, our little band retreated and dispersed, when a part were captured and sent, with twenty or more of the innocent inhabitants, to a jail where we were all separately indicted for high treason. . . ."

Judge Jones' sentence, given August 11th, 1838, was, Benjamin Wait, between the hours of 11 and 1, August the 25th, "you shall be drawn on a hurdle to the place of execution, and there hanged by the neck until you are dead, and your body shall be quartered."

The dramatic part of this book gives his wife's exertions to mitigate the death sentence, eventually amended to exile in V. D. L., and his acute suffering there.

"A wife's devotion. A Canadian heroine of sixty years ago," is Maria Wait's (*nee* Smith) story, as told by Janet Carnochan in No. 13 of the issues of the Niagara Historical Society, 1905. Both man and wife were born not far from Niagara, and she was educated by Robert Randall, who was also his early patron and friend. On Randall's tombstone, Lundy's Lane, 'tis recorded he was a "victim of colonial misrule." He probably knew it, for he was

fourteen years in the Legislature, and crossed the Atlantic to give voice to the wrongs of Canada.

It is part of the pathos of this story that so many of the appeals she and others made should have been to Durham, who was sickening to death, out of power, and possessing so little influence with the government that H. Martineau indignantly mentions that they would not give him a copy of the Blue Book containing his "Report," which he desired for a friend's use.

(3) Miller's chief note of complaint is that he was treated like a slave. His case was exceptional in that he and eleven others appeared before an English as well as before a Canadian, court. See Book 19 of this list.

(4) As Wright's account is written for him by Caleb Lyon, it does not rank in interest with such personal stories as Gates' description of the battle at the Windmill, Prescott.

(5) Of Marsh I have seen but one copy, the personal property of Dr. F. H. Severance, in the Historical Museum, Delaware Park, Buffalo, Ontario losing a copy in the last fire of the Legislative buildings. For most students the synopsis of this rarity, and of Marsh's life, given in Severance's "Old Trails on the Niagara Frontier," 2nd, 1903, p. 159 to 180, will save time and patience.

(6) Snow, when I commenced this paper, was to me a singleton, and is in the reference collection of the Toronto Public Library, but the Bibliothèque Saint Sulpice, Montreal, has two copies. He says: "I entered the Patriot service with the best of motives, only wishing that our Canadian neighbour-might, in the end, enjoy the same civil, religious and political freedom with which the citizens of the U. S. were blest" (3 p.). He had listened to Dr. Duncombe, who said that LIBERTY—the inestimable birthright of man—was unknown on the other side of Lake Erie. Leaving his Ohio home he, on the 4th of December, 1838, with 163 others crossed from Detroit to Windsor, where no Canadians joined them (a common experience, and the commencement of their disillusion), and after some loose fighting and wandering in the woods he was caught when he came to St. Clair River, which he was now anxious safely to recross. He was taken to Chatham, Toronto, Ft. Henry and Quebec, sailing from there in the *Buffalo* to an unknown port. After a four and one-half months' voyage he was landed at V. D. L., the French-Canadian prisoners on board being taken to Sidney, N.S.W.

(7 to 13) Sutherland—a newspaper man—the most voluminous of these otherwise amateur authors, was a prisoner but not exiled, and seems to have kept up through the daily press—as far as its editors would give him space—an agitation for the release of the U. S. exiles, and also a sort of roll-call of them. Under the title of "A Patriot General," a lively account of him is given by Justice W. R. Riddell, in Vol. 44 of the *Canadian Magazine*, Nov., 1914, and Robert B. Ross, in the *Detroit Evening News* of 1890, under the title, "The Patriot War," refers at length to Sutherland, mentioning only two of his books. This communication is reproduced in full in the "Michigan Pioneer and Historical Society collection," Vol. XXI, pp. 509-612, and was issued as a separate octavo pamphlet, in paper covers, of 101 pages. He makes brief mention of twenty-one men figuring in the rebellion, but it is a '37, not a '38, history. Ross was from New Brunswick, and a voluntary exile from December, 1837, to the spring of 1844.

References to Sutherland may also be found in the "Michigan Collections," Vol. VII, pp. 82-92.

The other numbers in the list, and their authors, have only a secondary interest, but seemed worth recording after turning them up in the search.

This still hunt also revealed interesting rare French books, chiefly dealing with 1837 and the kindlier treated exiles to Bermuda and Australia, and do not naturally list with the records of the harsher treatment of Upper Canada's 1838 prisoners.

It is this contrasting situation that makes this story interesting to the author. Durham, of set purpose, treated the 1837 offenders leniently, hoping to heal the breach, converting the rebels and their friends into good citizens, and this generous treatment of them was the cause of his own loss of power. To get the home view of this situation it would be interesting to see a British Museum item (8154 dd. 22 (2)), "Should Lord Durham be Impeached?" By a Freeholder (?) London, 1839, 8vo.

These 1838 men, independent of nationality, stoutly maintained in court and out, to the end of their days, that their trials and unannounced sentences were illegal, that their treatment as prisoners, and eventually as felons, in the matter of food, dress, and vermin, was foul and inhuman, and their punishment in no way remedial. This is all done without result. No one pays any attention to them or their grievances. No one is impeached, none give help; as if the then public sentiment was that hardship was right, moderation wrong.

Part of the criticism of Durham's leniency by his English political opponents was that he had no legal right to choose the penalty for prisoners of state, or decide how they should be tried. It is not for a layman to say what the suspension of constitutional rights during his brief colonial reign did give or cancel, but gleaning in our statutes of this period we met "Chapter 7, William IV, passed 4th March, 1837 (p. 31)," an Act that says transportation may be substituted for banishment, and that either may be substituted for death conviction, and defining the penalty for too early a return.

It adds something pathetic to this situation to note that the first four Canadian Acts that Victoria, the girl queen, has to sign are aimed at treason.

How far Fenian feeling influenced the invaders from the States is now difficult to trace, but it was felt to be there, and we must allow for it in estimating the situation. That the American Government could or would do nothing in mitigation of the pains of its citizens held prisoners is explained by a brief comment of O. F. Tiffany, in his Ph.D. Thesis, "The Relations of the U. S. to the Canadian Rebellion of 1837-1838," printed in Vol. No. VIII, Publications of the Buffalo Historical Society, 1905. He says this rebellion taxed the military vigilance and friendly feeling of both governments, led to international complications, and in America furnished new instances of internal conflict between State and Federal authority, contributing somewhat to the defeat of the Van Buren administration, and downfall of the Democratic party.

One of the broad features of these out-of-the-way books is that they reflect the surprise the invaders felt when the local dissatisfied Canadians did not rally to them, and that the militia they faced "shot to kill."

Also, some of them, in view of the sacrifices they had made for others' liberty, freedom and democratic governance, could never see the gravamen of their offence, so that they feel they have made a point when they contrast the

harshness of their punishment among Botany Bay felons, with their original mild aspirations.

When release came no provision was made for these emaciated men to get to their homes, a whole hemisphere away, and with most it took from ten to twelve months in a whaler.

One who was wrecked coming home in such fashion left a manuscript account of his V. D. L. experiences, which ultimately reached relatives in Ontario, and is now existent and unprinted. The author failed to persuade the possessor to let him use it, which he much regrets.

Of collateral interest only is a small rare book in the author's collection, one of the earliest outputs of the Tasmanian press, when her total population (bad and good) was 21,125.

"The Van Dieman's Land Anniversary and Hobart-Town Almanack, for the year 1831, with embellishments . . . by J. Ross (price 10s.)."

Chapter 13 on the penal settlements, which "consist of three establishments remote from the main colony, and communicating with it only by water," makes it of interest to us as confirming the harsh conditions of life reflected in the exile books.

"No beasts of burden are allowed . . . and as the whole of the timber" for ship and house building "is obtained by human hands alone, the labour is often of the most excessive kind" (p. 262).

"The manner in which the men are fed during this labour may also be considered some addition to the severity of the discipline. As soon as they are called from rest in the morning they are served with a dish of porridge, composed of flour and water, and a little salt; after which they embark in the boats and row to their several wood-cutting stations, where they continue to work without any other provision until they return at night, when they are supplied with a substantial meal, the main repast of the day. If the weather should happen to be rough or the wind adverse, so as to impede the progress of the boats, this meal is sometimes delayed till late, when of course the cravings of appetite after the exercise of the day must be great" (p. 263).

A frequent complaint was that the only flesh issued for this so-called substantial meal, was mutton, and it was freely stolen by the promoted penal convict officers, through whose distributing and cooking hands it had to pass.

#### Part II—Book List, Giving Title Pages of the Books.

(1) *Recollections of Life in Van Dieman's Land*; by William Gates, one of the Canadian Patriots. "A good man commendeth his cause to the one great Patron of innocence, convinced of justice at the last, and sure of good meanwhile." Lockport: P. S. Crandall, Printer; office of the Lockport *Daily Courier*. 1850.

(2) *Letters from Van Dieman's Land, written during four years' imprisonment for political offences committed in Upper Canada*. By Benjamin Wait. "It is better to fail in striking for so noble a thing as LIBERTY, than not to strike at all; for reform never dies."—Bacon. Embodying, also, letters descriptive of personal appeals in behalf of her husband, and his fellow prisoners, to the Earl of Durham, Her Majesty, and the United Legislature of the Canadas, by Mrs. B. Wait. Buffalo: A. W. Wilgus. 1843.

(3) Notes of an exile to Van Dieman's Land, comprising incidents of the Canadian rebellion in 1838, trial of the author in Canada and subsequent appearance before Her Majesty's Court in Queen's Bench in London; Imprisonment in England and transportation to Van Dieman's Land. Also an account of the horrid sufferings of six years in that land of British slavery, together with sketches of the Island, its history, productions, inhabitants, &c., &c. Slaves can breathe in England; by Linus W. Miller, Fredonia, N.Y. Printed by W. McKinstry & Co. 1846.

(4) Narrative and recollections of Van Dieman's Land during a three years' captivity of Stephen S. Wright; together with an account of the Battle of Prescott, in which he was taken prisoner; his imprisonment in Canada; trial, condemnation and transportation to Australia; his terrible sufferings in the British penal colony of Van Dieman's Land; and his return to the United States: with a copious appendix, embracing facts and documents relating to the Patriot War, now first given to the public, from the original notes and papers of Mr. Wright, and other sources. [Then follow eight lines of a Byron quotation.] By Caleb Lyon of Lyonsdale, New York. J. Winchester. New World Press. 30 Ann Street. (Entered) 1844.

(5) Seven years of my life, or a narrative of a Patriot Exile who together with eighty-two American citizens were illegally tried for rebellion in Upper Canada in 1838, and transported to Van Dieman's Land. Comprising a true account of our outrageous treatment during ten months' imprisonment in Upper Canada, and four months of horrible suffering in a transport ship on the ocean, with a true but appalling history of our cruel and unmerciful treatment during five years of unmitigated suffering on that detestable Island. Showing also the cruelty and barbarity of the British Government to the prisoners generally in that penal colony, with a concise account of the Island, its inhabitants, productions, &c., &c. By Robert Marsh. Buffalo: Faxon & Stevens. 1847.

(6) The Exile's Return: or, Narrative of Samuel Snow, who was banished to Van Dieman's Land, for participating in the Patriot War in Upper Canada, in 1838. Cleveland. Printed by Smead R. Cowles. Central Building. 1846.

(7) A letter to Her Majesty the British Queen, with letters to Lord Durham, Lord Glenelg, and Sir George Arthur: to which is added an appendix embracing a report of the testimony taken on the trial of the writer by a court martial at Toronto in Upper Canada. By Th. Jefferson Sutherland. Albany. Printed by C. Van Benthuyesen. 1841.

(8) Loose Leaves from the Port Folio of a late Patriot prisoner in Canada.

"Not fame I slight—nor for her favours call,  
She comes unlooked for, if she comes at all."

New York: William H. Colyer Printer, No. 5 Hague Street. 1840.

(9) The above is by Thomas Jefferson Sutherland, and bound up with Mr. Severance's copy of it is a small pamphlet of 18 pages—on green paper—without title, dated New York, 1st July, 1841, which is an appeal on behalf of those yet held captive in Van Dieman's Land, viz.: 73 from New York State, 15 from Ohio, 3 from Michigan, and 18 to him unknown, or 109 Americans captured in Upper Canada; and he thinks 50 more captured in

Lower Canada. It has copies of letters written to the American newspapers, government officers, and prominent politicians; and he gives the replies he got from Daniel Webster, Secretary of State; Fernando Wood, M.C. for N.Y.; R. C. Davies, M.C. from Dutchess Co.; J. McKeon, M.C. from N.Y. City; from Major Davizac, who originally was aide to General Jackson at the battle of New Orleans, 1815, and afterwards chargé d' affaires for the U.S. in Holland and Naples; from C. P. Van Ness, once Governor of Vermont and Minister to Spain; from John W. Edmonds, late Senator; from F. A. Tallmadge, recorder of N.Y. City; and last from M. Munroe, a prisoner yet in exile. All are dated 1841, that is, later than the book the pamphlet is bound up with.

The purpose of this, to me, unique green pamphlet was to secure certificates that these captives were American citizens and previously of good character, so that Secretary Webster could legally advise the English Government, through the U. S. Minister at St. James', of the situation, and thus get them release or relief.

The book proper, "Loose Leaves," was written about December, 1838, when, as Sutherland says, "I was detained in the Citadel, Quebec—as a prisoner of state—even after Her Majesty's Government in England, on my appeal, had declared my court martial trial irregular. Issued as it was in a series, in newspaper form, under the title of *Stadacona Gazette*, it advertised my case outside."

To the writer its interleaved rhymes have no merit. It is interesting to note that in the Citadel these prisoners, with much spread-eagleism, celebrated Independence Day on July 4, 1838, with toasts and speeches at a good dinner, which the much-berated British Government cheerfully paid for (except the wines).

(10) In a footnote (p. 19), Sutherland says: "A work bearing title [Navy Island; or, the First Movements of the Revolution in Upper Canada] has been prepared by me, and is now ready for press. But, as I have been indicted in the U. S. court for an alleged violation of the neutrality law, in the establishment of a military force on Navy Island, in December, A.D. 1837, it would be altogether inconsistent with my interest for me to publish any account of those proceedings, for which I am to be tried, until after my trial shall have been gone through with." Probably this book was never printed, at least the author has so far met no trace of it.

(11) "A letter to Lord Brougham, in behalf of the Captive Patriots. To which is annexed a list of their names. New York. 1841." 12mo., pp. 12.

(12) "A canvass of the proceedings on the trial of William Lyon Mackenzie for an alleged violation of the neutrality laws of the United States, with a report of the testimony, etc., and a petition to the President for his release." By Th. Jefferson Sutherland. New York: Sackett and Sargent, Printers, No. 1 Nassau St., corner of Wall. 1840. pp. 140, small 12mo.

(This is item 1282, p. 176, in the Gagnon Catalogue, No. 2.)

(13) Three Political Letters addressed to Dr. Wolfred Nelson, late of Lower Canada, now Plattsburgh, N.Y., by Th. Jefferson Sutherland. N.Y. 1840. pp. 64., 16mo.

(These refer only occasionally to Canadian troubles, being chiefly aimed at Harrison's candidature for president.)

(14) "The Empress of the Isles; or, The Lake Bravo. A romance of the Canadian struggle in 1837." By Charley Clewline. Cincinnati. Published by V. P. James, No. 167 Walnut Street."

(This is a thin 8vo. of 128 pp., of poor small print, which uses the patriot camps on the islands of the St. Lawrence as scenic backgrounds for its melodrama.)

(15) "An Adventure on a Frozen Lake; a Tale of the Canadian Rebellion of 1837-8, by J. Hunt, Jr. Cincinnati. Printed at the Ben Franklin book and job office [C. Clarke and Co.], Walnut St., above Pearl. 1855. (38 pp.) Travellers' edition, 10,000 copies." Continuously pagged with it is another story, "The Massacre at Owego: An Indian Tale."

(This is literally a specimen of yellow back literature, as it has lemon-yellow paper covers, and looks very cheap.)

(16) "The Prisoner of the Border: a tale of 1838. By P. Hamilton Myers. New York. Derby and Jackson, 119 Nassau St., 1857."

(It has one chapter devoted to the battle of Windmill Point, and another to Sir George Arthur, who is the one man in this literature for whom no one has a good word. A careful historian credits him with 1,500 legal deaths.)

(17) Edward Alexander Theller was not exiled, as he, after trial, escaped at Quebec, and his two volumes are easy to get, although it is not a common book. Their title page runs: "Canada in 1837-38, showing by historical facts, the cause of the late attempted revolution, and of its failure; the present condition of the people, and their future prospects, together with the personal adventures of the author, and others who were connected with the revolution. By E. A. Theller, Brigadier-General in the Canadian republican service.

"Who strikes at sovereign power had need strike home,  
For storms that fail to blow the cedar down,  
May tear the branches, but they fix the roots."

In two volumes. Philadelphia: Henry F. Anners. New York: J. and H. G. Langley. 1841."

(18) Under the heading of "Another Patriot General," Justice Riddell, at page 220 of the *Canadian Magazine* for July, 1916, tells Theller's life story in brief, and says he hated and despised Sutherland, who for him had the same measure of contempt.

(19) "Report of the case of the Canadian prisoners, with an introduction on the Writ of Habeas Corpus, by Alfred A. Fry, of Lincoln's Inn (one of the Counsel in the case). A. Maxwell. London, 1839, pp. 106, 8vo."

(20) C. Faxon, Buffalo, in 1839 prints an 8vo. pamphlet of 14 pp., being an "Address delivered at Niagara Falls, on the evening of the 29th December, 1838, the anniversary of the burning of the *Caroline*. By Thomas L. Nichols."

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