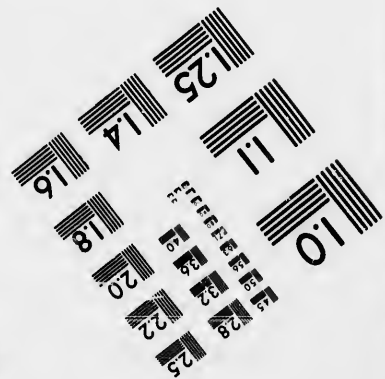
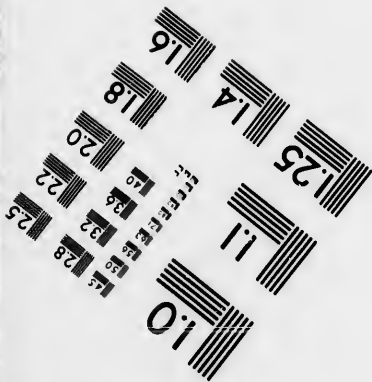
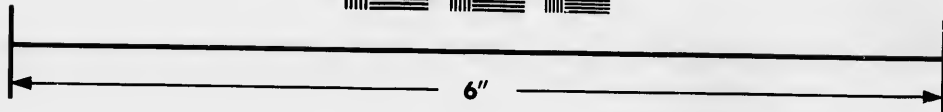
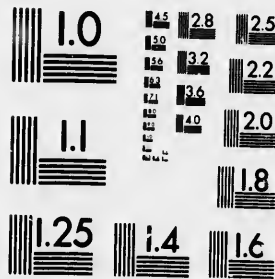


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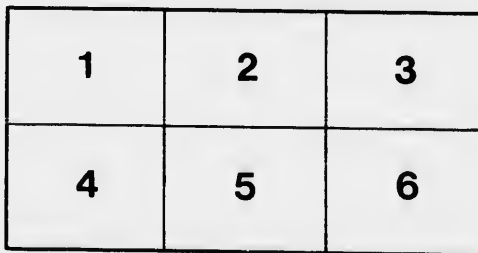
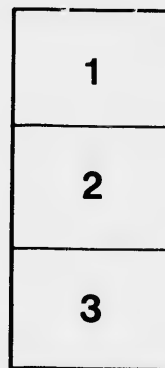
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THE
HISTORY

OF THE

Destruction of the Colonial Advocate Press,

BY

OFFICERS OF THE PROVINCIAL GOVERNMENT

OF UPPER CANADA

AND

LAW STUDENTS OF THE ATTORNEY & SOLICITOR GENERAL.

IN OPEN DAY.

And in presence of the honourable William Allan, a police magistrate and collector of the customs, and Stephen Heward Esquire, auditor general of the colony.

BY

WILLIAM L. MACKENZIE, EDITOR AND PROPRIETOR.

PART II.

YORK:

Printed at the Colonial Advocate Office, by W. L. Mackenzie, printer to the Honourable the House of Assembly of Upper Canada.

1827.

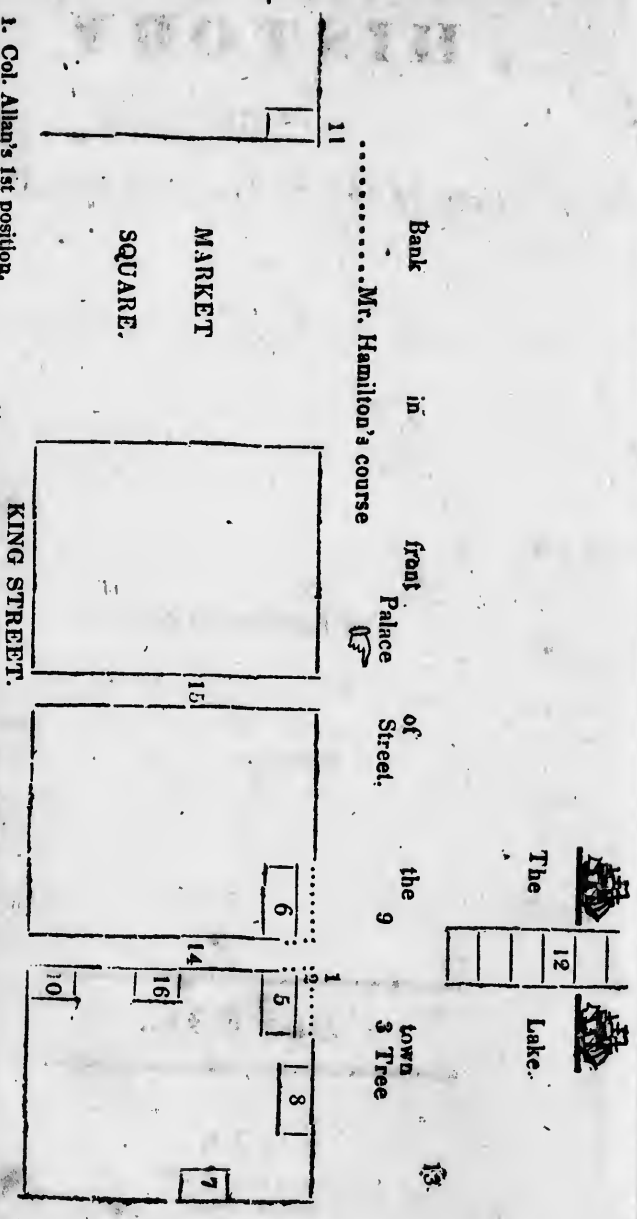
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1. Col. Howard's 2nd position.
5. Col. Allan's House.
6. Mr. Mackenzie's house and office.

7. Col. Howard's House.
8. Atty General's Office (Rendezvous)
9. Mr. Murray's position.
10. Bank of Upper Canada.
11. Mr. Hamilton's 1st position.
12. Allan's Wharf.
13. Hon. J. B. Macaulay's position.
14. Post Office street.
15. George or Queen street.
16. Post Office.



THE HISTORY

Of the destruction of the Colonial Advocate Press, &c.

It was at Queenston I had the news of the destruction of my property on the 8th June, and I instantly took such measures as appeared to me most judicious in order to obtain redress. Mr. Small had been retained as attorney by my foreman, and I lost no time in collecting all the testimony I could obtain, bearing upon the transaction, a copy of which I sent down to my legal adviser, Mr. Bidwell at Kingston. As the names of Messrs Allan & Heward had been omitted in the action for damages, I was not enabled to offer them that conspicuous niche on the trial, which their merits deserved, but I did hope that the result of that trial would enable me to do them still more ample justice with the public thro' the medium of the press and my anticipations have not been blasted.

The accounts published in the Canadian Freeman, and Kingston Herald of June last were substantially correct, I therefore make such selections from their columns as may serve to introduce the statements of individuals who saw the outrage.

(From the Canadian Freeman of June 15.)

Atrocious Outrage! total destruction of the Printing-Office of the Colonial Advocate. On Thursday last, a set of men holding high and honorable situations under the Colonial Government in this town—a set of men, not irritated by distress, disappointed hopes, or political degradation—but wallowing in ease and comfort—basking in the sun-shine of royal favour—enjoying every right and privilege of freemen—and chased by the toils of a loyal, peaceable, and industrious population—formed themselves into a conspiracy against the laws of the country—a conspiracy against **THE LIBERTY OF THE PRESS**—a conspiracy against the public peace—and between the hours of six and seven o'clock in the evening, while the great enemy of guilt as yet lingered above the horizon to restrain the arm of the ordinary desperado—they attacked the Printing-Office of the *Colonial Advocate*—broke open the door, in the presence of several witnesses, and demolished Press, Types, Forms, Sticks, Cases, Frames, Gallies, Stands, &c. &c. until the whole materials, which were new and of the first quality, exhibited nothing but one heap of ruins. Lest the types might be picked up again and turned to some advantage, large quantities of them were carried down on the Merchants' Wharf and thrown into the Lake! All this, we are informed, was carried on in the presence of two magistrates, who viewed the work of destruction with silent complacency!—Two *British magistrates*—*O! clarum et venerabile nomen!*—two police magistrates of little York—it is said, stood coolly gazing on the open violation of all law, both human and divine—while the son of one of them was engaged in the work! *O! tempora! O! mores!* Where is the majesty of *British Law*, which says “every man's house is his Castle?” Where are the thunders of *British Protection*—whose peals have been heard in the uttermost ends of the earth, and struck terror into the hearts of the most distant, and most ferocious of the children of Adam?—Are they to be des

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plised and set at naught by the official desperadoes of *little York* alone? By the laws of England, a man's house is his castle—no matter what his public or private conduct may be—but in *little York*, it seems that a man's house is his castle only while he crouches to official arrogance, and licks the hand of petty tyranny—and the moment that the dignity of his nature recoils from servility, his castle is to be razed to the very ground!

By this audacious outrage, the liberty of the Press has been assailed—the majesty of the law offended—the repose of private life disturbed—the rights of private property violated—the feelings of a respectable community insulted—public opinion set at defiance—and a precedent established by the very officers of government, men moving in the first circles in the colony, which, if followed up by the lower orders must overturn the foundations of civil society.—What will the enlightened people of the United States say—what will the world say—when they hear that emissaries from the very office of the Governor—assisted by high official men—broke open the private house of a British subject in open day—in the metropolis of a British Colony, and laid waste his property, in the presence of two British magistrates? What will they say, when they hear that after this nefarious outrage had thrown the seat of government into one common ferment, and that placards on the subject were posted up in every corner of the town, for two days, the official Gazette was published—and not only was there no Proclamation issued against the conspirators—but, behold, *it is not even noticed by the official Editor!*?—Does not this official connivance speak volumes? Does it not show that this transaction took its rise in no common source, when the plan was executed by men in the pay and the confidence of the Executive, and connived at by the official Gazette? What will be said of the free and independent people of York, if they allow the fearless sentinel of their rights and liberties—A FREE PRESS—to be overpowered by main force in their streets, and publicly strangled in their presence, without lifting up their united voices against it, and calling upon the chief magistrate to bring the offenders to condign punishment? If this outrage be permitted to pass unnoticed, whose property, or even life, can be said to be safe?

In unhappy Ireland, under the administration of British law, a man is torn from the bosom of his family—severed from his friends and from his country, and transported for *seven years*—without judge or jury, but at the mandate of *two or more magistrates*, for the simple crime of being absent from his dwelling between the hours of sun-set and sun-rise!--In *little York*, under the administration of British law, the private dwelling of an inhabitant is broken open—and his private property destroyed, in the presence of *two magistrates*—yet the perpetrators of this foul deed walk abroad unmolested, and enjoy high and confidential offices of trust and emolument under the Colonial Government!

“By the flagitious outrage here alluded to, the people of Upper Canada are thrown into a state of consternation and alarm—consternation at the unblushing audacity of the conspirators—and alarm for the safety of their lives and property in a country where such desperadoes are in the pay and the confidence of the government.—Nine of the conspirators have been identified and sworn to—and in order to give the people a correct idea of the thing, it is necessary for us to state, that *five or six of the nine* are employed in the offices of the Governor, the Attorney General, and the Solicitor General—as clerks and law students!!!--What will the patriotic Doctor Lefferty say, at the next meeting of Parliament, when the Attorney General in the *loyal* “zeal of the son of a U. E. Loyalist,” exclaims that the Americans invaded “our country—ransacked our towns—destroyed our property—and murdered our wives and children!”—We think we see the Doctor's indignant brow lowering upon him with the following appropriate retort—“Yes, Sir, the Americans invaded us and destroyed our property, as enemies, in open war—but *three emissaries*, as I am informed, from your office, and in your employ-

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Upper Canada tion at the un- of their lives pay and the e been identi- a of the thing, ployed in the or General—as fferty say, at in the loyal eicans invaded and murder- dignant brew s, Sir, the A- open war--- our employ-

ment, invaded the private abode of a fellow-subject and destroyed his property, in times of profound peace---yet they afterwards remained in your employ- ment, and enjoyed your confidence!"---What appears most extraordinary in this business is, that the official Gazette has been published a second time since the outrage was committed, without ever alluding to it---and to this circum- stance, coupled with the situations of the conspirators, we wish particularly to direct the public attention.

[From the Upper Canada, Kingston Herald of June 20.]

PATRICIAN RIOT, AT YORK.

Such an annihilation of valuable property, such a daring breach of the peace, in the face of the government, such an insult upon the laws, such a conspiracy and outrage against the freedom of the Press, the palladium of civil rights, was never before witnessed, in this province, or any other Colony under the protection of British government and law. The riot was per- petrated with deliberation and manifest concert, with what the lawyers call "malice prepense." The perpetrators of it are said to be attached to, or connected with, and as it were selected and delegated from, almost all the public offices in York, from the Lieutenant Governor's office down to that of the Clerk of the Peace. It is also stated to have been committed in the pre- sence of two Magistrates, who stood upon the bank, while the rioters, among whom was a son of one of them, were riotously carrying the types from the office to the bay, and these exemplary Conservators of the Peace, one of them a Legislative Councillor, and both of them loaded with public offices, witnessed the riot with apparent satisfaction, at least without any attempt to prevent the violation of law and destruction of property. It is so stated; but for the honour of the Government and the Province, we cannot but hope there is some mistake in the statement of so glaring and scandalous a fact.

The opponents of the Advocate, having the administration of the civil law in their own hands, had no occasion to resort to mob law. It is a pernicious precedent; an ill-advised and most dangerous experiment.— The stone, once "set a rolling," may roll back, and crush some of those who have thus rashly put it in motion. Mobocracy cannot be a desira- ble species of Government. Let mobs be rendered fashionable, by Gov- ernmental connivance or impunity, and no one can be sure that he will not be the next sacrificer. If this patrician Mob, for instance, planned and executed by officers, clerks and favourites of government, should be justified or excused for destroying a Press friendly to the rights of the people, under the pretext, true or false, of provoking personalities published by the Editor, the People, in their turn, may learn to imitate the courtly example, and a plebeian mob, excited by some offensive pub- lication, may demolish the Government Press, or the office of one of the Magistrates, who countenanced this riot, by looking on and not prevent- ing it, when they had the power, and were bound by official duty to do it, being commissioned and sworn to keep the peace.

A riotous spirit is at any time to be deprecated, and peculiarly so at the present distressing crisis. In the Mother country, such is the pressure of the times, that thousands of labouring people, thrown out of employment, and in dread of actual starvation, are hurried by blind prejudices and headlong passions, to combine together, and riotously destroy power looms and other articles of property belonging to the objects of their resentment. The ministers, Magistrates and peace officers are wisely exerting their utmost efforts to tranquilize and restrain the suffering and excited population. Pecuniary distress is already felt in this country, and is likely to increase, no one can tell to what extent. In this state of

things, and amidst the political disputes and agitations of the Province, it cannot be wise in the Provincial Administration to rouse the spirit of John Bull among the people, by sanctioning the example of a riotous destruction of the property of an individual, with whom the rioters, or their instigators are offended.

Connected as the actors in the late riot appear to be with the several departments of government, we sincerely hope the public authorities will, not in form and words merely, but in reality condemn, and effectually discountenance the unhappy outrage, and thereby avert the suspicion of connivance, and the consequent odium, which will otherwise inevitably be attached to the Government.

The preface to these statements hath already sufficiently explained the beginning of this affair---It follows that I should now say something of the persons implicated, and such of their friends as are under a cloud in the estimation of the country, on account of their alleged neglect of duty, and implied acquiescence in the riot.

I shall next proceed to select such parts of the evidence I obtained as tend to throw a greater degree of light on the operations and intentions of the gang, and conclude with a few brief remarks.

1

THE HONOURABLE WILLIAM ALLAN, a legislative councillor, an acting justice of the peace in, and treasurer of the Home District, postmaster of the city of York, collector of customs at the port of York, inspector of shop still and tavern licenses for the Counties of York and Simcoe, a colonel of militia, a commissioner for war losses, a commissioner for forfeited estates, a commissioner to investigate frauds in the revenue, a commissioner for the erection of the parliament buildings, vice president and director of the Welland Canal company, a commissioner appointed to investigate frauds in the post-office, treasurer to several societies, president of the bank of Upper Canada, a trustee of Chief Justice Scott's and of Colonel Smith's estates, a great land-owner, and house proprietor, a police magistrate for the town of York, a Church of Englandman.

2

STEPHEN HEWARD Esquire, father to Charles and Henry Heward, auditor general of land patents, clerk of the peace in and for the Home district, Colonel of Militia, Secretary to the reverend and worshipful corporation for *superintending and managing* the clergy reserves, a Church of Englandman.

The next eight persons named herein are rioters, part of those who destroyed the Advocate Press, and were convicted by a special jury, in the civil action, in the court of King's Bench, Oct. 1826---Verdict \$2,000, and costs.

3

SAMUEL PETERS JARVIS Esquire, (*convicted rioter*) late private secretary to his honour the Administrator of Upper Canada, son-in-law to his honour the late chief justice of the king's bench, clerk of the crown in chancery, a director of the bank of Upper Canada, a barrister

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at law, a lieutenant colonel of militia, a duellist who killed the Surveyor General's son in the field when the latter was a stripling and unwilling to fight, a Church of Englandman.

4

JOHN LYONS Esquire (*convicted rioter*) a confidential clerk in the office of his excellency the lieutenant governor (salary \$600 a year) captain of militia, *barrister at law*, since appointed by the lieutenant governor to the very important trust of REGISTER for the Niagara district in the room of the late John Powell Esquire—a Roman Catholic.

5

HENRY SHERWOOD Esquire, (*convicted rioter*) a student at law in the office of the Attorney General, and son to the hon. Mr. Justice Sherwood formerly speaker of the Assembly, late ensign in the 4th Leeds Militia, a *clerk of Assize*, a church of Englandman.

6

CHARLES BABY Esquire, a convicted rioter, (son to the Honourable James Baby, an executive councillor of Upper Canada,) ensign in the militia, a student at law in the Solicitor General's office, a pupil of Doctor Strachan, a Roman Catholic.

7

PETER McDOUGALL Esquire, (a convicted rioter) lieutenant of militia, an extensive merchant in York, a most intimate friend of the Hon. James Baby, a Roman Catholic.

8

CHARLES RICHARDSON Esquire, (a convicted rioter,) *Barrister at law*, (then a student at law with the Attorney General,) lieutenant of militia, a pupil of Doctor Strachan, a *commissioner for taking affidavits in the Court of King's Bench*, son to Judge Richardson, a church of Englandman.

9

MR. JAMES KING, (a convicted rioter,) *barrister at law*, late a law student in the Solicitor General's office. a clerk of assize in the King's Bench, an ensign in the militia, & a *commissioner for taking affidavits in the Court of King's Bench*, a Roman Catholic.

10

MR. CHARLES R. HEWARD a convicted rioter, son to (No. 2) the Auditor General of Land Patents, nephew to the Attorney General, and his law student, a lieutenant of militia, pupil of Dr. Strachan, a church of Englandman.

11

RAYMOND BABY (in the riot) an evidence for plaintiff, son to the Inspector General of J. C., an officer of militia, a pupil of Doctor Strachan, a Roman Catholic.

Note.—In consequence of a reply to Veritas, in a late Kingston Herald, I have stated who were of the church of England, & Doctor Strachan's pupils, and have put new appointments in italics.

Voluntary Statement of THOMAS HAMILTON ESQUIRE, Coroner for the county of York, signed by him at York July 3rd 1826.

"About seven o'clock in the evening of the 8th of June I saw Doctor Powell, Samuel P. Jarvis, and Peter McDougall walking along Pallace Street--when they came opposite George Street the doctor turned up it and left them, the other two went forward in the direction of the Advocate Office. A few minutes afterwards I (who was standing all the while at the corner of my own house at the south west corner of the Market place) saw a number of persons some from the Attorney General's side of the road, some down the street where the post office is situated; they, amounting to a dozen or fifteen persons as I suppose, stopt for a moment on the bank in front of the Advocate Office, they then appeared to go in towards the office in Indian file one after another at a quick step—I thought it was sheriff's officers, and that they had raised a posse. The actual facts never struck my mind. Mr. Humphreys was with me. I soon after heard a terrible crash as of something falling (in that direction) I said to Humphreys that something was wrong and set off at a quick pace towards the Advocate Office—I saw three persons come out carrying something; they ran very fast down to the wharf, and appeared to throw their loads into the water—I afterwards saw the type boxes floating. *During this time Colonel Allan was standing at first outside but afterwards inside his gate. I think he had a child in his arms when I arrived at the spot. When I got near to the place they dispersed—some of them came out and went in again. Major Heward was standing outside Colonel Allan's fence talking to Allan who was inside. If I was on my oath I could not have supposed it possible for any man to have stood where Allan was and yet been ignorant of what was going on, and that there was going on that which was not right. I walked past in front of Colonel Allan's and met Mr. Macaulay coming up from under the bank—I spoke to him. He went up to where Mr. Allan was standing with Mr. Heward. Col Heward being where he was could not but have seen what passed.* On returning I stopt at the office; they asked me to walk in and see the destruction, and the sight struck me with horror.—I saw all strewed about, desks and forms broke to pieces and smashed to pieces, the stone thrown over, the press upset, and all like desolation.

(Signed)

THOMAS HAMILTON.

Mr. H. added that in breaking open a dwelling house the rioters did what Indians would not have done. If a stick is set by the owner of a cottage in a certain direction, to shew he is absent, it is sacred in the eyes of all the rest, none of whom will enter his abode.

Voluntary Statement of Mr. WILLIAM MURRAY, of the town of York carpenter and builder.

Between six and seven o'clock as I was going up to tea from the wharf, I saw eight or nine persons standing at the corner of the York bank, earnestly discoursing together. I believe them to be part of the gang

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who destroyed the Advocate office. I stopt at tea from 20 minutes to half an hour, and on my return towards Couper's wharf, I (when on the bank in front of the Advocate office) met three men coming out at the office gate with three cases of type—two proceeded but the third appeared astonished at seeing me there, stopt and partly turned as if to go back: at last however he followed his comrades with his load. This strange appearance made me turn round to see where they were going; they made towards Allan's wharf and threw boxes and types into the lake off the wharf. The moment I turned round to see what they were to do with the types I saw Colonel Allan standing in front of his own pal- ing, close by the corner (as in the plan); no person was with him then nor near him; he was looking distinctly towards me and them—I took partic- ular notice of him: at this moment James Baxter (an apprentice) came out in front of the office, and called aloud that persons were tear- ing down the house or the press, and asked assistance, he requested me to assist but I was only one, and thought that as Colonel Allan did noth- ing, who was a magistrate, I had better not interfere. James Baxter came out before they had got to the lake with the types. I have no man- ner of doubt in my mind but that Colonel Allan heard James Baxter call out for assistance—and saw the whole as well as I did. He made no effort to quell the riot. When the three men ran down over the bank the types rattled in the cases and a good many tumbled out on the road; I looked over the fence inside Mr. Mackenzie's court yard and two or three of them were busily employed throwing the types about the court yard and over into Mr. Monro's garden. I think that the person who almost turn- ed round with the box of type was a son of Colonel Heward. They made a great noise inside, knocking things about. When the press or stone (as I suppose) fell, it made a great noise. As I was coming down from tea (as before stated) when between the York bank and post office, I beheld three persons running round the counting room corner—one of them sung out that all was clear, or words to that effect, and before I got down they were out of sight. It appears to me that as the roadmen had been working before the Advocate office and had just gone off, the gang chose that quiet hour, unseen to commit the work of destruction.

York July 3rd 1826.

(Signed)

WILLIAM MURRAY.

CHARLES RIDOUT Esquire.

I have learnt that this gentleman, who is a son of the hon. Thomas Ridout, can testify on oath that he was on the bank at the time of the riot, and that Colonel Allan the police magistrate, and Colonel Heward the clerk of the peace and auditor general, were on-look- ers to the outrage, and saw the whole just as well as he did—but I did not conceive it necessary to require him to give a written statement in a case where proof abounded. It has been asserted that Colonel Heward cheered some of the mob and cried out well done boys, but that fact must fall to the ground for want of proof.

FIRST OFFER OF THE RIOTERS.

*** Mr. Macaulay's letters would have been published before the trial, had not Mr. Small my Attorney forbid it.

Copy of a letter addressed by James B. Macaulay Esquire, agent on behalf of the Defendants, to James E. Small Esquire, Plaintiff's Attorney.

My Dear Sir,

The gentlemen prosecuted for a trespass upon the Advocate Press so far from entertaining a desire to do an irreparable injury to the property of the concern, went openly to the office without any attempt at concealment, and aware at the time of the responsibility they would incur.—An offer of indemnity to the actual extent of the injury would have been tendered immediately, had less clamour been raised and less exertion been used to prejudice the public mind.

The real cause of the step is well known to all;—it is not to be ascribed to any malice—political feeling—or private animosity;—*the personal calumnies of the latter advocates* point out sufficiently the true and only motives that prompted it; and I have now to offer to pay at once the full value of the damage occasioned to the press and types, to be determined by indifferent and competent judges selected for that purpose—will you inform me how far your client is disposed to meet this proposal?

This advance is in conformity with the original intention, and must not be attributed to any desire to withdraw the matter from the consideration of a Jury of the country, should your client prefer that course—but in that event, it is to be hoped no further attempts will be used by him or his friends to prejudice the cause now pending—nor any future complaints be made of a reluctance or hesitation to compensate voluntarily, a damage merely pecuniary although provoked by repeated assaults upon private character and feeling not susceptible of any adequate redress.

I am,

very truly yours,

J. B. MACAULAY.

J. E. SMALL Esq.

SECOND OFFER OF THE RIOTERS.

6th July, 1826.

My Dear Sir,

My friends do not seem inclined to make any higher proposals than follows, and which are dictated in a conviction that they fully meet the justice of Mr. Mackenzie's claim,—the real extent of which they are by no means ignorant of—or unable to prove:—

They will (receiving the press and appurtenances) be willing to pay £200 for them. This sum is considered not only the value of the whole materiel of the establishment, but amply sufficient to cover any contingencies also—with respect to further compensation there would be no objection to add £100 more, in all £300 to end the matter.

Or they will agree to £200 as above stated, and leave any excess to the decision of indifferent persons—or they will leave the whole to indifferent and competent referees as at first suggested.

If your client can meet this in any way so as to terminate the controversy I shall be very glad—if not I fear the law must take its course.

I am,

very truly yours

J. B. MACAULAY.

J. E. SMALL ESQUIRE.

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James E. Small to James B. Macaulay,

My Dear Sir:—

York, July 7th, 1826.

I received your note last evening and am extremely sorry to find that our endeavours to settle amicably this unfortunate affair have proved abortive—your proposals cannot be listened to. Will you therefore as stipulated have the goodness to return me the memorandum I handed you, and believe me

very truly yours

JAMES E. SMALL.

The Hon. JAMES B. MACAULAY.

DEAR SIR,—

York, June 29, 1826.

I received your note of last evening, and it is wholly impossible for me to say what the actual damage to the materials may be, not knowing the quantity that has been thrown into the lake, and otherwise totally destroyed. I can only state that to which I can make affidavit at any time—namely, that a few minutes after the outrage, I visited the office, and it struck me then, and I am still of opinion, that the desperadoes made their best exertions, not to upset the types, &c. as stated by Mr. Carey, but to *destroy every thing in the most malicious manner*—as large quantities of types were dashed out of the windows upon flags underneath, and I hear, out of form, with their face downwards, which was sufficient to cause certain destruction and from this impression on my mind, and the destructive appearance which I saw on that evening, I would not, were I about to purchase, give more than something about the value of old type metal for all the letter in the wreck.

I remain

Yours respectfully,

FRANCIS COLLINS.

WILLIAM LYON MACKENZIE Esq.

JAMES LUMSDEN an apprentice in the office of the Colonial Advocate (formerly apprenticed to the king's printer, and messenger in the Commons House of Assembly) his voluntary testimony respecting certain matters which took place at the riot—(about 18 years of age.)

I went down the wharf to see the Martha Ogden steam-boat go out, William Doyle was with me, and my attention was drawn towards the office by observing three men come down to the wharf, each with a case of type in his hand which they threw into the lake—Mr. Richardson the barrister was one, Mr. C. Heward a law student with the Attorney General was another, the third I did not know. At the time this outrage was going on I saw Mr. Allan the magistrate, and Mr. Heward the clerk of the peace, talking together outside of Mr. Allan's gate, they were looking towards the office, and I believe they saw the persons throwing the type into the bay, and that Colonel Heward saw his son Charles the Attorney General's law student so employed—from the position in which I stood I have no doubt but that these functionaries were witnesses of this transaction, and they did not, to my knowledge, make any attempt to keep the peace on witnessing this outrage. When

I saw the types consigned to the bottom of the lake I ran up to the office, and met James Baxter at the corner who told me a number of men had broken up the office and were in destroying it. I stopt talking to him a while and at last they came out—I noticed young Sherwood he had a stick—Charles Heward, James King, John Lyons and S. P. Jarvis, the others I did not take particular notice of. Several had sticks—Mr. Mackenzie's mother was standing at the corner of the office and she was greatly agitated. When they came outside the gate, James Baxter my fellow apprentice said to me pretty loud, "What a shame it is!"—on which young Sherwood, son to the honourable judge of that name, turned round and threatened him—"If you say a word I'll knock you down." They then seperated.—The honourable James B. Macaulay was not visible at the moment the work was going on, but a few minutes afterwards I observed him, Mr. Allan, and Mr. Howard Senr. all talking together at Allan's gate outside; I did not see the Attorney General, only his clerks and friends.

(Signed) JAMES LUMSDEN.

York June 29th 1826.

P. S. On the very evening after the outrage I had the following conversation with F. Heward, son to the auditor general, and brother to him who threw the types into the lake.

Heward.—Well, what do you think of your office now?

Lumsden.—I think we will get justice yet.

Heward.—I believe there is very little justice to be got in this country.

Lumsden.—I think you are half right.

DANIEL BANCROFT, formerly apprentice to the king's printer, and afterwards in my office. C. French, B. Ferguson, and several other persons testified that at the time of the riot, the Advocate office was one of the best in the town or colony, as far as they knew.

WILLIAM DOYLE, son to Michael Doyle, York, aged about 15 years stated that he did not see the Attorney General or Mr. Executive Counsellor Macaulay either in or witnesses to the riot, but that "Major Allan and Colonel Heward were there, standing opposite Mr. Mackenzie's house at the corner of Major Allan's, but I cannot swear that they paid particular attention to this matter. *I think they could not help seeing the whole*, but I cannot swear to that effect as my attention was more particularly engaged by the mob."

(Signed) WILLIAM DOYLE.

York, June 29th 1826.

JAMES BAXTER then an apprentice in the Advocate office, aged 18 years: since removed to the office of the Upper Canada Herald.

His voluntary testimony, subscribed on the 29th of June 1826, is as follows:—

"I was present when certain persons on the night of the 8th inst. broke open the Advocate office by force, and destroyed that establishment.—I had locked the door not two minutes before and shut up the office—I saw a number of persons pass the parlour window, they had sticks, I saw them enter the court yard, I then went round to the back door of the office, and found the men busy breaking open the office door—a number of them came in with clubs or sticks in their hands, some had pieces of cordwood—I afterwards

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went and told Charles Hrench to run to Simpson's and alarm Mr. Ferguson the foreman. I then went to the front door of the office, and saw three men go down with cases and type towards the lake—Charles Heward was one—Charles Richardson was another—Henry Heward I think was the third, but I will not swear to his being the third. I then stood and looked at those who remained destroying the property. I saw them pull down the press, throwing types about—they made them fly in the air, and thro' our and Mr. Moore's garden, then Lumsden came up while they were yet in the office. Before he came up I told Mr. Murray to run for assistance which he did, but the house-breakers had effected their escape before he returned with help. Mr. Allan the police magistrate, stood at his door and looked on, while the young men from the Attorney General's office carried down the types and threw them into the lake—I am sure he could not help both seeing and hearing the outrage—I should think it might have been heard almost at the old parliament house—the iron press weighing about a ton and a half made a terrible noise in falling, as did the imposing stone. Allan never offered to stop the proceedings—after the types had been thrown into the bay, the auditor general came up and conversed with Allan at his gate—I did not run to them for assistance because I thought them but a poor refuge in such a case, they ought to have come and done their duty, or what was the use of them?—Mr. Allan appeared to me to recognize the rioters when they passed to the attorney general's office they looked towards him and he smiled as in return—some of the rioters went to the office of his majesty's attorney general and deposited their sticks and clubs there—James King ran up by the end of Allan's house with a large club in his hand—some went one way and some another.—Col. Heward the worshipful clerk of the peace was standing on the bank in front of the attorney general's office, walking backward and forward all the time. His son Charles (and I think Henry also) were running off with the types, which made a noise in the cases. He could not help seeing them, and the noise which the mob made in destroying the office he or any one standing where he was must have distinctly heard. I have no doubt in my mind but that he heard and saw the whole from first to last—except that he could not see the iron press fall &c. from his position.—I am perfectly satisfied that he saw his son running down with the types to the lake—he made no attempt to prevent the outrage—he gave no word of command &c --he did not interfere, but when all was over he joined Allan at Allan's door.—When the gang broke up the office and began tearing down the establishment I did not run to Allan but I called out aloud for assistance to W. Murray in Allan's hearing, loud enough for Allan or any body else at that distance to hear me if they were so inclined—I called to William Murray that they were tearing down the house, and requested him to go for assistance and he went, but returned too late.

York, June 29th 1826.

(Signed)

JAMES BAXTER.

My mother's testimony as to Mr. Allan's being present, is the same the others—she saw a man with a child in his arms, standing before Colonel Allan's door, but does not know that gentleman by sight—She saw the office destroyed, and being 78 years of age and in feeble health, was much frightened, and her health affected by it for a long time after.

JAMES MACKENZIE, (an apprentice) testified as follows:—"I was at tea in my grandmother's room up stairs and heard a great noise—I went down to the office where I saw Jarvis taking a chase to the front of the office, full of types—he threw them down out of the chase upon the stones, the quoins flew out and the type fell out, then two or three more scattered the over the yard, and Jarvis took the rules, bent them and threw them away—Afterwards Capt. Peter McDougall came out from the printing office and said, "I think we have done enough."—Three of them carried three cases and threw them

into the bay and I afterwards went and took out the empty cases---when the three were returning they met Capt. Peter who said "I think we have done enough harm"---they made a great noise upsetting the press.---Colonel Allan was standing at his gate with his child in his arms, smiling, he could not help seeing and hearing what was passing.---June 30th 1826.

(Signed)

JAMES MACKENZIE.

MR. ANDREW WILSON brother to the editor of the Geneva Palladium, then printer in the government office---stated as follows. I met the Hon. J. B. Macaulay coming up (as I supposed) from the scene of the outrage, immediately after the affair is said to have taken place---He was opposite Mr. John Monro's store when we passed each other, and was laughing immoderately all the way---he held his hands on his face as if to conceal his emotion---It excited my particular attention and I remarked to Bennet and young Kane who were with me, to observe how pleased he was.---I had heard of the outrage before.

MARGARET BAXTER, stated as follows :---"While I was in front of the house and the men carrying the boxes of type to the lake, I saw Colonel Allan standing outside of his own fence looking on at the outrage; he was looking at the men throwing the type into the lake as was Major Heward also---he was standing at a little distance from Colonel Allan while the men were carrying the types to the lake, and afterwards he joined Allan at the fence---I am sure they were looking on at the perpetrators of the outrage---I did not see them interfere to prevent the mischief that was doing---the men that were destroying the office were making a terrible noise which was heard at a great distance."

M. B. was then 13 years of age and upwards.

I intended to have summoned the ATTORNEY GENERAL, but was persuaded by my legal advisers not to do so.---He retained the delinquents in his office as his students---took care to know nothing of the circumstances of the riot---and I have never learnt that he found fault with " the official rendezvous," made use of on the occasion. A very short time after he had Charles Richardson made a barrister at law! and no doubt sent him to speak and act for him in the late public meetings of the inhabitants of this town.

HENRY WILLIAM PETERSON, printer, Markham, states as follows.---From a hasty view of the apartment (once the *Printing office*) of Mr. Wm. L. Mackenzie, I am of opinion that the *types* are worth but little more (if any thing) than *old type metal*: lying all that I have seen, in as complete *Pi* (or confusion) as I ever beheld in any office. Previous to the destruction of Mr. Mackenzie's office, I was once in it, and believe the apparatus was principally all new. In a word, the destruction of his office seems to be complete.

York, U. C. July 3d 1826.

H. W. PETERSON.

After obtaining all the information I possibly could, I sent down a statement of the whole to Mr. Bidwell at Kingston, and had summoned about 30 persons, besides 6 or 7 of whose presence I was assured if it should be found necessary.

THE SPECIAL JURY.

On the 9th of October the defendants having demanded a special jury, it was struck in our presence, and in the presence of Messrs Small and Macaulay our attorneys, at the deputy sheriff's office.

All persons in the district who are assessed at £200 and upwards are liable to serve, and their names having been cut upon slips of paper and

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rolled up, were thrown into the Sheriff's hat. Out of the first 40 drawn out after the hat had been shaken, sixteen jurors were selected--twelve of whom were to pass upon the case.

The defendants and plaintiff had each the power of striking out a name alternately from the forty drawn, and we struck off names in the following order :

Mr. Small for Mr. Mackenzie, Plaintiff, struck off,

- 1 Hon. William Allan.
- 2 Hon. Duncan Cameron.
- 3 Hon. George Brookshank.
- 4 Hon. Alexander Arbuthnot.
- 5 Mr. James Rogers.
- 6 " John Carey (Observer.)
- 7 Thomas Racey Esq.
- 8 John Gamble Esq.
- 9 W. Gamble Jr.
- 10 Mr. Isaac Webb.
- 11 " James Forsyth.
- 12 " Jacob Shunk.

Judge Macaulay for S. P. Jarvis and friends, defendants, struck off:

- 1 Mr. John Drummond.
- 2 " Geo. W. Post.
- 3 " Lardner Bostwick.
- 4 " Peter Mc'hail.
- 5 " Jordan Post Jr.
- 6 " Israel Ransom.
- 7 " John Burnhart.
- 8 " John Reesor.
- 9 " Samuel Snyder.
- 10 " Patrick McGan.
- 11 " William Arthurs.
- 12 " Daniel Brooke, Junior.

The remaining sixteen were summoned accordingly as Jurors by the Sheriff.

On the day of trial at the hour of eleven, only eleven special jurors were present.---Three names were then drawn from the petty jury list by consent, and after two had been struck off, the jury was sworn and consisted of

- Robert Rutherford Esq. of York. *Foreman.*
- Mr. James Hogg, of Milford Mills.
- " Ezra Annis, of Whitby.
- " David Boyer, of Markham.
- " David Annis, of Whitby.
- " Valentine Fisher, of Vaughan.
- " Robert Johnson, of Scarboro'.
- " Joseph Tomlinson, of Markham.
- " Peter S. cor, of Scarboro'.
- " Edward Wright of York.
- " Joel Beman, of Yonge-street, &
- " George Shaw, of York,---12.

On the bench as presiding judge sat Chief Justice Campbell, with the *a-fore said* Hon. William Allan and Alexander McDowell, Esq. as his associates. My counsel were Messrs. Bidwell, Stewart, and Small, and for the defendants stood Judges Macaulay and Hagerman.---The Attorney and the Solicitor General were both in court, and the latter was accidentally made an evidence on my behalf. The new court house was greatly crowded, and few trials in the colony have excited so much and so general an interest in the minds of the people.

As the trial has been copied into five or six of the provincial prints it is not necessary that I should do more than reprint some of the leading facts, in addition to the mass of testimony already given, and which if tried will, I am assured, be found incontrovertible.

MR. BIDWELL to whom I am under the highest obligations for his timely assistance, and for the discernment and prudence he manifested on this trying occasion, addressed the court and jury in a speech which was mentioned in terms of approbation by all who heard him, yea even by those who felt his reproof:---his language was mild, but his arguments were forcible, and

produced a deep effect upon the minds of the very intelligent and highly respectable special jury---I have room only for a brief extract.

"It is needless for me, gentlemen," said Mr. Bidwell, "to inform you, that this is a case of the highest importance---the very circumstance of your being called upon as a special jury to determine it, shows that the defendants were afraid to trust it to a petty jury---yet to them it is not a matter of the same importance that it is to the plaintiff---most of the defendants are men of independence---men of high connexions and ample means---but to the plaintiff it is a case of the most serious consideration---his business, his property, the very implements which were the means of supporting his family, have been destroyed---therefore, his all is at stake in the issue of this trial. This case, gentlemen, is of the first importance in another point of view, inasmuch as it is the first instance, in this province of an attempt by open violence to destroy a printing press, and it is to be hoped that your verdict will be such as to prevent a similar recurrence---let it be seen by your verdict, that the defendants, or any other set of men, are not to conspire together for the purpose of violating the laws of the land, without the risk of a heavy responsibility. A free press is considered, under our well-balanced government, as one of the main pillars of the constitution, the chief stay and constitutional guardian of the rights and privileges of the people---it has been considered as one of the greatest blessings under all well-regulated governments---we are all, therefore, concerned in such a case, and an attack upon the press must be to all a matter of more than ordinary interest. But in this case, not only has the freedom of the press and the majesty of the law been insulted with a high hand, but the greatest privilege of an Englishman, the privacy of his house, has been grossly violated---yes, his private house, where every British subject is protected by the strong arm of the law, free from assault and invasion, has been violated and property to a considerable amount destroyed. Are you not bound, gentlemen, in such a case to give exemplary damages, in order to show that no man, however high his rank, shall violate with impunity these sacred privileges? It is true the press, with all its blessings, is subject to some evil---as long as human nature and human passions exist, there must be some degree of alloy in every human blessing, some abuse, which is licentious, the law of the land is sufficient to restrain it; and if the defendants, in this case, felt any provocation in that way, the law was open to them---yet I will not admit, nor can they prove, that such has been the case. The law is so strict with regard to licentious publications, that editors of papers are liable to punishment, even to the infamous punishment of the pillory, although they may be able to prove that they never knew any thing of the publication. If, then, gentlemen, after such ample restraint by the law, you wish violent and illegal measures to be resorted to---if you wish the sacred privacy of the dwellings of our inhabitants to be daringly violated---if you wish to encourage the destruction of private property---or if you wish to ruin, not only the plaintiff, but his family, you will give your verdict for little damages; but if you feel, as men sitting there ought to feel, for the magnitude of this outrage---if you respect the rights of the subject and the liberty of the press---if you wish to guard against the recurrence of such disgraceful proceedings, by placing a salutary restraint upon all those who may be disposed to engage in them, you will stamp upon this transaction your highest disapprobation, by a verdict for ample damages. There is one circumstance, gentlemen, which is entitled to your particular consideration, namely, the character and standing in life of the defendants. If they were ignorant men, of strong passions unrestrained by education, and stimulated by provocation, there would be some apology for them; but when we consider that they move in the first circles of society, and with all the advantages of education, chose to resort to violence and mob-law, the strong arm of the law should be raised against them. Look also to the connexions of the defendants, and you will see how much

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they presumed on them, in this case. It is not my intention to endeavour to make an impression upon your feelings with a view to obtain special damages-- the damages are limited, and your verdict will be according to the dictates of your conscience: but is your duty to award damages in this case, not only for the losses sustained by the plaintiff, but for the insult offered to him by the violent attack upon his house, in the absence of himself and family."

[Here the learned gentleman quoted some English cases on this point, and proceeded.]

"I shall prove that this was one of the most insulting and outrageous acts ever committed in this colony. What, then is to prevent the repetition of such acts? Ample damages. I remember a case where an English jury gave £500 damages for knocking off a man's hat. Here is the example of an English jury and English law, where the rights and privileges of Englishmen are properly protected: and as you gentlemen, enjoy the like rights and privileges. I hope you will be equally disposed to protect them. But should you allow such an outrage as the wanton destruction of a printing apparatus, to go unpunished, you will not only bring down disgrace upon yourselves, but on the country at large---and your verdict, instead of putting a salutary restraint upon such illegal proceedings, will serve as a signal for general outrage against every printing press in the country."

The evidence produced had its full weight with the jury.--The rioters employed Mr. Hagerman to speak in their behalf but they called no witnesses--- they denounced the Colonial Advocates from first to last, especially the latter ones, as licentious and abusive, but they neither produced the files nor quoted the papers they disliked---they even condescended to beg for opinions of my apprentice boys, as to the character of the publication. The Solicitor General Mr. H. J. Boulton made one remark as an evidence which excited much merriment---he said that he "valued character much more than property and would rather that a person would rob him of a horse or other property than take away his character." Truly he need be under very little apprehension on that score---his character such as it is will not be very likely to cause an early infraction of the 10th commandment.

It was my earnest wish to have asked such questions of the witnesses as would have placed the conduct of Messrs. Allan and Heward in its true light, but I felt that in an action for civil damages it was best to be guided by counsel, and they uniformly assured me that such questions would be productive of evil to the suit, as Messrs. Allan and Heward were not among the defendants.

It was likewise asserted by Mr. Hagerman in his closing speech (not from any evidence adduced, but merely because he wished on false premises to give an unfair bias to the jury) that I had left York with the intention of wronging those to whom I was at that time indebted. Nothing could be more false, groundless, or calumnious, than such a charge. Had I anticipated such arguments I should have acted contrary to the advice of my counsel (who insisted that there had been enough of witnesses fully to prove my case) and brought forward Mr. Thorburn of Queenston, Mr. McBride M. P. and Mr. Tannahill of Niagara, Mr. Cawthra and Mr. Ketchum of York, and Mr. Cameron of Dundas, all of whom could and would have testified that in all the transactions in business in which they had known me engaged, I had evinced a determination to do right to those whom I owe---even at personal loss---and the five first named gentlemen who were well and intimately acquainted with my personal circumstances at the time the press was destroyed could and would have proved that I had done *all that man could do* to act justly towards every man to whom I owed a farthing.--- Yet I bore Mr. Hagerman's language with patience, for the time for evidence had passed away, my health had for three or four months been in the most precarious state, and such sickness in my family had depressed my spirits beyond any thing I had ever felt or endured before. All is now over, I have survived the storm, and can sit down quietly to narrate its devastations.

During the trial, which lasted two days I felt much anxiety, because great expenses had been incurred, and I know that if by any means a verdict should be delayed, or no verdict returned, the consequences would to me be ruinous in the extreme. I knew the materiel of the majority in the assembly too well to expect their interference; they fear a free press and that not without good reason---and as for the judiciary I believe I shall not trust my pen to describe, what had better never been.

The room in which the jurors were confined until they should agree on their verdict was newly plastered, the weather was raw and unpleasant, and as some of the jurors were for £2000, some for other sums from £1500 to £750, and one man "George Shaw" for £150, there was small prospect of an agreement. Shaw, as I afterwards learnt brought into the room with him cases in law which he read to his fellow jurors in order to convince them that I ought not to get the damages I had so clearly proved---but his logic was of no use---public opinion was strong and decided, and altho' I had not written one line for the press from the time of the riot until the day of the verdict, and altho' the jurors were nearly all perfect strangers to me they determined to struggle with cold, and fatigue, and even sickness rather than trample under foot the boasted justice of a British jury.---They stood it out in that cold room nearly 30 hours, some of them old grey headed men; three of them were sick, but they bore it with patience---one of them, Mr. Jacob Boyer, a respectable and worthy German felt himself very ill indeed, and Doctor McCague was sent for, who bled him and he recovered, and I stated his determination to lay his head upon his great coat and stop another day before he yielded against his reason; and the evidence he had heard. Shaw (as I am informed) at last gave in, and a verdict of \$2500 besides costs was awarded in my favour by Robert Rutherford Esq. their worthy foreman, and assented to by his fellows.---And here let me express a hope that no injury may ever befall that honest Irishman and his comrades, for having justly, faithfully, and courageously performed their duty to their country on a very trying occasion. That verdict re-established on a permanent footing the Advocate press, because it enabled me to perform my engagements without disposing of my real property, and altho' it has several times been my wish to retire from the active duties of the press into the quiet paths of private life, I have had a presentiment that I should yet be able to evince my gratitude to the country which in my utmost need rescued me from destruction and utter ruin.

In a short time the amount of the verdict was paid to Mr. Small by Mr. Macaulay, and faithfully paid over to me when received. The judges taxed the costs in such a manner as only to allow £5., 5. to Mr. Bidwell, and 2 guineas to my other counsel---altho' the action was unequalled in the annals of Canadian history. It is said they allowed Judge Hagerman £50, but of that I am not certain.

The grand jury in assize times usually consists of persons in favour with the local government without much regard being paid to their other qualifications---in proof of which *one of the rioters a Mr. Peter McDougall who can scarcely read or write, was chosen by the sheriff to sit as a grand juror at the last assizes*---and other equally inconsistent selections might be mentioned. Even Judge Campbell as I learnt found fault last October at seeing always the same faces in the Grand Jury box.

But be they what they may, they sent for me and I in reply to interrogations from their foreman, replied that I had no intention to prosecute the rioters criminally---that the verdict and costs (about \$3000) would come heavy on some of them, and probably operate as a caution for the future, while the loss of place and of a chance of early preferment, would be a timely warning to others.

Little was I aware that at this very moment Colonel Fitzgibbon, one of the magistrates of this colony was begging the amount of the verdict, and that Sir Peregrine Maitland was seeking how he could best reward loyal riot and

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put impertinent patriotism to the blush. I know all this now, and Canada and England too shall know it before I am done with the party.

It was a wonder to many that the Attorney General did not institute a prosecution of some kind or other, but there can be no doubt now that there was a party in the plot not then thought of.

A writer in the Kingston Herald explains my conduct very correctly as follows:

"The immediate charge of prosecuting for this as well as other offences against law belongs to the law officers of the Government. Mr. Mackenzie, the party injured, only brought his action to recover damages for the aggravated injury sustained by him. That was his proper concern; but he was not a prosecuting or informing officer. He had no more interest than any other individual in the punishment of the offence. He could not even be a witness to prove it, having been absent when it was committed. Nor did the public prosecutor, need any information from him, the riotous breach of the peace being public, and the witnesses well known. On this subject Mr. Mackenzie conducted with great propriety. He maintained his own cause, and in so doing defended the rights of his fellow-subjects; but he did not usurp the authority of the crown officers charged with and responsible for the execution of the laws for the punishment of crime and the preservation of the peace. If the Attorney General, knowing that his office was the place of rendezvous for the perpetrators of the most flagrant violation of law, that ever occurred in the Province, has indeed been their purse holder, to receive money subscribed for their relief, instead of prosecuting them by indictment, in the name of the King, for their wanton and notorious offence, what confidence can his majesty's subjects at large have in his impartiality, as the public prosecutor? I hope it will turn out that the *Freeman* was misinformed. Suppose the parties had been reversed, that the Printing Office destroyed had been the Government Press, and the rioters, persons politically opposed to the Attorney General. In such a case, would a high handed riot, committed in the face and eyes of the Government, have been suffered to pass unpunished, in evil example to others in like cases to offend, against the peace of our Lord the King, his crown and dignity? The answer may be found in the well known story of the Farmer and the Justice. It was his worship's bull that killed the Farmer's cow; and that alters the case."

The Attorney General was not the purse holder, he left that department to his Hon. colleague, Mr. Executive Counsellor Macaulay, and the only reasons I have ever heard adduced, against a criminal prosecution are taken from Judge Hagerman's speech in defence of the outrage.

"It is wondered that these gentlemen were not indicted for a riot. But the Attorney General would not do so, because if he had, it would immediately be said that it was done with intention to destroy their prospect of damages—so that it was difficult to know how to act."

GOVERNMENT SUBSCRIPTION PURSE.

Mr. Collins the editor of the *Freeman* continued from time to time to advert to the means by which it was reported that the rioters had got clear of the damages awarded against them, and in the end obtained an acknowledgment from Colonel Fitzgibbon which even his most sanguine expectation had hardly anticipated. We shall here give a few specimens of his arguments—

"*Outrage patronized and supported.*—We are informed upon good authority that the sum of £625, the amount of damages awarded by a special jury to the Proprietor of the Colonial Advocate for the destruction of his Printing-Office, has been raised by private subscription among what is called the ministerial party in this town, & that so cheerful & general were the contributions, that few even among the Conspirators themselves, were called upon to advance a larger sum than ten dollars! From

this circumstance, we anticipate, in a short time, the total suppression, by sub-law, of every free Press in Upper Canada; for, where is the corrupt tool of power, who would not contribute *ten, twenty, or thirty dollars*, to suppress a machine that is his chief terror, particularly when he can command by his single nod, the services of a set of bullies among his relatives and dependants? £625 are paid for the destruction of one free Press out of *three* in Upper Canada, by subscriptions at *ten dollars* each! therefore, it will only require two other salaries from the official "Press Gang," one in York, and the other in Kingston, at *ten dollars* each, to suppress every thing in the shape of a free Press in Upper Canada!!! With these facts before us, is it not wonderful that this system has not long since been acted upon, when nothing is so much to be dreaded by the Agents of corruption as a FREE PRESS? Were it not for a free Press, the ministerial party in the House of Assembly of this Colony, instead of a miserable minority of *ten*, would command a sweeping and overwhelming majority. Had such been the case, £3,000, in a service of plate, would long since have been laid on the table of Sir Peregrine Maitland, as was the case with Governor Gore, and another permanent *private service fund* of £2,500 a year, voted to grease the hands of old, faithful and *bidable* servants, all at the expense of the people of this Province—were it not for the Press, Judge Hagerman would be a Member of our Assembly, and would have voted to his friend the Attorney General *three thousand pounds* last year, for going to London, on Executive business, (as he did some two or three years ago, instead of the £555 that he received—where it not for the Press, the early American settlers, who tamed the rudeness of the forest, & made it blossom like the rose," would not only long since have been disfranchised and turned out of office, on the call of *Catharus*, to make room for himself and his friends, but probably robbed of their property, the reward of the toil and hardships of many years—were it not for the Press, gangs of official desperadoes, might range the streets of York, meditating vengeance against the persons and property of their fellow subjects, and *put their threats in execution*, without ever being presented by a Grand Jury, or indicted by a Crown Officer—were it not, in fact, for the Press, a few agents of power might sit in secret conclave, form schemes for their own aggrandizement, and the oppression of their fellow subjects, and put their plans into practice, to the ruin of the Country, without the people being able to know from whom or whence originated their misfortunes. Is there, then, a hungry fawning expectant about the halls of power—is there a sleek aspiring incumbent of office who would grudge to pay the paltry sum of *thirty dollars*, to get rid of such an incumbrance? We believe not.—But should the desperadoes choose to economise, by coming an hour or two later, with a little lampblack on their faces, to save the *thirty dollars*; what remedy is there to be obtained in *Little York*; where the sum of £625 can be raised in a few hours among the natural Conservators of the peace, at *ten dollars* each, (except a few heads of departments, who are said to have contributed one hundred dollars each) to defray the expense of a flagrant noon-day outrage?

Such remarks as these, added to a hint that Sir P. Maitland's name was at the head of the subscribers list, produced from Colonel Fitzgibbon the following very remarkable avowal.

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To the Editor of the Canadian Freeman.

York, June 1, 1837.

Sir,

In your paper of yesterday you make allusion to me and say that his Excellency's name was at the head of a list carried about by me in order to indemnify the rioters and pay the £225 awarded against them by the jury.

My conduct upon that occasion was dictated by a sense of duty, and I have not a wish for the concealment of any single step I took in the accomplishment of the object I had in view, and which originated entirely and spontaneously with myself.

My only object in publicly noticing your assertion is to state that as respects his excellency the lieutenant governor there is no truth at all in it. I know that his excellency never contributed a shilling either directly or indirectly towards the fund you allude to, nor, have I a single reason to suppose that his excellency ever heard a syllable of such contribution.

I do not make this declaration to defend the character of the lieutenant governor from the aspersions of a *public calumniator*, because as far as regards his excellency it would be superfluous for me to do so; but being alluded to by you, and best knowing the circumstances of the transaction you have misrepresented, I deem it my duty to give a public contradiction to your statement. For there are many honest well meaning persons, little acquainted with the bold confidence with which falsehood is now so frequently put forward as fact, who must naturally believe that such statements cannot be so much at variance with the truth as they actually are. Especially as the fabricators of those calumnies so ingeniously mix up fact and falsehood as easily to deceive the inexperienced reader. *Thus upon the well known fact that I interested myself to obtain assistance for individuals about to suffer for conduct which I considered as the inevitable result of the wickedness of others, is built up the falsehood I have now exposed.* I have no doubt in my own mind but that you fabricated this falsehood---it may be however that I am mistaken, and I shall readily admit that I am mistaken, if you will publish the name of any respectable person as your author.

I request you to let me know by the bearer if you will publish this letter in the next number of your paper. I am, Sir,

Your obedient servant,

JAMES FITZGIBBON.

When Colonel Fitzgibbon had thus confessed his partnership in guilt, he lay at the mercy of the editor he had insulted, who thus disposed of him—

“We ask the impartial reader, did ever an official man commit himself in such a way? did ever a loyal sycophant so incautiously betray his own secrets and expose his own depravity? Colonel Fitzgibbon, Deputy-Adjutant-General, one of his excellency's suite, a magistrate of the Home district, publicly asserts in the face of an insulted community---in the face of a verdict from an intelligent jury---in the face of law and justice---that his “conduct,” in privately sneaking about among the York officials with a subscription list to defray the expenses of a daring outrage---“*was dictated by a sense of duty!*” and that the illegal and infamous conduct of the destroyers of Mr Mackenzie's property was “*the inevitable result of the wickedness of others!!*”---Good and merciful heavens! was there ever such doctrine preached up by a British magistrate, the dispenser of law and sworn conservator of the public peace!---that because a little scurrility is published in a newspaper, “*the inevitable result*” is that the house must be illegally and forcibly entered and the property destroyed, no matter whether the owner or his creditors suffer by it!---and that it is the “*duty*” of a magistrate, instead of preventing the outrage, to counteract the intention of the law by “*spontaneously*” collecting money to keep the rioters indemnified.”

“And, we must say, that in the above letter he makes an avowal that will for ever damn him in the eyes of every honest man; for, either the highly res-

pectable jury who sat on Mackenzie's case, and after a patient hearing of the evidence returned a verdict against the rioters for £825, have presumed themselves, by fixing men who ought to stand in commendation, or Col. Fitzgibbon's conduct as a magistrate, in endeavouring to shield them from the verdict was infamous--there is no alternative. But the Colonel says the outrage was "the inevitable result of the wickedness of others;" that is, that Mr. Mackenzie called the rioters or their friends bad names in his paper, and that the destruction of his printing office was consequently altogether unavoidable on the part of the official mob."

"Again taking the Colonel upon his own principles he says his "conduct upon that occasion was dictated by a sense of duty, and he has not a wish for the concealment of any single step he took in the accomplishment of the object he had in view which originated entirely and spontaneously with himself;"-- If, then, it be a thing of which the Colonel feels proud to avow himself the sole and spontaneous origin--if it be no disgrace for a Colonel of the militia, a Deputy-Adjutant-General, and a Justice of the Peace, to subscribe himself and beg from others, money to defeat the ends of justice, and keep in commendation a band of convicted rioters, why should he call it "public calumny," to hint that his excellency had his name at the head of the list? If it be a good and honorable thing, why not give his excellency a share in the honour? If disgraceful why "spontaneously" avowed by the Colonel?"

"With respect to his excellency not knowing any thing of the list, nor contributing to it we are happy to see his excellency's innocence established by the evidence of a man without whose knowledge it would seem that it is wholly impossible for his excellency to do any thing! for, we view that measure, flowing "spontaneously" as it did from the fountain of official corruption, to be the most unjustifiable, the most infamous, and the most assassin-like attempt to stab the rights of the people, that has ever occurred in this colony--a measure which puts the laws and the constitution at defiance, and renders tried by jury a mere mockery--a measure which strikes at the foundation of civilized society and places a private man on a level with the savage--a measure which leaves the weak at the mercy of the strong--and, finally, a measure which encourages the grossest of the human passions by offering to the malicious and vindictive heart the richest, most alluring, and most direct premium for villainy and outrage--*intimidation in his guilt!* Where, we ask, is the official petty tyrant, that fancies to himself that he has received provocation by "the wickedness of others," who will restrain his arm, when he has such tools as James Fitzgibbon, the successful pander to official depravity, to sneak privately about from office to office, and beg for him an intimidation from the verdict of an honest jury of the country--and, when the outrage is too daring to be done for by the poverty-struck officials of little York, to apply by letter to the brethren in the remotest parts of the Province? But now that the agent in this foul conspiracy to defeat the ends of justice, has boldly avowed the fact--we hope the house of assembly--the natural guardians of the people's rights--will do their duty--that they will probe the affair to the very bottom--and that they will let our "spontaneous calumniator" know, that the person who publicly avows that his interference to counteract the intention of the law, and defeat the ends of justice, was "dictated by a sense of duty!" is not a fit person to fill an office in legislative halls--and that they will "purge" their house, (as Dr. Buchanan says) from such impurity."

CAPT. LYONS.

I had discovered on several occasions that General Maitland is extremely uneasy under personal attacks upon his character, and when I had allowed weeks to elapse without perceiving in the official paper of the province the least notice of the riot, and learnt that all the delinquents remained in place, I soon saw thro' the plan of the ministry. His excellency was to appear ignorant of

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this notorious riot, leaving it to the trio (Hillier, Robinson, and Macaulay) to get out of the scrape as easily as they could. I found that his excellency was to make one of his pilgrimages between Queenston and York by the Frontenac steamboat, and I judged he would call at the post office in passing. I prepared a selection from the York, Rochester, Kingston, and Washington newspapers, in several of which Sir Peregrine got the credit of chief instigator of the press riot, and enclosed them in a blank cover along with a letter from Mr. Gourlay to J. B. Robinson, containing sundry suitable admonitions: & directed them "care of Sir P. Maitland, on his way to York." This package I sealed and sent to the post office: the clerk delivered it to his servant. In the steamboat he had time to look over his despatches, and the result was the dismissal of Capt. Lyons from his confidential situation in his office, and a brief notice of the riot in next Saturday's Gazette. This was all forced work however, and Capt. Lyons was soon reinstated in the very responsible and lucrative post of Register of the Niagara district, vacant by the death of Judge Powell's son, and is now a barrister in the higher courts of our immaculate judiciary. From one end of this continent to the other, the press cried shame on the press riot, but in Canada it cried in vain.--Such services as the rioters performed are not often soon forgot.--Even Colonel Fitzgibbon met his reward in an appointment to the head clerkship of the assembly of Upper Canada--but there will probably be an *if* or two before installation.

During the time my press was dormant, an anonymous writer in the Lewiston paper (and whom I ascertained beyond a doubt to be that same sycophantic tool who told so many untruths on Mr. Gourlay and who now writes black-guard nonsense by the sheet as Watkin Miller) was prevailed upon by the Maitlands to undertake their case for a consideration. Don Quixotte and his blue stocking termed their joint effort, "A Subscriber,"--and meanly attempted to dive into my personal affairs, and to do me harm with the public at a time when I could not reply--I despised them for this conduct and shall despise them to the end of the chapter--but as "Blue" is intimate at head quarters the following extract is important, being joined with Lyons's late elevation to the Registership.

"In dismissing from his office a young man to whom he is said to have been much attached, the Lieutenant Governor certainly acted with sternness of justice worthy his high character and situation and gave a convincing proof (if proof was wanting) of his zeal in the support of the laws and of that order which is necessary for the well being of society."

[From the Brockville Recorder.]

Freedom of the Press.—It is a position generally laid down by the un-biassed advocates of the British Constitution, that the Freedom of the Press is the great bulwark of the much boasted liberty of Britons. In this there is much reason for in what country is liberty exercised in a more extensive degree? and where has refinement and prosperity risen to a greater height than where the benign influence of a free and unshackled Press has found its way? Yet it has met with severe and determined opposition from aspiring demagogues, and those heartless and unprincipled men who can sit themselves down in the midst of the ruins of their country, if they can but obtain a share of her spoil and fatten on her degradation. That such men should be found, is, to every true patriot, a matter of regret: but that there are such, almost every age and country can furnish us with examples. It is not therefore a matter of surprise that our Capital should nourish in her bosom a party of men capable of assailing the most vital interests of our country, and make an effort to put down by physical force, any person who should have the firmness and temerity to hold up to the view the base and underhanded measures

practised for self aggrandizement, reckless of the fate of posterity or the feelings of the virtuous and patriotic. That such men should be found, is indeed not so much a matter of surprise ; but that they should be countenanced and supported in one of the most daring outrages ever committed on the Liberty of the Press in this province, by men whose situations in life and connection with the government of the province should lead them to visit with the most marked indignation every violation of the laws of our country, must be to every man of probity and justice, a matter of surprise and regret."

"It is stated in a public paper as coming from good authority, that the amount of damages given by a special Jury for the destruction of the private property of an individual has been raised by private subscription among the ministerial party in the Town of York, and that so general were the contributions, that few even among the perpetrators of the outrage, were under the necessity of paying above ten dollars. If this be true, where will we look for justice and protection, when for a trifling sum from those individuals whose conduct may be opposed to the free exercise of personal rights, a subject of His Majesty may have his property destroyed in the face of day, himself thrown out of employment, and his family exposed to poverty and insult. If such things be countenanced by the opulent and powerful among us, what may we not expect from the free exercise of mob law by those moving in an inferior station, and who among us will be safe, if, following the example set in the capital of our province, our neighbours who are not under the influence of moral restraint should conduct themselves on a similar principle?"

Speaking of myself, the editor continues—"His conduct is to be judged of by those who feel aggrieved by his publications, whether true or false, whether expedient, or inexpedient, who in the plenitude of their personal powers, and in the confidence of their high standing and connections, bid defiance to all laws. To crown this, and fix a lasting stigma upon the province, what is next done? A sum is awarded by a Special Jury barely sufficient to cover personal losses, which, as we should construe the laws was meant to operate as a salutary lesson; but in lieu of this, the check designed to be put upon such conduct is destroyed, by the very persons most interested in enforcing it, and who should express the utmost abhorrence at every attempt to render nugatory its effects."

Is such a state of things to be tolerated in the Capital of a British Province, and under the eyes of His Majesty's Representative?"

END OF THE SECOND PART.



