

UPPER CANADA.

COPY of INSTRUCTIONS to the Lieutenant-Governor of Upper Canada, relative to Proceedings against Persons recently arrested in that Province, &c.

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
21 June 1838.

UPPER CANADA.

RETURN to ADDRESSES of the Honourable The House of Commons,
dated 8 & 21 May and 8 June 1838;—for,

COPY of INSTRUCTIONS to the Lieutenant-Governor of *Upper Canada*,
relative to Proceedings against Persons recently arrested in that Province.

EXTRACT of a DESPATCH from the Lieutenant-Governor of *Upper Canada*,
relative to the Disposal of the Prisoners convicted of Treason in that
Province.

COPIES of the several Acts of the Legislature of *Upper Canada* in the last
Session, for the Preservation of the Peace, and for the Trial of Persons
charged with Insurrection and Revolt against the Government of the
Province, stating the Dates on which the several Bills received the Royal
Sanction.

Colonial-Office, Downing-street, }
20 June 1838.

G. GREY.

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
21 June 1838.

SCHEDULE.

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P A P E R S
RELATING TO
U P P E R C A N A D A.

— No. 1. —

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir *George Arthur*.

(Separate.)

Sir,

Downing-street, 30 January 1838.

UPPER
CANADA.

Instructions to the
Lieut.-Governor of
Upper Canada.

FROM Sir F. Head's despatch of the 19th December, No. 132, I observe that a special commission has been constituted in Upper Canada for the trial of those persons who may be in custody on political charges connected with the recent revolt in that province. Her Majesty's Government entirely approve the distinction which has been made by your predecessor between the cases of the few leaders in the attempt to disturb the peace of the colony, and of those misguided individuals who were seduced from their allegiance by the arts and misrepresentations of others. Nor can Her Majesty's Government fail to notice the wide difference which exists between the circumstances which have taken place in Lower Canada, and the recent events in the Upper Province. So far as can be collected from the information now before me, the chief motive which influenced the instigators of the disturbance in Upper Canada appears to have been the desire of plunder, and the offences which they perpetrated seem to bear comparatively little of a political character. In transmitting to you therefore the enclosed copy of a despatch, recently addressed by me to Sir J. Colborne, explanatory of the views of Her Majesty's Government as to the manner in which persons accused of political offences in Lower Canada should, if possible, be dealt with, I cannot venture to impose any restriction on the discretion which you will exercise in the event of any convictions taking place, in due course of law, for crimes of a serious nature committed by the insurgents in Upper Canada. So far only as the opinion expressed to Sir J. Colborne is applicable to the circumstances of the Upper Province you will take it for your guide, and I feel confident that while the open and daring violation of the law which has recently taken place will be fully vindicated, no unnecessary severity will be sanctioned by you.

6 January 1838.

I have, &c.

(signed) *Glenelg*.

Enclosure in No. 1.

Sir,

Downing-street, 6 January 1838.

Encl. in No. 1.

ALTHOUGH I am well aware that it is as unnecessary as it is impossible for me to address to you any specific instructions as to the course which, under particular circumstances, you may feel it incumbent on you to adopt, in the exercise of the powers at present vested in you, I feel it my duty to make one or two suggestions for your consideration.

Adverting to the great irritation which has for some time past existed in the minds of many of the inhabitants of Lower Canada of British origin, in consequence of the conduct of the French Canadian majority, I am extremely anxious that every precaution should be taken against any semblance of retaliation on their part upon such of their opponents as may have brought themselves by their conduct within the operation of martial law.

It seems to me with this view highly important, that courts martial for the trial of offenders during the continuance of martial law should, as much as possible, be composed of regular officers in the British army, and not of officers in the militia, or of those invested only with temporary commissions, being themselves permanent settlers in the province. Great circumspection will, I think, also be requisite in carrying into effect any capital sentences which may be passed on persons convicted of political offences. It may indeed be necessary that a sentence of this nature should be carried into effect, and without

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any considerable delay, but unless under circumstances of peculiar and pressing urgency, I am strongly of opinion that sound policy as well as humanity dictates an abstinence on the part of the Executive from having recourse to this extreme penalty.

I fear that the execution of such of the popular leaders as may be apprehended and convicted, especially by sentence of courts martial, would have a strong tendency to embitter the spirit and animate the revenge of the great body of their followers, and thus to oppose a formidable obstacle to that pacification of the province which it is the anxious desire of Her Majesty's Government to effect, at the earliest period at which it can be accomplished, without a compromise of the honour of the Crown or of the public interests.

A severe punishment ought undoubtedly to be inflicted on those who have been the authors of the recent insurrection, and who have abused their influence with the peasantry to excite them to rebellion; but the degree of guilt in which the parties may have involved themselves, and the extent of the punishment to which it may be necessary to subject them, will be more safely estimated at a distance from the scene of the existing disturbances, and of the excitement consequent on them; at all events, the punishment will in that case not be liable to be attributed to any hasty or inconsiderate feeling of the moment, but will be known to be adjudged after mature consideration, and on a careful review of all the circumstances which ought to affect the decision of so important a question; I trust, therefore, that in no case will any capital sentence be allowed to take effect without your own express authority having been previously obtained; and I should be glad to find that you were enabled to suspend any such execution until after you shall have communicated to Her Majesty's Government a report of the trial which led to the capital sentence.

In the meantime, I hope that you will experience no difficulty in providing for the safe custody of any parties who may be so convicted. You will consider this despatch as intended only to convey the opinion of the advisers of the Crown, and not to embarrass your judgment in circumstances of peril to the safety of the province.

I have, &c.

Lieutenant-General Sir John Colborne, G. C. B.
&c. &c. &c.

(signed) *Glenelg.*

— No. 2. —

COPY of a DESPATCH from Lord *Glenelg* to Major-General Sir *George Arthur*.

Lord *Glenelg* to
Major-General
Sir *G. Arthur*,
14 March 1838.

Sir,

Downing-street, 14 March 1838.

REPRESENTATIONS have reached this department from various quarters that during the present Session of the Legislature of Upper Canada, measures of unusual severity and of extensive application have been proposed against those who may have been in any way implicated in the late insurrection in the province. As these representations have not reached me in any official form, I am inclined to hope that they may prove exaggerated; but I shall await with anxiety your report of the proceedings of the Legislature during their present session.

Her Majesty's Government are fully alive to the difficult position in which, at such a period of alarm and confusion, the Legislature and the Government of Upper Canada are placed. But as I trust that the causes of apprehension so lately existing are now, through the loyalty of the great body of the population, almost entirely at an end, I earnestly hope that they will be as distinguished by moderation after success, as they have been by gallantry in the time of danger. Nothing, I fear, would be more likely to impair the moral effects of the late events than unnecessary severity; I trust, therefore, that while every measure will be adopted essential to the security of the province, your influence will be successfully exerted in moderating the zeal of those, if such there be, who might be disposed to proceed to extreme measures, and in allaying that irritation which, however natural, cannot but be attended with danger to the public peace.

I have, &c.

(signed) *Glenelg.*

— No. 3. —

EXTRACT of a DESPATCH from Major-General Sir *George Arthur* to Lord *Glenelg*, dated Upper Canada, Toronto, 14 April 1838.

1. I HAVE the honour to acknowledge your Lordship's despatch of the 30th January last, marked "Separate," enclosing a copy of a despatch dated 6th January, addressed to Sir John Colborne, in which your Lordship had offered some suggestions for his consideration respecting the circumspection which would be requisite in carrying into effect any capital sentences passed upon persons convicted of political offences, and more especially by courts martial.

2. In drawing my attention to the same subject, your Lordship observes that "Her Majesty's Government could not fail to notice the wide difference which exists between the circumstances which have taken place in Lower Canada and the recent events in the Upper Province. So far as can be collected from the information now before me, the chief motive which influenced the instigators of the disturbance in Upper Canada appears to have been the view of plunder, and the offences which they perpetrated seem to bear comparatively little of a political character."

3. In this view of the case your Lordship has laboured under a certain degree of misapprehension. For although the distribution of the public lands was held out as a bounty to those who should join the rebels, and the war was expected to be carried on by means of the confiscation of the lands of the loyalists, and the plunder of the banks and of private property; though crimes were wantonly committed, and though there was too much reason to apprehend that rapine and outrage to a great extent would have followed an unsuccessful resistance to the insurgents, yet the disturbance was essentially of a political character, as in Lower Canada. In the latter province the rebels remained in a neighbourhood almost wholly disaffected; and to the circumstance of their not being able to advance upon Montreal, is to be attributed the comparative absence of outrage, and not to any peculiar elevation of sentiment or peculiar purity of motive which belonged to the French Canadian insurgents. In Upper Canada the same pretensions to patriotism, the same assertions of republican principles, the same accusations against the Government of tyranny and corruption were put forth as the ground and justification of the rebellion, as in the lower province. In Lower Canada, the right was insisted on, of the popular branch of the Legislature sullenly to refuse acting as a legislative body, and to bring to a complete stop all beneficial operations of Government, and to assert a supremacy inconsistent with the relations of a colony with the parent state.

In Upper Canada arms were taken up with the avowed purpose of assisting the Lower Canadians, and of asserting the same principles as applicable to this colony. In Upper Canada the majority of the Assembly were attached to British institutions; but this majority was asserted to have been brought about by unconstitutional means on the part of Government; and the use which the revolutionary party had made of a majority in Parliament when they had it, was precisely the same here as in Lower Canada; namely, to coerce the Government by a refusal to grant the necessary supplies. The revolutionists in neither province hoped by themselves to overthrow the Government. They alike solicited foreign aid, and by its means expected to accomplish those designs. The object to be gained, the means to be used, the Government to be overthrown, the institutions to be set up, the true moving cause of the revolt (the desperate ambition of a few leaders, and the apparent weakness of the barriers to its gratification), were in both provinces not only similar but identical.

Therefore, my Lord, I cannot see that any distinction of value can be drawn between the cases of the two provinces: and I greatly fear that the plain and wide difference between right and wrong, between allegiance and disloyalty, between innocence and immorality, would be dangerously narrowed, by making treason a shadow of excuse or mitigation for the crimes and outrages which it naturally brings in its train.

4. Accordingly, regarding the circumstances of the two provinces in these respects as the same on the 24th of March, the very day after my succeeding to the Government (the gaols at Toronto and in the Gore and London districts being full of prisoners, and the trials having commenced) I caused your Lordship's

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despatch and its enclosure to be read before the Executive Council, in order that the members might be in possession of the views of Her Majesty's Government as regarded Lower Canada, and have time to reflect how far they bore upon the events that had transpired in Upper Canada, before the reports of any capital cases were brought under the consideration of the Council.

On this occasion I was informed that it was almost universally expected, after the great injuries, the severe hardships and privations, and, in many instances, deep distress which the loyal inhabitants of the province had endured, that the severest penalty of the law would be visited upon all the leaders and most guilty traitors, in order to deter the disaffected section from ever again venturing to bring upon the community such a heavy calamity.

At the same time, whilst they put me in possession of the general sentiment abroad, the members of the Council themselves saw the difficulty of proceeding to extremes where so large a number of persons were concerned; and much consideration was given to framing some plan for classifying the offenders, amongst whom were many shades of moral guilt, although all were alike amenable to the legal penalties of high treason.

5. On the 29th March, the Chief Justice reported that Samuel Lount and Peter Matthews had been convicted, upon their confession, of high treason, and that sentence of death had been passed upon them, to be carried into execution on the 12th of April.

The Council was therefore again assembled on the 31st of March, to take this report into consideration; and I thought it a duty that peculiarly devolved upon me, at such a crisis, to intimate to the Council my opinion, which your Lordship will find in the accompanying Minute, that it was expedient and proper, in the spirit of your Lordship's suggestions to Sir John Colborne, that a course of mercy should be pursued, so far as it could be carried on with a due regard to the maintenance of the laws, and that some means must be devised for limiting the number of trials, and discouraging the continued apprehension of persons on the charge of treason.

Vide Minute
marked (A.)

6. On the cases of Lount and Matthews, the Chief Justice and the Attorney-general were heard at length before the Council; neither could recommend that they should be either pardoned or respited. In his Report the Attorney-general observes, "It will be seen from the foregoing statement, that both Lount and Matthews were prominent and active leaders of the rebels; that they possessed much influence, which they employed in seducing their neighbours from their allegiance; and that each of them, in attempting to attain their treasonable designs, was directly implicated in the crimes of robbery, arson, and murder.

Vide Minute in
Council.

Vide Report of the
Attorney-general,
2 April.

"With respect to the infliction of capital punishments on any of the offenders, I have already, by your Excellency's command, expressed my opinion in the presence of your Excellency in Council. I think public justice requires, and the peace of the country renders it necessary, that some of the most guilty offenders should be executed. I trust it will be found that the number may be reduced to a *very few*. With this feeling I considered it my duty to prosecute, in the first instance, the two convicts to whom this report refers, that the earliest opportunity might be afforded your Excellency to determine on the course that your Excellency might deem most just and expedient to pursue in a matter involving considerations of the deepest importance."

With respect to these cases, therefore, the following advice was given: "The Council have considered with great deliberation the despatch dated 30th January 1838, the copy of a despatch to Sir John Colborne, bearing date 6th January 1838, transmitted with the former despatch, and referred to therein, and also the opinion delivered by the Chief Justice and the Attorney-general before the Council, with the report of the Attorney-general.

Vide Minute in
Council, 2 April.

"The Council have also considered attentively the Minute of his Excellency, and with every disposition to recommend the extension of Royal clemency, so far as at all compatible with the public safety, feel bound respectfully to advise his Excellency not to interfere with the course of justice in favour of Samuel Lount and Peter Matthews.

"The Council conceive that in advising this course, they are not, in any respect, departing from the spirit of the despatch addressed to Sir John Colborne. The Council are of opinion that the cases in question are of great urgency; that severe public example is actually required in some instances; and that the crimes
which

which these prisoners were shown to have aided, abetted and countenanced the committal of, in addition to the crime of high treason, point them out as particularly fit to be selected for capital punishment.

"They are not the deluded followers of the instigators of treason, but, on the contrary, the leaders and instigators of others. Murders have been committed by the men under their immediate command, and houses have been burned by those amongst whom they held command; they appear to have been aiding in robbery of the public mail, and their conduct seems to have but too well justified the apprehensions entertained of the horrible consequences which would have attended a successful revolt.

"The Council believing that the execution of the sentence of the law with promptitude will do much towards its beneficial operation, feel that they cannot consistently with their duty recommend the delay which must take place on a reference to Her Majesty.

"The Council, conceive that a reference to the Home Government, accompanied as it must necessarily be with a strong recommendation that sentence should be executed, while it might raise false hopes of mercy in the minds of the unhappy convicts, could scarcely be said to add to the probability of an extension of mercy.

"The Council, therefore, without entering into the consideration of the course to be pursued towards the prisoners generally, feeling no doubt or hesitation regarding the cases of the prisoners Samuel Lount and Peter Matthews, respectfully advise his Excellency to let the law take its course upon them."

In this advice I most entirely concurred; and the two unhappy, but I rejoice to hope penitent, convicts, were executed on the 12th instant.

Petitions signed by not less than 8,000 persons have been presented in their favor within the last three or four days. They were, of course, laid before the Council, but the members adhered to the advice and opinion they had given, and I think they did so wisely. There were no circumstances in favour of the culprits, and they were the most active leaders and partizans in rebellion, next to Mackenzie, Rolph, Duncombe, and others, who had made their escape to the United States.

The rebels, amongst whom they thus took a very active and prominent part, proved not only that they were determined with their own hands to execute the foulest deeds in furtherance of their project of subverting the Government, but that they had encouraged a class of dissolute and vagrant foreigners to join in their enterprize, who, they well knew, would not hesitate to inflict upon the inhabitants of this province, if they could have subjugated them, the most barbarous atrocities. Moreover, some valuable lives have been sacrificed; a great number of industrious poor persons have, to the great distress of their families, been called from their homes for many weeks, first, to suppress the rebellion, and then to guard the frontier from the incursions of a lawless banditti; and an enormous expense has been incurred.

8. These aggravating circumstances, strong as they be, are no justification for revengeful feelings; but they go to establish that the very severest examples are necessary to demonstrate that those who enter upon a treasonable course must be prepared to answer for a failure with their lives.

9. With these remarks, I transmit to your Lordship copies of the whole of the Minutes of the Executive Council bearing upon the case, as I am anxious Her Majesty's Government should be at once in full possession of all that has transpired regarding the execution of Lount and Matthews; and when your Lordship shall have read the proceedings of the Council, I trust you will be convinced that I ought not, from any apprehension of responsibility, to have respited these convicts for the purpose of sending their cases to England, as no recommendation for mercy could possibly accompany them.

10. Your Lordship is no doubt anxious that the whole proceedings against the parties who have been implicated in this unhappy rebellion should be brought to a speedy close, and Her Majesty's Government made acquainted with the results. Certainly, in some respects, despatch is very desirable; but, in others, the most beneficial results are the consequences of delay.

11. When I arrived here, only three weeks ago, the prevailing sentiment amongst very excellent persons was, that many of the most guilty traitors ought to suffer the extreme penalty of the law; and that those who were known to

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have long been disloyal men, and who were not executed, should be either transported or banished, and their property confiscated. The constitutional party, indeed, strongly entertain the utmost indignation towards the authors of the calamity which has been brought upon the province, and the ruin which has been the consequence to many loyal men; and they expect that signal examples will be made to deter future reformers from daring to go to such lengths. But the more moderate men of this party begin to be softened; and many, I believe, would now themselves be even desirous that the lives of some of the traitors should be spared, towards whom but yesterday, as it were, they thought that any mercy shown would have been a violation of justice, and an encouragement to crime.

12. There are some serious legal difficulties which hedge the movements of the Executive Government in on all sides. Something, perhaps, must be done that is abstractly wrong; but if this fence be broken through for a merciful purpose, I satisfy myself that Her Majesty's Government will relieve me from the responsibility of the damage.

13. But, before I proceed to detail the course that has been determined upon, it is necessary that I should respectfully correct an error into which I observe your Lordship has fallen, in supposing "that a special commission has been constituted in Upper Canada for the trial of those persons who may be in custody on political charges connected with the recent revolt in this province." Such was not the case. In order to relieve the country from the perplexity of dealing with the great body of persons daily apprehended on the charge of high treason, my predecessor appointed certain commissioners, of whom the Vice-chancellor was president, for the purpose of inquiry and taking the depositions of witnesses; and the Commissioners, very properly I think, (though perhaps not quite constitutionally) took upon themselves the responsibility, in certain cases, to suffer the accused to be at large on bail, but liable, of course, at any moment, to be brought to trial before the ordinary tribunals of the province.

14. Of this class of persons out on bail, the Commissioners are aware that there are some dangerous characters. These (it is hoped they will not be found to be numerous) must be tried, for they cannot otherwise in any manner be dealt with. But the great mass of these cases, if there were any power to get rid of them, might be beneficially dropped.

At present, however, it will be most prudent to let them remain under their liabilities. There is thereby a hold upon them which just now it may be as well not to abandon.

15. It is questionable whether there be constitutionally any authority to interpose, in order to prevent these or any other persons charged with high treason from being brought to trial; and having called upon the Executive Council for their opinion and advice in this matter, a very clear and able report was drawn up thereupon by Mr. Sullivan, the presiding member, which was referred to the judges; and, under their opinion, the Attorney-general has been instructed "to stay proceedings against all who may fall within the above classification at present on bail, or not yet arrested, until Her Majesty's pleasure be known."

Vide Minute in
Council, 3 April.

16. The next cases with which there is a difficulty in dealing, refer to those persons who have made full confession of the guilt of high treason, and have petitioned under the Act of the Provincial Parliament, and whose petitions have been received.

Vide Act, cap. 10,
intituled, "An Act
to enable the Go-
vernment of this
Province to extend
a conditional par-
don in certain
cases to persons
who have been
concerned in the
late insurrection."

A doubt has arisen whether the Legislature, in enacting that the lives of these offenders should be spared, did not intend that they should actually suffer all other penalties incident to a conviction for high treason, in the way of disability and forfeiture of property in addition to commuted personal punishment. But, for the reasons which I have explained in my Minute to the Executive Council, I am satisfied the Legislature of this province could not constitutionally limit the power of the Crown in extending mercy, and therefore it must be presumed it was not intended.

17. Your Lordship will then perceive that our position is as follows:

1st. The cases which are tried before the courts wherein the prisoners are convicted, and capital punishment is not inflicted, must be pardoned either conditionally or unconditionally by the Crown. In like manner must the cases be disposed of wherein the parties have been allowed to petition, and have made full confession

confession of their guilt. And in all the cases wherein the accused parties are on bail, they must be tried, or the cases must be left in abeyance.

The Commissioners are therefore now employed in drawing up a report upon the whole of these cases, which will be transmitted to your Lordship with the least possible delay, after I shall have received and considered it in Council, with a humble recommendation to Her Majesty of the conditions, if any, on which each prisoner should receive a pardon. Your Lordship, however, must be prepared to expect that this report will take some time in preparing.

18. With regard to the secondary punishments with which those should be visited who have confessed to high treason, or who may be convicted of it, nothing has yet been determined upon, although the subject has several times been discussed before the Council.

My own impression, with the information now before me, is that there are no cases quite so bad, in every respect, as those of Lount and Matthews; and that, therefore, no farther capital executions need of necessity be inflicted; but that transportation should be resorted to, both as a deterring punishment and as the means of effectually ridding the country of the worst and most dangerous traitors. And to all others I would grant a free and unconditional pardon, hoping that they will not abuse the mercy shown them, and that they will become faithful and loyal subjects.

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CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Enclosures in No. 3.

(No. 1.)

Government-house, Toronto, 24 March 1838.

Present; His Excellency the Lieutenant-Governor, the Honourable Robert Baldwin Sullivan, the Honourable William Allan, the Honourable Augustus Baldwin, the Honourable John Elmsley, the Honourable William Henry Draper.

Encl. in No. 3.

His Excellency was pleased to lay before the Council a despatch received from the Right Hon. the Secretary of State for the Colonies, marked "separate," dated 30th January 1838, on the subject of the proceedings anticipated by his Lordship to be had against persons implicated in the late rebellion.

Also accompanying the above, a copy of a despatch, marked "separate," dated 6 January 1838, transmitted by his Lordship to his Excellency Sir John Colborne, now administering the government of the province of lower Canada, on the same subject.

Which documents, by desire of his Excellency, were read in Council.

His Excellency was pleased to direct the attention of the Council to the following documents:

First. A letter from Her Majesty's Solicitor-general, with an accompanying list of prisoners against whom indictments have been found at the court of Oyer and Terminer at Hamilton, in the district of Gore, requesting that the said list might be submitted to the consideration of his Excellency, that the necessary Order in Council might be transmitted, authorizing the trial of these prisoners, or such of them as his Excellency might think fit.

Second. A letter from the same officer, containing an additional list of prisoners against whom indictments for high treason had been found at the same court, and the Solicitor-general's observations on the cases of the prisoners.

The two acts of the provincial Parliament passed during the last session, relating to the detention of persons charged with treason, or suspected of treasonable practices, and authorizing conditional pardon in cases of petition before arraignment, having been read; The Hon. William Henry Draper, Solicitor-general, stated that he was ready to lay before the Council the informations against the respective prisoners, and to give such explanations of the several cases as the knowledge obtained by him, as the prosecuting officer of the Crown, enabled him to do. After much deliberation on the subject of such a general classification of the cases and a corresponding scale of penalty as would produce as nearly as practicable uniform action of the Government in the respective cases, as well as in the several districts of the province, it was agreed to postpone the discussion of this question, and to confine the attention of the Board to such cases on the Solicitor-general's list as it would be proper to bring to trial, whether petitions for conditional pardon should or should not be preferred by the parties implicated.

And, secondly, to the disposal of cases in which bills of indictment have been found, and in which the parties implicated shall not petition, but which shall not be included in the class of cases which are considered proper to be brought to trial at all events.

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The attention of Her Majesty's Attorney-general having been required, and that officer and the Solicitor-general concurring in the opinion that it would be necessary to dispose of the cases of prisoners who should not petition, by bringing such prisoners to trial on the indictments found,

It was agreed, after full consideration of the merits of the respective cases, that the following Order in Council do issue :

" It is ordered by his Excellency the Lieutenant-Governor in Council, that the under-named prisoners, who stand indicted by the grand jury of the district of Gore for high treason, be arraigned and tried upon the respective indictments found against them; that is to say,

Horatio Hills,
William Lyons,
Finlay Malcolm,
Peter Malcolm,

Elias Snider,
John Tufford,
Charles P. Walrath,
Solomon Lossing,

And that all other prisoners against whom indictments have been found for high treason by the said grand jury, and who have petitioned, or who shall petition before arraignment, pursuant to the act of the provincial Parliament in that behalf made and provided, shall be considered as proper objects for the merciful consideration of the Government under the authority of the said Act.

And it is further ordered, that all prisoners against whom indictments for high treason have been found by the said grand jury, who have not petitioned, or who shall not petition before arraignment under the said Act, shall be arraigned and brought to trial in due course of law.

It was further agreed by the Board, that a copy of the above order be furnished to Her Majesty's Solicitor-general for his direction and guidance in the premises.

After which the Council rose.

(No. 2.)

Executive Council Chamber, at Toronto, Saturday 31st March 1838.

Present; His Excellency the Lieutenant-Governor, the Honourable Robert Baldwin Sullivan, the Honourable William Allan, the Honourable John Elmsley.

His Excellency was pleased to lay before the Council the following minute, which by his Excellency's desire was read.

His Excellency was also pleased to lay before the Council a despatch from Her Majesty's minister at Washington, on the subject of the Act of Congress for the preservation of neutrality on the frontier, enclosing a copy of the Act.

Also, a report from the Chief Justice on the respective cases of Samuel Lount and Peter Matthews, tried for high treason, before the Special Commission of Oyer and Terminer now sitting.

The Chief Justice having attended the Council, at the request of his Excellency the Lieutenant-Governor, the despatches of the Right Honourable the Secretary of State for the Colonies, and his Excellency's minute, were laid before him, and being desired to state whether, having considered those documents, there was any ground upon which he would recommend that the sentence of the Court, in the two cases reported by him, should not be carried into execution; the Chief Justice stated in answer, that he saw no ground upon which he felt that he could properly recommend a pardon or respite in those cases.

His Excellency was pleased to require the attendance of the Attorney-general, and on that officer appearing, his Excellency proposed to him the same question as had been before asked of the Chief Justice; and, moreover, directed his attention to the cases of the two convicts reported by the Chief Justice to be under sentence of death.

The Attorney-general said, that after giving the matter great consideration, he felt himself bound to give it as his opinion, that a necessity existed for the infliction of capital punishment in some instances; he, however, thought that the number of cases of capital punishment might, if such was the desire of Her Majesty's Government and of his Excellency, be very limited.

The Attorney-general called the attention of his Excellency to the fact, that the lives of several of Her Majesty's loyal subjects had been taken by the insurgents during the late revolt, and that the peculiar and appropriate punishment for this crime was death; and that he did not consider the crime at all mitigated, but on the contrary aggravated, by its being accompanied with treason, and committed in the attempt to overthrow the Government by violence.

The Attorney-general said, that he had selected the persons, reported to be under sentence of death, from amongst the number in custody, as being to the best of his knowledge more peculiarly accountable than the others actually within the reach of justice, for the crimes committed; that they were not of a class liable or likely to be misled or deluded by others, and certainly had been most active in assisting and leading into the rebellion many who had that excuse, such as it was, to offer.

The Attorney-general further said, that he regretted exceedingly that some had succeeded in escaping to the United States who well deserved to be substituted for these prisoners,

as

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as objects for the extreme penalty of the law, but that he knew of no circumstances in their cases in extenuation of guilt which would warrant him in recommending them as proper objects of royal clemency.

The Attorney-general said, that as the plea of guilty by these prisoners prevented the facts of their respective cases from coming before the Chief Justice, and therefore could not enter into his report, he would collect such information as the proceedings of the Commission of Inquiry placed within his reach, and would have the honour of transmitting them for the information of his Excellency.

The Attorney-general further said, that although he knew it was expected by the public that a sacrifice of life to a greater extent should take place, and that extreme lenity on the part of the Government might produce dissatisfaction, he nevertheless hoped his Excellency might feel himself justified, in compliance with the views of her Majesty's Government, and with his own feelings of humanity, in limiting the number of capital punishments, even to the two cases reported.

The Attorney-general, in answer to the inquiry as to the legality and expediency of staying proceedings against any person against whom information was regularly given, said that he was prepared to act in obedience to the orders of Government, and that no proceedings could take place without his having the power of staying them. He said that a number of persons had been arrested, which, in comparison with the proceedings after rebellion in the British Isles, must appear unusually large in proportion to the number engaged in the revolt. This, he said, was easily accounted for, from the fact that the rebellion was quelled in the place where it originated, and that under this circumstance, in a small community, the conduct of the disaffected was known to the loyal, and their persons easily recognized. It was also to be expected, when the loyalty of the great mass of the people was undoubted, and when there was no place the inhabitants of which were wholly disaffected, into which obscure persons could retire from observation. He said that it was nevertheless desirable that the proceedings against the deluded followers of rebellion should not be too strict, and expressed his willingness to act with the Government in any course which it might see fit to adopt for staying the course of justice until the pleasure of Her Majesty should be known.

The Attorney-general then alluded to the cases in which the Commission of Inquiry had admitted persons brought before it to bail, and said that he hoped the Government would give him positive instructions concerning them, as otherwise he should feel himself under the necessity of proceeding on the information before him.

The Attorney-general having retired, his Excellency said that the proclamation issued by Sir Francis Bond Head, inviting the persons in arms to return to their homes, was particularly worthy of the attention of the Council; and that at the next meeting he would bring this subject, in connexion with the others under discussion, before them; and his Excellency expressed his desire that the Council should assemble on Monday next, at eleven o'clock, A. M., and stated that it was his intention to meet them at noon.

Wherefore it was ordered, that the Council be summoned specially for Monday next at eleven o'clock, A. M., and the Council rose.

(No. 3.) A.

MINUTE.

1. THE Lieutenant-Governor, in requiring the advice of the Executive Council as to the course to be pursued towards those unhappy subjects of Her Majesty engaged in the late insurrection, again refers to the despatches read and discussed in Council on the 24th of this present month.

2. The Council will no doubt give due weight to the distinction which was properly made by his Excellency Sir Francis Bond Head, between the cases of the few leaders in the attempt to disturb the peace of the colony, and of those misguided individuals who were seduced from their allegiance by the acts and misrepresentations of others; which distinction the Council will perceive by the despatch of the 30th January last, marked "separate," has been fully approved of by Her Majesty's Government; nor will the Council fail to perceive the importance attached by the Right honourable Secretary to the motives which influenced the instigators of disturbance in Upper Canada, and the nature of the offences which they perpetrated.

3. With these qualifications, his Excellency desires the Council to understand that he feels himself bound to act in the spirit of the instructions to His Excellency Sir John Colborne, (so far as they are applicable to this province,) a copy of which has been transmitted for the information and guidance of this Government; and, with a view to this important document receiving full consideration, the Lieutenant-Governor particularly invites the attention of the Council to that part of the despatch in which Lord Glenelg makes the following observation:

"Great circumspection will, I think, also be requisite in carrying into effect any capital sentences which may be passed on persons convicted of political offences.

"It may indeed be necessary that a sentence of this nature should be carried into effect, and without any considerable delay; but, unless under circumstances of peculiar and pressing urgency, I am strongly of opinion that sound policy as well as humanity dictates an abstinence on the part of the Executive from having recourse to this extreme penalty."

UPPER
CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Encl. in No. 3.

UPPER
CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Encl. in No. 3.

4. The Council will perceive by the above extract, that Her Majesty's Government, unless in cases of extreme urgency, is desirous of reserving to itself much discretion on the subject of the infliction of severe and extreme penalties; and the Lieutenant-Governor sees, in addition to the argument so forcibly set forth in this despatch, an additional inducement to follow the humane course pointed out by his Lordship, in the necessity under which the local authorities and the loyal Canadian people must feel themselves placed, not only to act in a manner which they know to be right and becoming, to the best of their own judgment, but also in such a way as to secure the good opinion and sympathy, and assistance of the British Government and people, to which this colony must in a great measure look for the preservation and security of the institutions which it has been proved to hold so dear.

5. The Lieutenant-Governor would also suggest to the Council that the determination expressed on the part of Her Majesty's Government to maintain and preserve the loyal inhabitants of this colony in the truly noble course adopted by them, and the extensive military preparations for the defence of this province against revolt or aggression, must be considered as removing one great motive for extreme punishment. Harshness and severity are distinguishing marks of weakness and apprehension. It is to undoubted power and security alone belong the magnanimity and serenity which accompany acts of forbearance and mercy.

6. The cordial approval by the Secretary of State of the distinction made by his predecessor, Sir Francis Head, between the few leaders and instigators of the late revolt, and their deluded followers, leads the Lieutenant-Governor irresistibly to the conclusion that it is not the desire of Her Majesty's Government to visit with prosecution and punishment the great mass of offenders engaged in the late insurrection. He is, therefore, induced to request the assistance of the Council in selecting from the numbers who have brought themselves within the penalty of the law, such as from their influence or importance, or from the aggravated nature of the offences committed by them, may appear the most proper to be made examples of severe punishment.

7. The remainder, the Lieutenant-Governor thinks, must, in deference to the views of Her Majesty's Government, remain for the present in a great degree unmolested; and although by the mildness of this proceeding, sincere penitence, amendment and gratitude may not in many cases be secured, it is sufficient for a strong and merciful Government to know that its clemency is deserving of such return.

8. The Lieutenant-Governor feels it proper to advert to the Act of the provincial Parliament passed during the last session, assuming to give limited powers of extending conditional pardon to the executive provincial government.

The Lieutenant-Governor does not desire to question the wisdom of the Legislature, or the propriety, under the circumstances, of giving the Royal assent to this measure; but he cannot relieve himself from an impression that the Houses of the provincial Legislature were not the constitutional sources from whence the Lieutenant-Governor ought to derive the power of exercising to an extended degree a prerogative so exclusively belonging to the Crown as that of pardoning offences.

The Lieutenant-Governor, however, in the supposition that his ideas on this subject may not be so well founded as those of the Legislature and of his predecessor, will be prepared to act under the law so far as he conceives it adapted to the exigencies of the occasion.

9. He is well aware that, in directing the law officers of the Crown to stay proceedings and forbear prosecutions in cases of treason, he may be considered as far exceeding the authority given by this Act, and as incurring a responsibility still more serious than in acting under it; but to this course he thinks sound policy points, as well as proper considerations of humanity, and he is convinced that his most gracious Sovereign will not judge with severity what, strictly speaking, may be considered an usurpation of Her Majesty's prerogative.

10. As regards the citizens of a foreign country, who have been taken in the atrocious act of appearing in arms against the subjects of Her Majesty, the Lieutenant-Governor has nothing to say in extenuation of the offence, or in favour of the offenders; but, as the making war or peace, the management of international policy, and adjudication upon international law, belong exclusively to the Imperial Government; and as the cessation of aggression upon the frontier relieves the province from the immediate apprehension of the reiteration of the same offence, and as the pressing necessity for making severe and terrible examples is thus, happily, greatly removed, the Lieutenant-Governor hopes the Council will concur with him that these cases should also anxiously be considered, with a view of making some distinction, if the circumstances admit of any distinction being made.

11. The Lieutenant-Governor has thought it proper to place before the Council his views on these important subjects; he does so without any desire unduly to influence their opinion, but to show them to what extent he is willing to incur the responsibility of acting under the exigency of the present circumstances. It will give him great pleasure and increased confidence in his own opinions, should they meet the concurrence of the Council; but, if he should fail in convincing them, he has at least no doubt of their receiving candid, full, and unprejudiced consideration.

31 March 1838.

(signed) George Arthur, L. G.

(No. 4.)

Toronto, 29 March 1838.

UPPER
CANADA.Sir George Arthur
to Lord Glenelg,
14 April 1838.

Encl. in No. 3.

May it please your Excellency,

I HAVE to report to your Excellency that at the special commission now sitting in Toronto, Samuel Lount and Peter Matthews have been convicted, upon their confession, of high treason, in levying war against Her Majesty, and that sentence of death was passed upon them this day, to be executed on the 12th day of April next.

The prisoners having pleaded guilty upon their respective indictments, I have no evidence to report; and for the particular circumstances of each case, I must refer your Excellency to the Crown Officer, and to the commissioners who investigated the charges against the prisoners after their apprehension.

I have, &c.

(signed) *John B. Robinson*, Chief Justice.His Excellency the Lieutenant-Governor,
&c. &c. &c.

(No. 5.)

Attorney-general's Office, Toronto, 2 April 1838.

To His Excellency Major-General Sir George Arthur, K. C. H. Lieutenant-Governor
of Upper Canada, &c. &c. &c.Report of the Attorney-general on the cases of Samuel Lount and Peter Matthews,
convicted of high treason.

May it please your Excellency,

THE above-named persons were the first arraigned during the present session of the court of Oyer and Terminer; they respectively pleaded guilty to the charge preferred against them, and were subsequently sentenced to be executed on the 12th day of the present month of April.

The facts as respects the cases of these two convicts are as follows:—

Samuel Lount is a native of the United States of America; he came to this province many years ago, and established himself in this district, where he acquired a valuable property.

In 1834, he was returned by the electors of the county in which he resided as one of their representatives in the Provincial Parliament; and of course possessed extensive influence with the people among whom he lived.

It appears from the deposition of witnesses taken before magistrates, that a considerable proportion of the force, lately in arms against Her Majesty, came from the neighbourhood in which Lount resided, and it also appears that he was their leader, and that he was distinguished by the title of "General," by M'Kenzie, the person who is supposed to have been the principal instigator of the rebellion.

It is further sworn, that he was among the assemblage of persons present when Colonel Moodie was fired upon and murdered.

He accompanied M'Kenzie, and aided him in seizing upon and robbing the public mail, and in making prisoners of the passengers, and taking them with the driver, mail, stage, and horses, to the head-quarters of the rebels. Dr. Horne's house was burned in his presence, and from the time the insurgents first met at Montgomery's, until their dispersion by the loyalists, he appears to have been a prominent actor among them.

After the attack upon the rebels, he fled and endeavoured to make his escape to the United States; a reward was offered for his apprehension, and he was intercepted and arrested some time in the month of January last.

Peter Matthews is a native of the province, a yeoman, in affluent circumstances, and possessing very considerable influence among the people in his neighbourhood.

When it was announced that the insurgents had assembled at Montgomery's, it is sworn, that he collected about 50 followers, and marched at their head to join the rebels. On their way the party met the public stage, which was stopped by order of Matthews, and search was made for the mail-bags; which, however, having been despatched by a different conveyance, escaped seizure. The passengers were searched, and after one or two hour's detention, were permitted to proceed without further molestation.

On Thursday morning, shortly before the attack was made by the loyalists upon the insurgents, Matthews was directed by M'Kenzie to proceed with a party and enter the city by the Don Bridge, and to burn the bridge and the houses near to it. In obedience to these orders, he headed a band of rebels, who by his command set fire to the bridge and the houses; the former was partially burnt; the latter were wholly consumed, the principal building being the property of a widow lady in indigent circumstances residing in the city; and on their march several of the party, Matthews among the number, fired upon and killed a man of the name of Smith, who was at the time on horseback, and who does not appear to have been offering them any molestation.

UPPER
CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Encl. in No. 3.

Being checked in their attempt to enter the city, the party retreated, seizing upon the horses belonging to the public stage, which they met, to assist them in their flight.

It will be seen from the foregoing statement, that both Lount and Matthews were prominent and active leaders of the rebels; that they possessed much influence, which they employed in seducing their neighbours from their allegiance; and that each of them in attempting to attain their treasonable designs was directly implicated in the crimes of robbery, arson and murder.

With respect to the infliction of capital punishment on any of the offenders, I have already, by your Excellency's command, expressed my opinion in the presence of your Excellency in Council. I think public justice requires, and the peace of the country renders it necessary, that some of the most guilty offenders should be executed. I trust it will be found that the number may be reduced to a very few. With this feeling I considered it my duty to prosecute, in the first instance, the two convicts to whom this report refers, that the earliest opportunity might be afforded your Excellency to determine on the course that your Excellency might deem most just and expedient to pursue in a matter involving considerations of the deepest importance.

All which is respectfully submitted.

(signed) *Chr A. Hagerman,*
Attorney-general.

(No. 6.)

Executive Council Chamber at Toronto, Monday, 2 April 1838.

Present; His Excellency the Lieutenant-Governor, the Honourable Robert Baldwin Sullivan, the Honourable William Allan, the Honourable Augustus Baldwin, the Honourable John Elmsley.

29 March 1838.

His Excellency was pleased to direct the attention of the Council to the report of the Chief Justice on the cases of Samuel Lount and Peter Matthews. His Excellency further laid before the Council the report of the Attorney-general on the same cases, which was read in Council.

2 April 1838.

The Council have considered with great deliberation the despatch dated 30th January 1838, the copy of a despatch to Sir John Colborne, bearing date 6th January 1838, transmitted with the former despatch and referred to therein, and also the opinion delivered by the Chief Justice and the Attorney-general before the Council, with the report of the Attorney-general.

The Council have also considered attentively the minute of his Excellency; and with every disposition to recommend the extension of Royal clemency, so far as at all compatible with the public safety, feel bound respectfully to advise his Excellency not to interfere with the course of justice in favour of Samuel Lount and Peter Matthews.

The Council conceive that in advising this course they are not in any respect departing from the spirit of the despatch addressed to Sir John Colborne. The Council are of opinion that the cases in question are of great urgency, that severe public example is actually required in some instances, and that the crimes which these prisoners are shown to have aided, abetted and countenanced the committal of, in addition to the crime of high treason, point them out as particularly fit to be selected for capital punishment.

They are not the deluded followers of the instigators of treason, but on the contrary the leaders and instigators of others. Murders have been committed by the men under their immediate command, and houses have been burned by those amongst whom they held command; they appear to have been present aiding in the robbery of the public mail, and their conduct seems to have but too well justified the apprehensions entertained of the horrible consequences which would have attended a successful revolt.

The Council believing that the execution of the sentence of the law with promptitude will do much towards its beneficial operation, feel that they cannot consistently with their duty recommend the delay which must take place on a reference to Her Majesty.

The Council conceive that a reference to the Home Government, accompanied as it must necessarily be, with a strong recommendation that sentence should be executed, while it might raise false hopes of mercy in the minds of the unhappy convicts, could scarcely be said to add to the probability of an extension of mercy.

The Council therefore, without entering into the consideration of the course to be pursued towards the prisoners generally, feeling no doubt or hesitation regarding the cases of the prisoners Samuel Lount and Peter Matthews, respectfully advise his Excellency to let the law take its course upon them.

Upon which his Excellency stating his concurrence in the opinion of the Council, it was ordered, that the sheriff of the home district be informed that his Excellency having advised with the Executive Council, feels it necessary to direct that the prisoners Samuel Lount and Peter Matthews be informed that there is no intention of staying the execution of the sentences passed upon them.

And also that the Chief Justice be informed to the same effect.

The list of prisoners ordered for trial under the Order in Council of the 19th March last being considered, by the advice of the Council, the Lieutenant-governor ordered, that the same be revised, and that the following names be struck out of the said list, in case they

they have petitioned, or shall petition, under the Act of the provincial Parliament passed in the last session, intituled, "An Act to enable the Government of this Province to extend a conditional Pardon in certain cases to Persons who have been concerned in the late Insurrection:" that is to say,

Randal Wixon,
Jay Codey,
John Devins,
Michael Sheppard,

Solomon Sly,
Leonard Watson,
Stephen B. Brophy,
Walter Chase.

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Sir George Arthur
to Lord Glenelg,
14 April 1838.

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But that in case the above named persons have not petitioned, or shall not petition, under the Act, the trial of such person or persons respectively shall proceed in due course of law.

And further, that the Attorney-general be furnished with a copy of this order, for his direction and guidance.

(No. 7.)

Executive Council Chamber, Toronto, Tuesday, 3 April 1838.

Present; His Excellency the Lieutenant-Governor, the Honourable Robert Baldwin Sullivan, the Honourable William Allan, the Honourable Augustus Baldwin, the Honourable John Elmsley.

His Excellency was pleased to lay before the Council the despatch of his Excellency Sir Francis Bond Head, dated 19th December 1837, and to request the consideration of the Council to this document, in connexion with the despatches laid before the Council on the 24th March last.

His Excellency was pleased to ask the advise of the Council as to the course to be taken towards the prisoners.

The opinion of the Council was as follows:

1. That of the persons now in the power of the Government, capital punishments should be confined to as few cases as possible.

2. That severe secondary punishment should be limited to the cases of leaders and instigators amongst the rebels, and to persons guilty of outrage independently of rebellion.

3. That amongst the persons concerned in the late revolt, the Council conceives, that according to the despatch of Sir Francis Bond Head, and the answer thereto, before the Council, those who can be brought under the denomination of followers, that is to say, who have held no command, who have not been active in seducing others, and who have not been guilty of crime or outrage, independently of the crime of treason, even if they should be proved to have been found in arms, and to have fought against Her Majesty's troops, are proper to be recommended for the mercy of the Crown.

And that all those who are implicated in a lesser degree, should be objects of a like recommendation.

The Council are of opinion that it is highly desirable that proceedings should for the present, as far as practicable, be stayed against the above classes.

The Council are aware that this merciful course cannot now be conveniently adopted towards any individuals who have not petitioned under the Act of Parliament, and also of the necessity of proceeding to trial with those who are actually in custody, if they do not petition.

But the Council hope that it will be considered proper to direct the Attorney-general to stay proceedings against all who may fall within the above classification, at present on bail, or not yet arrested, until Her Majesty's pleasure be known.

It may be right for this interference not to extend further than the not preferring indictment until after a presentment by the grand jury, when proceedings can be formally stayed by the Attorney-general.

The Council would respectfully desire a case to be prepared for the opinion of the Judges of the Court of King's Bench on the point as to whether the above course can or cannot be legally and properly pursued by the Government.

His Excellency having withdrawn, the following report was drawn up and adopted.

(No. 8.)

Executive Council Chamber at Toronto, Tuesday, 3 April 1838.

Present; The Honourable Robert Baldwin Sullivan, Presiding Councillor, the Honourable William Allan, the Honourable Augustus Baldwin, the Honourable John Elmsley.

To His Excellency Sir George Arthur, K. C. H., Lieutenant-Governor of the Province of Upper Canada, and Major-General commanding Her Majesty's Forces therein, &c. &c. &c.

May it please Your Excellency,

THE Executive Council having had under its anxious consideration the course to be adopted by this Government as regards the unhappy criminals engaged in the late revolt;

UPPER
CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Incl. in No. 3.

Your Excellency, in referring this important matter to the Council, was pleased to direct its attention to certain documents which the Council respectfully proceeds to enumerate.

1. An Act of the provincial Parliament passed in the last session, intituled, "An Act to enable the Government of this Province to extend a conditional Pardon in certain Cases to Persons who have been concerned in the late Insurrection."

2. A despatch received by your Excellency from the Right Honourable the Secretary of State for the Colonies, answering a despatch of his Excellency Sir Francis Bond Head, of the 19th December 1837, and on the subject of the anticipated proceedings against persons implicated in the rebellion.

3. A copy of a despatch addressed by Lord Glenelg to his Excellency Sir John Colborne on the same subject, as related to the province of Lower Canada.

4. The despatch of Sir Francis Bond Head of the 19th December 1837.

5. A proclamation issued by authority of his Excellency transmitted with the despatch.

The Council observe that in the despatch of Sir Francis Head of the 19th December 1837, his Excellency, after describing at length the progress of the insurrection, and the persons engaged in it, and after having taken important distinctions between the guilt of the instigators and leaders of the rebellion and their deluded followers, mentions the fact of his having, on the 5th December 1837, and on the occasion of the dispersion of the rebels by Her Majesty's militia, extended the Royal mercy to most of the prisoners taken on the field, by dismissing them to their homes.

The proclamation of his Excellency, which it is believed was written previously to the collision at Montgomery's, and which was distributed during the same day, takes the same distinction, and even goes so far as to name certain leaders who were to be considered at all events as excluded from the benefits of the proclamation.

The distinction thus drawn between the leaders and their followers is fully approved of in his Lordship's despatch, and the Council consider that the exercise of the Royal clemency by his Excellency the late Lieutenant-governor is recognized and adopted thereby.

The Council are of opinion, that had it occurred to his Lordship that the power of extending the Royal clemency to traitors taken in arms, transcended the authority given to the Lieutenant-governor by his instructions, the instructions would have been referred to, and the act of clemency more formally sanctioned by his Lordship.

The Council nevertheless see in his Lordship's despatch an expression of the wish of Her Majesty's Government, that the mercy of the Crown should be extended to all but the leaders and instigators of the revolt, even to the extent of dismissing to their homes persons taken in the act of fighting against Her Majesty's forces.

The Council are therefore led to the conclusion, that amongst the rebels, those who can be brought under the denomination of "followers," who have held no command, who have not been active in seducing others, and who are not personally implicated in crime or outrage independently of the crime of treason, even if they should be proved to have fought against Her Majesty's troops, come within the meaning of the distinction taken by his Excellency Sir Francis Bond Head, approved of and sanctioned by Her Majesty's Government, and that persons implicated in a lesser degree would of course have the benefit of the same distinction.

The Council respectfully conceive that the approval of Her Majesty's Government to the act of the Lieutenant-Governor in dismissing to their homes the objects of his clemency, implies an intention that they should remain there unmolested by further prosecutions.

The Council here advert to the proceedings before the Commission of Inquiry instituted by the late Lieutenant-Governor, and to the fact that the commissioners discharged a great number of those brought before them, against whom the crime of high treason, in a mitigated degree, was established in many instances by their own confessions, and in others by evidence fully entitled to credit.

The powers of the commissioners to bail persons brought before them not being greater than those of ordinary justices of the peace, it is plain the commissioners transcended their authority, but in this the Council respectfully conceive the commissioners were justified from the necessity of the case, and in consideration of the proclamation of the Lieutenant-Governor.

The Council would also advert to the fact, that many persons indicted at the special session have actually petitioned under the above-mentioned Act, praying for the conditional pardon which it authorizes, and thereby subjecting themselves to confiscation of property and other disadvantages which the Act does not authorize to be remitted.

The Council would respectfully express its desire that the apparent intentions of Government in the forbearance to prosecute the above-mentioned class of persons should be carried into effect.

The Council would have had much difficulty in drawing the line of distinction between the cases which ought to be prosecuted, and others, were it not that Her Majesty's Government seems to have almost marked out the extent to which these prosecutions should take place.

The Council consider, on the one hand, that an appearance of unusual severity in the prosecution of great numbers of the rebels, in proportion to the whole numbers engaged in the revolt, would be injurious to the character of this government for clemency and forbearance

bearance, while such extensive prosecutions are not absolutely necessary for example and the ends of justice.

The Council, on the other hand, desire as little as possible to interfere with the ordinary course of judicial proceedings.

The Council, moreover, see many objections to an interference with the cases of those in custody, even if they should be found to come within the distinction approved of by Government, that is to say, so far as relates to a stay of proceedings against any of them, from the fact, that those who have petitioned under the Act are exposed to many of the penalties of high treason, while those who have not complied with that law would, in case of a stay of proceedings, go free of these penalties.

The Council, therefore, see the necessity of allowing the law to take its course, so far as trial and conviction of those in custody who have not petitioned, deferring the merciful action of the Government till after the passing of sentence.

But as to those who have been admitted to bail by the commissioners, or who have not been yet arrested, and who come within the distinction above mentioned, the Council would gladly, if it can be legally and properly done, wish a stay of proceedings until Her Majesty's pleasure be known.

The only manner in which this can be accomplished, within the knowledge of the Council, is by a direction to the Attorney-general not to prefer indictments against any person not in custody who shall, in his opinion, come within the distinction above mentioned, or who shall be adjudged by the Government as coming within the same, upon investigation of the cases; and that if the grand jury should make presentment in any such case, that the same be reported; and that, if your Excellency should see fit, a stay of proceedings be ordered until Her Majesty's pleasure be known.

The Council, feeling that great responsibility will be thrown on your Excellency should this course be pursued, humbly advise your Excellency to request the opinion of the Honourable the Chief Justice, and the other Judges of Her Majesty's Court of Queen's Bench, as to its legality and propriety.

And further, if the Honourable Chief Justice and his fellow Judges should see no objection, the Council would feel great satisfaction if the documents above referred to were submitted to their inspection, or so much thereof as relate to the questions under consideration, and if the Honourable Judges would express their views of the interpretation to be placed thereon, and the intentions of Her Majesty's Government, as the same may appear to be ascertainable from a perusal and consideration of the despatch of the Right Honourable the Secretary of State to your Excellency.

All which is humbly submitted.

(signed) *R. B. Sullivan*, P. C.

A true copy.

(signed) *John Beikie*, Clerk Executive Council.

(No. 9.)

Sir,

Government House, 4 April 1838.

I AM commanded by his Excellency the Lieutenant-Governor to transmit to you a copy of a Minute in Council, together with the various documents on which that Minute was framed, detailing the course which the Council conceive it desirable his Excellency should pursue with respect to the individuals implicated in the late revolt; and I am directed to request the opinion of yourself, and the other Judges, concerning the legality of the measures which the Council have recommended to his Excellency's adoption; and should you not concur in the recommendation of the Council, I am desired to request you to favour his Excellency with your joint advice concerning any other course which it may be desirable his Excellency should adopt.

The Honourable the Chief Justice,
&c. &c. &c.

I have, &c.
(signed) *J. Joseph*.

(No. 10.)

Toronto, 6 April 1838.

May it please Your Excellency,

THE Judges have perused and considered the Minute of Council of the 3d April 1838, respecting the course to be adopted by the Government, as regards the unhappy criminals engaged in the late revolt, and also the documents which accompanied the Minute, and they see no legal objection to the exercise of such a control by the Attorney-general, under the direction of your Excellency, as may be necessary for carrying into effect the lenient course suggested in the Minute of the Council.

We have, &c.
(signed) *John B. Robinson*, C. J.
J. B. Macaulay, J.
J. Jones, J.
A. M'Lean, J.

UPPER
CANADA.

Sir George Arthur
to Lord Glenelg,
14 April 1838.

Encl. in No. 3.

(No. 11.)

EXTRACT from the MINUTES.

Executive Council Chamber, Toronto, Monday, 9 April 1838.

Present; His Excellency the Lieutenant-Governor, the Honourable Robert Baldwin Sullivan, the Honourable William Allan, the Honourable Augustus Baldwin, the Honourable John Elmsley.

His Excellency was pleased to lay before the Council the petition of Isaac Webb and 3,289 others, praying that a pardon may be extended to Samuel Lount, a prisoner in the home district gaol, under sentence of death, for the crime of high treason.

Also, a petition from Ann Henderson and 787 others, to the same purpose, in favour of the same.

Also, a petition from Jacob Gill and 74 others, to the same purpose, in favour of the same.

Also, a petition from James M'Kay and 66 others, to the same purpose, in favour of the same.

Also, a petition from John B. Warren and 156 others, to the same purpose, in favour of Peter Matthews.

Also, a petition from Samuel Bentley and 196 others, to the same purpose, in favour of the said Peter Matthews.

Also petitions from the prisoners Samuel Lount and Peter Matthews for pardon.

The Council having considered the same, the following minute was endorsed on the petitions of the prisoners, and received the assent of his Excellency, and the answer immediately following was directed to be transmitted to the petitioners.

"The Executive Council feel it to be their imperative, but painful duty, to adhere to their former advice to your Excellency, which they now respectfully reiterate, by saying that they cannot recommend to your Excellency any interference with the sentence of the law passed upon the prisoners Samuel Lount and Peter Matthews."

The Lieutenant-Governor, with the assistance of the Executive Council, has taken into his most deliberate consideration the cases of the unfortunate prisoners, Samuel Lount and Peter Matthews, now under sentence of death for high treason, with a sincere desire to discover any reason or fact which would justify him in acceding to the prayers of the humane petitions in behalf of these unhappy men. The Lieutenant-Governor is compelled to say that he cannot, consistently with his duty to the public, or with a view to the safety of the province, interfere, in favour of either of the prisoners, with the sentence of the law passed upon them respectively.

The Lieutenant-Governor in Council having considered the report of the Honourable Mr. Justice Macaulay on the proceedings of the special commission of oyer and terminer held at Hamilton, in the Gore district, and the report of the Solicitor-general on the same subject, particularly with reference to the cases of Horatio Hills, Stephen Smith, Nathan Town, Charles P. Walrath, Peter Malcolm, Ephraim Cook, and John Tufford, under sentence of death for high treason, and also the cases of William Webb and John Hammill, against whom sentence of death has been recorded, the Council feel great hesitation in advising your Excellency that no capital punishment should be inflicted in the Gore district, as the policy of making some example to that extent is not easily controverted; but as it appears that none of the principal leaders have been secured, and that no outrages of importance, independent of the crime of rising in rebellion, were committed in the course of the revolt in that district, the Council desire to make a distinction between the cases, even of the most guilty of the prisoners now under consideration, and those in the home district, in which the Council felt under the necessity of leaving the law to take its course.

In the anticipation, therefore, that the most severe secondary penalty will be inflicted on Peter Malcolm and Horatio Hills, and in the hope that the avoiding of having recourse to capital punishment except where the same appears indispensably necessary, the Council consider that a respite may properly be sent for all the prisoners under sentence at the Gore district.

And it was ordered that a respite be sent for the said prisoners until the pleasure of Her Majesty be known.

The Council respectfully recommend that if the said should appear to the Attorney-general to be a legal course, that the prisoners Peter Malcolm and Horatio Hills be removed to the town of Kingston, in the midland district, there to remain in custody to await the decision of Her Majesty, and that Her Majesty be advised to commute the sentence of death into transportation for life, if it be Her Majesty's pleasure.

His Excellency was pleased to call the attention of the Council to the cases of prisoners convicted of high treason in the home district, and to those who have petitioned under the Act of Parliament, intituled, "An Act to enable the Government of this Province to extend a conditional Pardon, in certain cases, to Persons who have been concerned in the late Insurrection."

And it was, with his Excellency's assent, resolved that these cases be referred to the Commission of Inquiry for a report on each case, classifying the measure of guilt of each, as it shall appear to the Commissioners most likely to convey the required information to the Lieutenant-Governor in Council.

(signed) G. A.

— No. 4. —

UPPER
CANADA.

EXTRACT of a DESPATCH from Major-General Sir *George Arthur* to
Lord *Glenelg*, dated Upper Canada, Toronto, 23 April 1838.

Sir *George Arthur*
to Lord *Glenelg*,
23 April 1838.

THE Chief Justice having suggested to me some "remarks upon certain Acts passed during the last Session of the Legislature in Upper Canada, in consequence of the insurrection," I have the honour to inclose a copy of them, for your Lordship's information.

Enclosure in No. 4.

REMARKS upon certain Acts passed during the last Session of the Legislature in Upper Canada, in consequence of the insurrection.

Encl. in No. 4.

Chapter I. An Act authorizing the suspension of the remedy by Habeas Corpus.

This Act is similar to one passed in this province in 1814, during the war with the United States of America, and follows closely the form of enactments in the British statute, both for the same purpose.

I am not aware that any commitment has been made under it.

Chapter II. An Act to provide for the more effectual and impartial Trial of Persons charged with Treason and Treasonable Practices committed in this Province.

This Act is also similar to one passed in this province in 1814 for the same purpose. The trials in England after the rebellion in 1745 took place under an enactment of the same kind.

Chapter III. An Act to protect the Inhabitants of this Province against lawless aggressions from Subjects of foreign Countries at peace with Her Majesty.

This statute was passed under very peculiar circumstances. The Legislature met on the 28th December; some days before, five or six hundred persons, principally Americans, and under an American leader, had taken forcible possession of Navy Island in the river Niagara, and in conjunction with some fugitive rebels from this province, had proclaimed a provisional government, and invited the people of Upper Canada to join their standard. There was much reason to fear, from the extraordinary excitement prevailing along the American frontier, that great numbers would join this piratical army; there was no military force in the province, and it was uncertain for some time whether any soldiers could be spared from Lower Canada. Under these circumstances, the consequence to be apprehended was, that many disaffected inhabitants of this province might be encouraged to hope that a revolution could be effected by the aid of this force from the United States, and might venture to join the army of brigands, and thus give a formidable appearance to the Navy Island camp. The Legislature thought it necessary to act promptly in this emergency; their intention was to deter the people of Canada from uniting themselves to these foreign invaders, by subjecting them to trial by court-martial, instead of trying them as traitors in the common law courts, thus holding out to them the prospect of more certain and prompt punishment.

And, on the other hand, it was thought it might have a salutary effect in repressing the eagerness of American citizens to join in this warfare, if they were placed upon the same footing in respect to trial and punishment, as the rebels with whom they might be associated. It is true that these American citizens were liable to be even more summarily dealt with, for no principle of law would be violated by punishing them capitally, without any form of trial; but this was not likely to be done; they were not liable either to be dealt with as traitors, and it was thought they would be most effectually deterred by providing this certain and summary method of trial for their offence.

The effect of the Act is, that foreigners may either be tried under it by a militia general court-martial, or before the ordinary criminal court, as for a felony.

In the latter case, death is the only punishment, because it is wholly unusual to vest a discretionary power over life in the judges of a common law court; but in giving that discretionary power in case of trial by court-martial, a precedent was followed which is common in such cases, and there seems to be very obvious reasons for this difference.

With respect to British subjects offending against the Act, the alternative of course is, that they may either be proceeded against before a court-martial under this Act, or be prosecuted in the ordinary manner for high treason.

The Act may be thought one of questionable propriety as it applies to foreigners, but it will be found salutary, if it can be suffered to remain in force. Immediate execution on the spot, without the sentence of some tribunal, is not apprehended by these lawless foreigners, because they persuade themselves it will not be resorted to by any officer in command on the frontier; and indeed it would be an unpleasant responsibility for any subordinate officer to assume. This provision extends the prompt punishment of a military court, where it is much required, while, at the same time, the ordinary law of the land is left in force for all other purposes. If it be thought objectionable to suffer this law to continue, then it is to be hoped that Her Majesty's Government will convey positive instructions as to the course to be taken with foreigners guilty of these aggressions, that there may be no doubt or hesitation on the subject.

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Sir George Arthur
to Lord Glenelg.
23 April 1838.

Encl. in No. 4.

Chapter IX. An Act for the more speedy Attainder of Persons indicted for High Treason.

This is intended to supply the place of the process of outlawry, which is dilatory and troublesome, without affording the same certainty of notice to the defendant; there have been many such statutes passed.

Chapter X. An Act for extending conditional Pardon to Persons accused of Treason.

When this Act was passed, there were probably not less than 300 or 400 persons in close custody, charged with high treason. If they were tried and convicted, the Lieutenant-Governor had not, by his commission, the power to pardon them, because he is expressly restrained in cases of treason. Thus an immense number of trials would probably be followed by the necessity of keeping this great body of prisoners in gaol during the next summer, until the reference could be made to England, occasioning a vast inconvenience and expense in guarding them, continuing in a great measure the uneasy state of excitement produced by the insurrection, and subjecting to the danger of disease and death, and the certainty of much suffering, many unhappy persons whom the Government would doubtless consent to pardon, and, in some cases on very favourable terms. The restriction imposed upon the Lieutenant-Governor applied only in strictness when the defendant was tried and convicted; the Attorney-general might always exercise a discretion in forbearing to prosecute, and, under the peculiar circumstances, the Legislature thought it expedient to afford to the Lieutenant-Governor, if he chose to avail himself of it, the sanction of their authority for interposing with an extension of pardon, before conviction, which would not in literal terms contravene his instructions, and which, it was assumed, Her Majesty would not disapprove of, under the unforeseen circumstances in which the province was placed. Reference was had to the course taken after the Irish rebellion of 1798.

The Act has proved most beneficial in its consequences; a great majority of the prisoners having been taken in arms, have freely confessed their guilt, and thrown themselves upon the mercy of the Government, and these can now be spared on such terms as may be thought proper. A small number only have been left for trial; such prisoners as the Lieutenant-Governor and Council did not think it just to pardon, or such as preferred taking their trial, from the nature of the evidence in their respective cases being perhaps less direct and conclusive, and affording a hope of acquittal.

Chapter XI. An Act to prevent the unlawful training with arms, &c.

This is chiefly taken from an Act passed in England a few years ago; the main difference is, that those clauses which prohibit the training with arms without public authority are not limited in duration, as in England, but are made perpetual, though other powers given by the bill are conferred only temporarily, and will expire unless renewed. It was thought unwise to make the prohibition of unlawful trainings temporary; when the Act expired it would be contended that the training with fire-arms was no longer an offence, since it had been thought necessary to make it such by statute. And it might happen that it might expire at a time when it might be most wanted, but when, from the state of things, it would be difficult to obtain a renewal of so reasonable and salutary a law.

Chapter XII. This indemnity Act resembles statutes passed for the same purpose on different occasions in England.

Chapter XIII. There will be but two or three claims of the kind referred to in this statute.

— No. 5. —

COPY of a DESPATCH from Major-General Sir *George Arthur* to Lord *Glenelg*.

Sir George Arthur
to Lord Glenelg.
5 May 1838.

My Lord,

Upper Canada, Toronto, 5 May 1838.

I HAVE had the honour to receive your Lordship's despatch, dated the 14th of March last, in which your Lordship states that representations have reached the Colonial Office from various quarters, that during the late session of the Legislature of Upper Canada, measures of unusual severity and of extensive application had been proposed against those who had been in any way implicated in the late insurrection; and your Lordship informs me that it will be with anxiety that you await my report of the proceedings of the Legislature during their late session.

2. On the close of a session of the Provincial Parliament, it becomes the duty of the provincial secretary to proceed with all practicable dispatch to transcribe the Bills which may have been enacted; and in consequence of the anxiety expressed in your Lordship's despatch, I have directed that officer to furnish me as speedily as may be with the authentic copies which he is preparing. In the meantime I have transmitted to the Attorney-general a copy of such of these Acts as have been printed and published by the Queen's printer; and have requested him to make his abstract and report on them as soon as the state trials which are now proceeding,

proceeding, and which engross the whole of his time, shall admit of his devoting his attention to that subject.

3. I trust, however, that the remarks of the Chief Justice, on certain Acts passed during the late session, and which became necessary in consequence of the recent insurrection (transmitted in my despatch of the 23d ultimo), will have supplied the information which your Lordship requires.

4. Your Lordship will be apprised, by my recent communications, that it has been my earnest endeavour to allay irritation, and in commuting the sentences of the prisoners convicted of high treason, to pursue as lenient a course as the state of the province would justify.

I have, &c.
(signed) Geo. Arthur.

Sir George Arthur
to Lord Glenelg,
5 May 1838.

—No. 6.—

COPIES of the several ACTS of the Legislature of *Upper Canada* passed in the last Session for the Preservation of the Peace, and for the Trial of Persons charged with Insurrection and Revolt against the Government of the Province. Acts of Legislature of Upper Canada passed in last session.

N. B.—As printed copies only of these Acts have been received, and not the Transcripts under the Public Seal of the Province, it has been impossible yet to submit them for the consideration of Her Majesty in Council.

- Cap. I.—An Act to authorize the Apprehending and Detention of Persons suspected of High Treason, Misprision of Treason and Treasonable Practices; passed 12 January 1838 - - - - - p. 21
- Cap. II.—An Act to provide for the more effectual and impartial Trial of Persons charged with Treason and Treasonable Practices committed in this Province; passed 12 January 1838 - - - - - p. 22
- Cap. III.—An Act to protect the Inhabitants of this Province against Lawless Aggressions from Subjects of Foreign Countries at peace with Her Majesty; passed 12 January 1838 p. 23
- Cap. IX.—An Act to provide for the more speedy Attainder of Persons indicted for High Treason, who have fled from this Province, or remained concealed therein, to escape from Justice; passed 6 March 1838 - - - - - p. 24
- Cap. X.—An Act to enable the Government of this Province to extend a Conditional Pardon in certain cases to persons who have been concerned in the late insurrection; passed 6 March 1838 - - - - - p. 25
- Cap. XI.—An Act to prevent the unlawful Training of Persons to the use of Arms, and to practise Military Evolutions and Exercises; and to authorize Justices of the Peace to seize and detain Arms collected or kept for purposes dangerous to the public peace; passed 6 March 1838 - - - - - p. 25
- Cap. XII.—An Act to indemnify Persons, who since the 2d December 1837 have acted in apprehending, imprisoning or detaining in custody Persons suspected of High Treason or Treasonable Practices, and in the suppression of unlawful Assemblies, and for other purposes therein mentioned; passed 6 March 1838 - - - - - p. 27
- Cap. XIII.—An Act to authorize the Appointment of Commissioners to investigate the Claims of certain Inhabitants of this Province, for Losses sustained during the late unnatural Rebellion; passed 6 March 1838 - - - - - p. 28

CAP. I.

AN ACT to authorize the Apprehending and Detention of Persons suspected of High Treason, Misprision of Treason and Treasonable Practices.—(Passed 12 January 1838.)

No. 1085.

WHEREAS a traitorous conspiracy hath been formed, for the purpose of overthrowing by means of insurrection the government, laws and constitution of this province and the happy connexion thereof with the mother country; and whereas designs and practices of a treasonable and highly dangerous nature are now carrying on in some parts of this province: therefore, for the better preservation of the peace, laws and liberties of this province, be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to Repeal certain parts of an Act passed in the four-

Preamble

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- Persons in prison at or after passing this Act under warrant of Governor in Council, upon charge of high treason, suspicion of high treason, or treasonable practices, may be detained without bail, and not to be tried without an order from Governor in Council.
- After Act expires persons committed to have advantage of laws relating to liberty of subject.
- Not to interfere with rights and privileges of Members of Assembly, and during sitting of Legislature, charges against members to be communicated to the house of which accused belongs, and assent to his commitment to be obtained.
- Accused persons to be confined by order of Governor in Council to any gaol of the Province.
- Right to be tried in place where offence committed, and to be bailed, not taken away.
- Restrictions relative to the granting the writ of habeas corpus.
- Limitation of Act.
- teenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,' and by the authority of the same, that all or any person or persons that are or shall be in prison in this province at or upon the day on which this Act shall receive the Royal assent, or after, by warrant of the Lieutenant-governor of this province in Council, for high treason, suspicion of high treason, or treasonable practices, may be detained in safe custody, without bail or mainprize, during the continuance of this Act, and that no judge or justice of the peace shall during such continuance bail or try any such person or persons so committed without an order from the Lieutenant-governor of this province in Council, any law or statute to the contrary notwithstanding: provided always, that nothing in this Act contained shall extend or be construed to extend to any seditious language or other act of sedition only uttered, spoken, committed, or done before the first day of December last past.
- II. Provided always, and be it further enacted by the authority aforesaid, that from and after the expiration of this Act the said persons so committed shall have the benefit and advantage of all laws and statutes in any way relating to or providing for the liberty of the subjects of this province.
- III. Provided always, and be it further enacted by the authority aforesaid, that nothing in this Act contained shall be construed to extend to invalidate the rights and privileges of this provincial parliament, or to the imprisonment or detaining of any member of either house of the legislature thereof, during the sitting of the same, until the matter of which he stands suspected be communicated to the house of which he is a member, and the consent of the said house be obtained for his commitment or detaining.
- IV. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Lieutenant-governor of this province, as he shall see occasion, by and with the advice of the Executive Council, to order any person committed to any gaol on any charge of high treason, suspicion of high treason, or treasonable practices, either before or after indictment found, to be conveyed or detained in any other gaol or other prison or safe place of confinement until discharged by due course of law, and to issue all warrants necessary for such purposes: provided always, nevertheless, that no person who shall be removed by any such warrant as aforesaid shall by means of such removal be deprived of such right to be tried or discharged as such person would by law have been entitled to if not so removed; and in any case in which any such person would have been entitled to have been tried or discharged if such person had continued in the gaol or prison to which such person was before committed, it shall and may be lawful for such person to apply to be bailed or discharged, in the same manner as such person might have done if he had remained in the gaol or prison to which such person was before committed as aforesaid.
- V. And be it further enacted by the authority aforesaid, that for and during the continuance of this Act, in all and every case in which application shall be made for Her Majesty's writ of habeas corpus to any court or courts, judge or judges, within this province, by any person or persons who are or shall be in prison within this province, at or upon the day on which this Act shall receive the Royal assent, or afterwards, charged by any public authority with high treason, misprision of high treason, or treasonable practices, such writ of habeas corpus, if allowed, shall not be made returnable in less than 30 days from the time of its being allowed; and in all and every such case and cases it shall be the duty of such court, or judge or judges, and of each and every of them, and they are hereby required, when and so soon as such application for such writ of habeas corpus shall to them be respectively made, to give notice and information thereof in writing, together with copies of such application, and of the affidavit or affidavits, or other paper writing on which such application shall be founded, to the Governor, Lieutenant-governor, or person administering the government for the time being.
- VI. And be it further enacted by the authority aforesaid, that this Act shall be and continue in force to the end of the next Session of Parliament, and no longer.

CAP. II.

No. 1086.

AN ACT to provide for the more effectual and impartial Trial of Persons charged with Treason and Treasonable Practices committed in this Province.—(Passed 12 January 1838.)

Preamble.

Trials for high treason, misprision of

For the more impartial and effectual trial and punishment of all offences of high treason and treasonable practices committed in this province, and for taking away hopes of impunity from persons guilty of crimes so dangerous to Her Majesty's Government; be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that

from

from and after the passing of this Act, all offences of high treason, and misprision of high treason, and of treasonable practices, already committed or to be committed within this province, may be inquired of, heard, tried and determined in the Court of Queen's Bench within the same, in the district where that Court shall sit, or before such justices of oyer and terminer and gaol delivery within such district of this province as shall be assigned by the Lieutenant-governor of this province, by commission under the great seal, in like manner and form, and to all intents and purposes, as if such offences had been done or committed in the same district where they shall be so inquired of, heard, and determined as aforesaid.

high treason and treasonable practices, may be tried in the Court of Queen's-Bench, when that Court shall sit, or before justices of gaol delivery in such district as shall be assigned by Governor.

II. And be it further enacted by the authority aforesaid, that all inquiries and trials for high treason, or misprision of high treason, or treasonable practices committed or to be committed in the said province, may be had by good and lawful men of the district where the said Court of Queen's Bench shall sit, or of the district where the said justices of oyer and terminer and gaol delivery shall execute their said commissions, by virtue of the provisions of this Act, and that no challenge to jurors for not being of the district where the offence was committed shall be allowed.

Jury to be summoned from district where Court of Queen's-Bench sits, or where commission of gaol delivery shall be executed.

III. And be it further enacted by the authority aforesaid, that Her Majesty's Chief Justice of the said province, and the Justices of the Court of Queen's Bench therein, shall be named and assigned justices in every such commission, whereof one to be of the quorum.

Chief Justice and Judges of Queen's-Bench to be assigned in commission of gaol delivery, and one to be of the quorum.

IV. Provided always, and be it further enacted by the authority aforesaid, that all persons convicted or attainted of high treason, or misprision of high treason, or treasonable practices, pursuant to this Act, shall be subject and liable to the same corruption of blood, pains, penalties, and forfeitures, as persons convicted and attainted of high treason or treasonable practices in the same district where such offences have been committed.

Corruption of blood, &c. to follow attainder of persons convicted of high treason in any district appointed for trial.

V. And be it further enacted by the authority aforesaid, that this Act shall be and continue in force until the 1st day of January next, and from thence until the end of the next ensuing Session of Parliament.

Limitation of Act.

CAP. III.

AN ACT to protect the Inhabitants of this Province against Lawless Aggressions from Subjects of Foreign Countries at peace with Her Majesty.—(Passed 12 January 1838.)

No. 1087.

WHEREAS a number of persons lately inhabiting the State of New York, or some one of the other United States of America, have within the said State of New York lately enlisted or engaged themselves to serve as soldiers, or have procured others to enlist or engage themselves to serve as soldiers, and have within the said State of New York collected artillery, arms, and ammunition, and made other preparations for a hostile invasion of this province, under the pretext of assisting certain traitors who have fled from this province to the said United States; and whereas the said persons, without the authority of their government and in defiance of its express injunctions, have actually invaded this province contrary to the faith and obligations of the treaties subsisting between the United Kingdom of Great Britain and Ireland and the said United States, and during the continuance of the relations of amity and peace between the two countries; and whereas it is necessary for protecting the peace and security of this province to provide for the prompt punishment of persons so offending: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that if any person being a citizen or subject of any foreign state or country at peace with the United Kingdom of Great Britain and Ireland, having joined himself before or after the passing of this Act to any subjects of our Sovereign Lady the Queen, her heirs or successors, shall after the passing of this Act be or continue in arms against Her Majesty, her heirs or successors, within this province, or commit any act of hostility therein, then it shall and may be lawful for the Governor of this province to order the assembling of a militia general court-martial for the trial of such person, agreeably to the militia laws of this province, and upon being found guilty by such court-martial of offending against this Act, such person shall be sentenced by such court-martial to suffer death or such other punishment as shall be awarded by the court.

Preamble.

Persons being citizens or subjects of a foreign power taken in arms in this province may in certain cases be tried by court-martial;

and upon conviction be sentenced to death.

II. And be it further enacted by the authority aforesaid, that if any subject of Her Majesty, her heirs or successors, shall within this province levy war against Her Majesty, her heirs or successors, in company with any of the citizens or subjects of any foreign state or country then being at peace with the United Kingdom of Great Britain and Ireland, and offending against the provisions of this Act, then such subject of Her Majesty, her heirs or successors, shall be liable to be tried and punished by a militia general court-martial, in

Subjects of Her Majesty may be in like manner tried and punished by court-martial.

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Citizens or subjects of foreign countries offending against this Act, may be tried before court of oyer and terminer.

like manner as any citizen or subject of a foreign state or country at peace with Her Majesty, her heirs or successors, is liable under this Act to be tried and punished.

III. And be it further enacted by the authority aforesaid, that the citizen or subject of any foreign state or country offending against the provisions of this Act shall be deemed guilty of felony, and may notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any court of oyer and terminer, and general gaol delivery in and for any district of this province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death as in cases of felony.

CAP. IX.

No. 1093.

AN ACT to provide for the more speedy Attainder of Persons indicted for High Treason, who have fled from this Province, or remain concealed therein, to escape from Justice. (Passed 6 March 1838.)

Preamble.

Proceedings to be had against persons indicted for high treason, &c., against whom process shall have issued, and who may not be apprehended, and upon which the attainder of such persons shall be founded. Proclamation to issue, calling on person indicted to surrender himself, and in default to be adjudged attainted of the crime charged in the indictment.

WHEREAS a wicked and unnatural rebellion against Her Majesty hath been raised and carried on within this province; and whereas divers persons who were concerned in such rebellion have fled from this province, or remained concealed therein, in order to escape from justice; and whereas it is expedient and necessary to provide for the speedy attainder of such persons, in order to deter others from the like high crimes and offences: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that from and after the passing of this Act, in case any indictment shall be found by a grand jury at and before any court of competent jurisdiction in this province, against any person or persons, for high treason, misprision of treason, or treasonable practices; and when the sheriff shall make return to any warrant or capias that may issue thereupon, that such persons, or any of them, is or are not to be found in his district, it shall and may be lawful for the Governor of this province, by and with the advice of the Executive Council, immediately upon the making of such return to issue a proclamation to be published not less than six weeks in the Upper Canada Gazette, calling upon and requiring the person or persons against whom any such indictment or indictments shall have been found, to surrender himself or themselves to the custody of the sheriff of the district within which the court before whom such indictment or indictments were found was held, by a day to be within the said proclamation named, such day not to be less than three calendar months from the first publication of such proclamation in the Gazette; and if such person or persons shall not by the day in such proclamation named, surrender themselves to the custody aforesaid, and submit to justice, then and in such case they and every of them, after the day in such proclamation named, shall stand and be adjudged attainted of the crime expressed and set forth in such indictment or indictments, and shall suffer and forfeit as a person attainted of such crime by the laws of the land ought to suffer and forfeit.

Justices of oyer and terminer to certify indictment and return of sheriff, that party has not been arrested into the Court of Queen's Bench.

II. And be it further enacted by the authority aforesaid, that the justices of all and every court of oyer and terminer, and general gaol delivery, at which any such indictment shall be found as aforesaid, shall, upon the return of the sheriff that the person or persons named in such indictment is not to be found within the district of such sheriff, certify the said indictment, and the proceedings thereon, into the Court of Queen's Bench in this province; and it shall be the duty of every such sheriff, at the expiration of the term limited in such proclamation, to make a return to the said Court of Queen's Bench of the names of all and every such person or persons, who, being named in any such proclamation as aforesaid, shall not have surrendered themselves to the custody of the said sheriff, pursuant to the exigency of such proclamation, and the said Court of Queen's Bench shall, during the term in or before which such last-mentioned return shall be made, direct judgment of attainder against all and every such person or persons to be entered on record.

Person against whom judgment of attainder shall have been entered, may surrender himself within three months, and upon proof that such person was prevented from surrendering himself, the Court of Queen's Bench may reverse the attainder and admit party to be tried.

III. Provided always, and be it further enacted by the authority aforesaid, that if any person against whom any such judgment of attainder shall have been entered, shall, within three calendar months next after the day of entry of such judgment, surrender himself to the custody of the sheriff of the home district, and by the oath of two credible witnesses shall establish to the satisfaction of the Court of Queen's Bench, that such person was actually and *bonâ fide* prevented from surrendering himself pursuant to the exigency of such proclamation, by reason of absence beyond seas, sickness, or other inevitable necessity, then and in such case it shall and may be lawful for the said Court of Queen's Bench to reverse the said judgment of attainder, and to transmit the indictment or indictments to any court of oyer and terminer to be held in and for the district wherein such indictment or indictments was or were found; and such person so surrendering shall be tried for the offence charged in such indictment, in like manner as if no such judgment of attainder had been entered.

CAP. X.

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AN ACT to enable the Government of this Province to extend a Conditional Pardon in certain cases to Persons who have been concerned in the late Insurrection—(Passed 6 March, 1838.) No. 1094.

WHEREAS there is reason to believe that among the persons concerned in the late treasonable insurrection in this province there were some to whom the lenity of the Government may not improperly be extended, on account of the artifices used by desperate and unprincipled persons to seduce them from their allegiance: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual Provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province,'" and by authority of the same, that upon the petition of any person charged with high treason committed in this province, preferred to the Lieutenant-governor before the arraignment of such person, and praying to be pardoned for his offence, it shall and may be lawful for the Lieutenant-governor of this province, by and with the advice and consent of the Executive Council thereof, to grant, if it shall seem fit, a pardon to such person, in Her Majesty's name, upon such terms and conditions as may appear proper; which pardon being granted under the great seal of this province, and reciting in substance the prayer of such petition, shall have the same effect as an attainder of the person therein named for the crime of high treason, so far as regards the forfeiture of his estate and property, real and personal: provided always, that in case a pardon shall not be granted upon any such petition, no evidence shall be given of any admission or statement therein contained upon any trial to be afterwards had.

Preamble.

Persons charged with high treason petitioning before arraignment to be pardoned, may receive a pardon, if Governor and Council see fit, on such conditions as may be prescribed.

Pardon granted under great seal, reciting petition, to have same effect as attainder of high treason, so far as regards forfeiture of estate, real and personal.

II. And be it further enacted by the authority aforesaid, that in case any person shall be pardoned under this Act, upon condition of being transported or of banishing himself from this province, either for life or for any term of years, such person, if he shall afterwards voluntarily return to this province without lawful excuse, contrary to the condition of his pardon, shall be deemed guilty of felony, and shall suffer death as in cases of felony.

Persons pardoned on condition of transportation or banishment, returning without lawful excuse, to suffer death.

III. And be it further enacted by the authority aforesaid, that the provisions of this Act shall not extend or be construed to extend to such persons as have fled and are still absent from this province under a charge of high treason, and for whose apprehension a reward has been offered.

This Act not to extend to persons who have fled, &c.

CAP. XI.

AN ACT to prevent the Unlawful Training of Persons to the Use of Arms, and to practise Military Evolutions and Exercises; and to authorize Justices of the Peace to seize and detain Arms collected or kept for purposes dangerous to the Public Peace.—(Passed 6 March 1838.) No. 1095.

WHEREAS in some parts of this province men clandestinely and unlawfully assembled have practised military training and exercising in arms, to the great terror and alarm of Her Majesty's loyal subjects, and the imminent danger of the public peace: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, 'An Act for making more effectual Provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province,'" and by the authority of the same, that all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained and drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, without any lawful authority for so doing, shall be and the same are hereby prohibited as dangerous to the peace and security of Her Majesty's liege subjects, and of this province; and every person who shall be present at or attend any such meeting or assembling for the purpose of training and drilling any other person or persons to the use of arms, or to the practice of military exercise, movement or evolution, or who shall train and drill any other person or persons to the use of arms, or to the practice of military exercise, movement or evolution, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be confined in the public penitentiary of this province, for any term not exceeding two years, or to be punished by fine and imprisonment in any of the common gaols in this province, for a period not exceeding two years, at the discretion of the court in which such conviction shall be had; and every person who shall attend or be present at any such meeting or assembly for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms, or the practice of military exercise, movements or evolutions, being legally convicted thereof, shall be liable to be punished

Preamble.

Meetings of persons for the purpose of being drilled to the use of arms prohibited.

Punishment of persons engaged in drilling, &c.

Punishment of persons present at such drilling, &c.

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Justices, &c. authorized to disperse unlawful meetings of persons, and justices empowered to commit offenders.

Act not to prevent prosecution by indictment, &c.

Justices of the peace authorized to seize and detain arms, &c. upon complaint on oath that such arms are in the possession of any one for purposes dangerous to the public peace.

Justices being refused admittance into houses to search for arms, may enter by force and may detain arms kept for purposes dangerous to the public peace.

Party from whom arms are taken may apply to general quarter sessions for an order for restoration.

Justices of the peace may seize and authorize the seizure of arms under particular circumstances.

And unless bail be given by person carrying arms under suspicious circumstances, justices may commit him for trial.

Concurrent jurisdiction given to justices of different districts in carrying this Act into effect.

Action against justices, &c. for anything done under this Act, to be commenced within six months.

punished by fine and imprisonment, not exceeding two years, at the discretion of the court in which such conviction shall be had.

II. And be it further enacted, by the authority aforesaid, that it shall be lawful for any justice of the peace, or for any constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly as aforesaid, and to arrest and detain any person present at, or aiding, assisting or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial for such offence, under the provisions of this Act, unless such person can and shall give bail for his appearance at the next assizes to answer to any indictment which may be preferred against him for any such offence against this Act.

III. Provided always, and be it further enacted by the authority aforesaid, that nothing in this Act contained shall extend to prevent any prosecution by indictment or otherwise, for anything that shall be an offence within the intent and meaning of this Act, and which might have been so prosecuted if this Act had not been made, unless the offender shall have been prosecuted for such offence under this Act, and convicted or acquitted of such offence.

IV. And whereas arms and weapons of various sorts have in some parts of this province been collected, and are kept for purposes dangerous to the public peace, and it is expedient that the justices of the peace should be authorized and empowered to seize and detain such arms and weapons; be it therefore enacted by the authority aforesaid, that it shall be lawful for any justice of the peace, upon information on oath of one or more credible witness or witnesses, that any pike, pike-head or spear is in possession of any person or persons, or in any house or place, or that any dirk, dagger, sword, pistol, gun, rifle, or other weapon, is for any purpose dangerous to the public peace in the possession of any person, or in any house or place, to issue his warrant to any constable or other peace officer, to search for and seize any such pike, pike-head, spear, dirk, dagger, sword, pistol, gun, rifle, or other weapon being in the possession of any such person, or in any such house or place as aforesaid; and in case admission into such house or place be refused, or not obtained within a reasonable time after it shall have been first demanded, to enter by force, by day or by night, into any such house or place whatsoever, and to detain or cause to be detained in safe custody, in such place as the said justice shall appoint and direct, the arms and weapons so found or seized as aforesaid, unless the owner thereof shall prove to the satisfaction of such justice that such arms or weapons were not kept for any purpose dangerous to the public peace.

V. Provided always, and be it further enacted by the authority aforesaid, that it shall be lawful for any person from whom any such arms or weapons shall be so taken as last aforesaid, in case the justice of the peace upon whose warrant the same shall have been taken, upon application made for that purpose, refuse to restore the same, to apply to the next general or quarter sessions of the peace, upon giving ten days' previous notice of such application to such justice, for the restitution of such arms or weapons, or any part thereof; and the justices assembled at such general quarter sessions of the peace shall make such order for the restitution or safe custody of such arms or weapons, or any part thereof, as upon such application shall appear to them to be proper.

VI. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any justice of the peace, or for any constable, peace officer, or other person acting under the warrant of any justice of the peace, or for any person acting with or in aid of any justice of the peace, or of any constable or other peace officer having such warrant as aforesaid, to arrest and detain any person found carrying arms in such manner and at such times as in the judgment of such justice of the peace to afford just grounds of suspicion that the same are for purposes dangerous to the public peace; and it shall be lawful for the justice who shall arrest any such person, or before whom any person arrested upon any such warrant shall be brought, to commit such person for trial for a misdemeanor, unless such person can and shall give good and sufficient bail for his appearance at the next assizes or general quarter sessions of the peace to answer to any indictment which may be preferred against him.

VII. And be it further enacted by the authority aforesaid, that all justices of the peace in and for any district in this province shall have concurrent jurisdiction as justices of the peace with the justices of any other district, in all cases as to the carrying into execution the provisions of this Act, and as to all matters and things relating to the preservation of the public peace, as fully and effectually as if each of such justices was in the commission of the peace for each of such districts.

VIII. And be it further enacted by the authority aforesaid, that any action or suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, for anything done or acted in pursuance of this Act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and that the venue in every such action or suit shall be laid in the proper district where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this Act and the special matter in evidence in any trial to be had thereupon; and if such action shall be brought

or

or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action, after appearance, or if the jury find a verdict for the defendant or defendants upon the merits, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases.

IX. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Governor, Lieutenant-governor, or person administering the government of this province, by and with the advice of the Executive Council, by proclamation to declare that this Act shall be no longer in force in any particular district therein specified; and from and after the period specified in any such proclamation, the powers of this Act shall no longer be in force in such district: provided always, that nothing herein contained shall prevent, or be construed to prevent, the Governor, Lieutenant-governor, or person administering the government of this province, upon such advice as aforesaid, declaring by proclamation any such district to be again within the powers of this Act.

X. Provided always, and be it further enacted by the authority aforesaid, that no person shall be prosecuted for any offence done or committed contrary to the provisions of this Act, unless such prosecution be commenced within six calendar months after the offence committed.

XI. And be it further enacted by the authority aforesaid, that the fourth, fifth, and sixth clauses of this Act shall continue in force during the present Parliament, and to the end of the first session of the next Parliament, and no longer.

XII. Provided also, and be it further enacted by the authority aforesaid, that this Act may be repealed in the whole or any part thereof, or in any manner altered and amended during the present session of Parliament.

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Other protection to Justices, &c.

Governor may declare, by proclamation, that this Act is no longer in force in any particular district, and again to declare the same in force.

All prosecutions for offences committed against this Act to be commenced in six months.

Fourth, fifth and sixth clauses to continue in force to the end of the first session of next Parliament.

Act may be altered or amended during the present session.

CAP. XII.

AN ACT for indemnifying Persons who since the 2d of December 1837 have acted in Apprehending, Imprisoning, or Detaining in custody Persons suspected of High Treason, or Treasonable Practices, and in the Suppression of Unlawful Assemblies, and for other Purposes therein mentioned.—(Passed 6 March 1838.)

No. 1096.

WHEREAS a late armed insurrection of certain subjects of Her Majesty in this province, with intent to subvert the government, and to plunder and destroy the property of the loyal inhabitants, has been happily subdued, but not until the insurgents had committed acts of murder, robbery, and arson, and had occasioned much alarm for the peace and security of the province; and whereas immediately before and during the said insurrection, and in consequence thereof, it became necessary for justices of the peace, officers of the militia, and other persons in authority in this province, and for divers loyal subjects of Her Majesty, to take all possible measures for apprehending, securing, detaining, and bringing to justice persons charged or suspected of joining in the said insurrection, or of aiding and abetting the same, or of other treasonable practices dangerous to the peace of this province and the security of its government, and also for the purpose of defeating and putting down the said insurrection, and for maintaining the peace of this province, and securing the lives and properties of the inhabitants thereof; and whereas some of such acts may not have been strictly legal and formal, but it is nevertheless just and necessary that the persons doing or advising the same should be kept harmless and indemnified against actions at law or other proceedings with which they might otherwise be harassed: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual Provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province,'" and by the authority of the same, that all personal actions, suits, indictments, and prosecutions, heretofore brought, commenced, preferred, or exhibited, or now depending, or to be hereafter brought, commenced, preferred, or exhibited, and all judgments thereupon obtained, if any such there be or shall be, and all proceedings whatsoever against any person or persons for or on account of any act, matter or thing by him or them done or commanded, ordered or directed, or advised to be done, since the 2d day of December, in the year of our Lord 1837, for apprehending, committing, imprisoning, detaining in custody, or discharging any person or persons who hath or have been imprisoned or detained in custody for high treason, or suspicion of high treason, or treasonable practices, or for apprehending, committing, imprisoning, or detaining in custody any person or persons who hath or have been imprisoned or detained in custody for having been so tumultuously, unlawfully, and traitorously assembled in arms as aforesaid, or for dispersing by force of arms any persons so assembled

Preamble.

All prosecutions heretofore brought or hereafter to be brought, and all judgments and proceedings for or on account of any act done since 2d December 1837, in apprehending, imprisoning, &c. persons charged with high treason, or for other acts relating to recent insurrections, to be made void and parties indemnified.

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as aforesaid, or for suppressing the said traitorous insurrection, and discovering and guarding against any other the treasonable proceedings aforesaid, or for the discovering and bringing to justice the persons concerned therein, or for maintaining the public peace and the security of Her Majesty's subjects in their persons and property, or for supporting the government and constitution of this province against the treasonable practices and proceedings aforesaid, shall be discharged and made void; and that every person by whom any such act, matter or thing shall have been done or commanded, ordered, directed, or advised to be done, shall be freed, acquitted, discharged, and indemnified, as well against the Queen's Majesty, her heirs and successors, as against all and every other person and persons.

Parties sued may plead general issue and give Act in evidence,

II. And be it further enacted by the authority aforesaid, that if any action or suit shall be brought, commenced, or had in any superior court in this province, against any person or persons for and on account of any such act, matter, or thing as aforesaid, he and they may plead the general issue, and give this Act and the special matter in evidence; and if the plaintiff or plaintiffs shall become nonsuit, or forbear further prosecution, or suffer discontinuance in any such action or suit, or if a verdict shall pass against the plaintiff or plaintiffs therein, the defendant or defendants therein shall be entitled to double costs, for which he or they shall have the like remedy as in other cases in which costs by law are given to defendants.

and entitled to double costs.

Persons prosecuted may apply to court in which prosecution commenced to stay proceedings, or if court be not sitting, then to any judge or justice of such court,

III. And be it further enacted by the authority aforesaid, that if any action, suit, indictment, information, prosecution or proceeding shall be brought, commenced, preferred, exhibited, or had in any court against any person or persons, for and on account of any such act, matter or thing as aforesaid, it shall be lawful for the defendant or defendants in any such action, suit, indictment, information, prosecution or proceeding, or for any of them, to apply by motion, petition, or otherwise, in a summary way, to the court in which the same hath been or shall be brought, commenced, preferred, exhibited or had, or shall be depending, if such court shall be sitting, and, if not sitting, then to any one of the judges or justices of such court, to stay all further proceedings in such action, suit, indictment, information, prosecution or proceeding; and such court, and any judge or justice thereof, when the said court shall not be sitting, is hereby authorized and required to examine the matter of such application, and upon proof by the oath or affidavit of the person or persons making such application, or any of them, or other proof to the satisfaction of such court, judge or justice that such action, suit, indictment, information, prosecution or proceeding is brought, commenced, preferred, exhibited or had for or on account of any such act, matter or thing as aforesaid, to make an order for staying execution and all other proceedings in such action, suit, indictment, information, prosecution or proceeding, in whatever state the same shall or may then be; and the court, or the judge or justice making such order for stay of proceedings in any action or suit as aforesaid, shall also order unto the defendant or defendants, and he or they shall have or be entitled to double costs for all such proceedings as shall be had or carried on in any such action or suit after the passing of this Act, and for which costs he and they shall have the like remedy as in cases where costs are by law given to defendants: provided always, that it shall be lawful for any person or persons being a party or parties to any such action, suit, indictment, information, prosecution or other proceeding, to apply by motion, petition or otherwise, in a summary way, to the court in which the same shall have been brought, commenced, preferred, exhibited or had, or shall be depending, to vacate, discharge or set aside any order made by any judge or justice of that court for staying proceedings, or for payment of costs as aforesaid, so as such application be made within the first four days of the term next ensuing the making of any such order by any judge or justice as aforesaid; and such court is required to examine the matter of such application, and to make such order therein as if the application had been originally made to the said court: but, nevertheless, in the mean time and until such application shall be made to the said court, and unless the said court shall think fit to vacate, discharge, set aside, or reverse the order made by any such judge or justice as aforesaid, the same shall continue in full force to all intents and purposes whatsoever.

and to order double costs to be paid defendant.

Prosecutor authorized to apply to court to discharge order of judge or justice, for stay of proceedings; application for such order to be made within first four days of next term of the court to which application is made.

Persons committed upon charges and heretofore discharged, to be deemed legally discharged.

IV. And be it further enacted by the authority aforesaid, that all and every person or persons discharged out of custody as aforesaid, although he shall not have been discharged according to law, shall be deemed and taken to have been legally discharged out of custody.

CAP. XIII.

No. 1097.

AN ACT to authorize the Appointment of Commissioners to investigate the Claims of certain Inhabitants of this Province for Losses sustained during the late unnatural Rebellion.—(Passed 6 March 1838.)

Preamble.

WHEREAS during the late unnatural rebellion, certain inhabitants of this province sustained much loss and damage by the destruction of their dwellings and other buildings by the rebels; and whereas it is expedient that a diligent and impartial inquiry should be made into the amount of such losses: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority

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authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province,'" and by the authority of the same, that it shall and may be lawful for the Lieutenant-governor of this province, from time to time, by commission under the great seal of said province, to appoint three persons as commissioners, whose duty it shall be to inquire into the losses so sustained by Her Majesty's subjects during the late unnatural rebellion.

Three commissioners to be appointed.

II. And be it further enacted by the authority aforesaid, that the said commissioners, before they enter upon the execution of their office, shall take an oath before any one of Her Majesty's justices of the peace, which he is hereby authorized to administer, to the following effect: "I, A. B., do swear that according to the best of my skill and knowledge I will faithfully, impartially and truly execute the duty of commissioner for ascertaining the losses sustained by certain inhabitants of this province during the late unnatural rebellion. So help me God."

Commissioners before entering on their office to take an oath, &c.

III. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the said commissioners, and they are hereby authorized and empowered and required to examine upon oath all persons whom the said commissioners shall think fit to examine touching all such matters and things as shall be necessary for the execution of the powers vested in the said commissioners by this Act; and all such persons are hereby directed and required personally to attend the said commissioners at such time and place as they shall appoint.

Authority given commissioners to examine persons on oath, &c.

IV. And be it further enacted by the authority aforesaid, that the said commissioners are hereby authorized to meet, and sit from time to time at such place or places as the Lieutenant-governor, or person administering the government of the province may direct, with or without adjournment, and to send their precept or precepts, under their hands and seals, for any person or persons whatsoever, and for such books, papers, writings, or records as they judge necessary for their information or the execution of the powers vested in the said commissioners by this Act; and the said commissioners are hereby authorized to appoint and employ a clerk and messenger.

Commissioners to hold their meetings from time to time, and to summon persons to appear before them, and examine books, &c.

V. And be it further enacted by the authority aforesaid, that in case any person or persons upon examination upon oath before the said commissioners respectively, as before mentioned, shall wilfully and corruptly give false evidence, every such person so offending; and being duly convicted thereof, shall be and is and are hereby declared to be subject and liable to such pains and penalties as by any law now in being persons convicted of wilful and corrupt perjury are subject and liable.

Punishment for false swearing before Commissioners.

VI. And be it further enacted by the authority aforesaid, that the said commissioners shall, from time to time, at their discretion, or as often as they shall be thereunto required, and as soon as possible after the determination of their examination and proceedings by virtue of this Act, and without any further requisition, furnish an account of their proceedings in writing to the Lieutenant-governor, that a copy of such proceedings may be laid before the Legislature of this province at the then next ensuing session of Parliament.

Commissioners to furnish account of their proceedings to Governor, to be laid before Legislature.