

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/
Couverture de couleur
- Covers damaged/
Couverture endommagée
- Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée
- Cover title missing/
Le titre de couverture manque
- Coloured maps/
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur
- Bound with other material/
Relié avec d'autres documents
- Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- Coloured pages/
Pages de couleur
- Pages damaged/
Pages endommagées
- Pages restored and/or laminated/
Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées
- Pages detached/
Pages détachées
- Showthrough/
Transparence
- Quality of print varies/
Qualité inégale de l'impression
- Includes supplementary material/
Comprend du matériel supplémentaire
- Only edition available/
Seule édition disponible
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

Additional comments:/
Commentaires supplémentaires:
Docket title is bound as last page but filmed as first page on fiche.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

	10X		14X		18X		22X		26X		30X
	12X		16X		20X		24X		28X		32X

Memorial

PRESENTED

TO HIS ROYAL HIGHNESS

THE PRINCE REGENT

in Council,

BY

THOMAS EARL OF SELKIRK.



OCT 6 1932

**To His Royal Highness the PRINCE REGENT
in Council.**

The MEMORIAL of THOMAS EARL OF SELKIRK,

SHEWETH,

THAT, in the month of September, 1818, a bill of indictment was preferred against your Memorialist, at Sandwich, in the Western district of Upper Canada, for a conspiracy to destroy the trade of certain fur-traders calling themselves the North-West Company of Montreal.

That, when the said bill was before the Grand Jury, the Attorney-General of the Province claimed a right to attend them in their private room, and to examine the witnesses for the prosecution.

That your Memorialist appealed to the Court against this proceeding, which appeared to him highly irregular—(and the more so as he knew the Attorney-General held, shortly before, and most probably at the very moment, a general professional retainer for the said fur-traders) but the Chief-Justice declared from the Bench, that the Attorney-General, as a law officer of the Crown, had a right to examine the witnesses before the Grand Jury, and that such was the practice in England.

That in consequence of this declaration,—the accuracy of which your Memorialist took the liberty of contradicting in Court,—the Grand Jury was induced to permit the Attorney-General to attend them three days successively, for the purpose of marshalling and examining his witnesses,—all of whom were partners, clerks, or hired servants of the said fur-traders, or otherwise paid by, or dependent upon them. That, after the Attorney-General had finished this examination, the Grand Jury continued two days more in deliberating upon the said bill, during which time they called in other evidence, and also again questioned several of the same witnesses who had already appeared before them. That on the morning of the sixth day, when it was generally believed (from the purport of several questions publicly put by the foreman to the Chief-Justice, and from other circumstances) that the bill against your Memorialist would be immediately thrown out, the Chief-Justice,—without calling before him the Grand Jury (who were sitting in the adjoining room) or inquiring of them if they had any presentment to make, and without permitting them to fulfil the duties required of them, or regularly discharging them from their legal functions, unexpectedly and suddenly broke up the Court, thereby improperly interrupting, and putting a total stop to, the proceedings of the Grand Jury.

That upon the Chief-Justice thus breaking up the Court, the Attorney-General immediately went into the room where the Grand Jury were sitting, and carried off the bill of indictment upon which they were then legally summoned and sworn to deliberate.

That your Memorialist humbly conceives the Chief-Justice of Upper Canada, in thus abruptly breaking up the Court, acted in a manner highly unbecoming as a Judge, and most improperly and unjustly towards your Memorialist;—and particularly so as he was not called away by any other judicial engagement, having himself appointed the Assizes, then held at Sandwich, to be the last in rotation upon that Circuit, expressly and avowedly in order that no other business might interfere with, or interrupt, the necessary proceedings to be then held at that place.

That, after this failure on the part of the Attorney-General, and the North-West Company, to procure a true bill for the alleged conspiracy, your Memorialist did not suppose that any prosecution of a similar description would be again contemplated against him; and he therefore permitted his witnesses (who, in consequence of numerous vexatious proceedings instituted by the said Company, had been long detained by him in Canada at a heavy expense) to go back into the interior, or otherwise to disperse, upon their own concerns,—and that shortly afterwards, your Memorialist himself returned to England.

That soon after his return, however, he received information that in order to give another chance, and to afford a better opportunity, of having an indictment found against your Memorialist in some other district, a bill was brought into the Legislature of Upper Canada which it was expected would produce that result. It was introduced into the House of Assembly at the very commencement of the Session (held in October last) and passed through that House with unusual rapidity, without waiting for the arrival of the Members who represented the distant districts of the Province (peculiarly interested in the question), and who, as it was generally understood, would have opposed the bill.

That the bill, having passed the House of Assembly, was immediately sent up to the Legislative Council, where, in order to prevent it having a retrospective effect (which it bore as originally framed) an amendment,—leaving out the word “heretofore” before the word “committed”—was moved and carried, notwithstanding the opposition of the Chief-Justice,—under whose auspices the bill had been originally introduced.—The bill so amended was then taken back to the House of Assembly and passed;—after which it received the assent of the Provincial Government.

That by the said Act (a Copy of which accompanies this Memorial) a most unusual and dangerous power is given to the Law Officers of the Crown in Upper Canada, of removing, at pleasure, the trial of alleged offences to a distance of many hundred miles from the district Courts before which they were regu-

larly and constitutionally cognizable, and of dragging accused persons to the most remote parts of the Province, where juries, not of their own districts, may be packed for the purpose of convicting them, and where the prisoners, owing to the great distance, and expense of conveyance, may be unable to bring with them any witnesses to prove their innocence, or obtain counsel to assist them in their defence.

That in the said Act no reason is given for the alteration thus made in the established law and judicature of Upper Canada, unless, indeed, the vague words appearing in the preamble,—namely, “*that it might be inconvenient*”—(to try offences in the Courts where they ought to be tried)—can be deemed a reason for such an extraordinary and unconstitutional innovation.

Your Memorialist submits that not only is this Act in itself highly unjust, and contrary to every principle of the law of England,—which is the recognized law of Upper Canada,—but that, in spite of the amendment made upon it for the purpose of preventing it having the effect of an *ex post facto* enactment, the Chief-Justice of the Province, and the Attorney-General, have thought fit to interpret and act upon it as having a retrospective effect: that as they could not succeed in their endeavours to obtain, from the Grand Jury in the Western District, a true bill against your Memorialist for the alleged conspiracy, another bill, immediately after the passing of this new Act, was preferred against him on the same charge, and supported by the very same witnesses, before a Grand Jury of the Home District, and for offences alleged to have been committed no less than two years before the passing of the said Act.

That the Grand Jury at York, before whom this second bill of indictment was preferred, were prevailed upon, at the instance and upon the opinion of the said Attorney-General, to admit into their private room the principal agent and partner of the North-West Company, for the purpose of assisting as interpreter, and examiner of the witnesses, most of whom spoke a language not understood by the jurors, in consequence of which improper and irregular proceedings, the bill has been found against your Memorialist, and nineteen other persons, most of whose names have been inserted in the indictment evidently for no other purpose than to prevent them being called as witnesses in your Memorialist's defence.

That your Memorialist further submits that Fort William, a trading post occupied by the said North-West Company, and the place where the alleged offences charged against him are stated to have been committed, is not situated within the jurisdiction of the Courts of Upper Canada, as settled by the Act of Parliament (14 George III. c. 83,) which defines the boundary of that Province, and therefore that these charges cannot be legally brought to trial in any Court of Upper Canada.



That the Chief-Justice of Upper Canada, in defiance of the Act of Parliament which declares the Western boundary of Canada, to be a line drawn Northward from the point of junction of the Rivers Ohio and Mississippi, and in opposition to the unanimous decision of the Court at Quebec, asserts that the Western District of Upper Canada extends Westward to an indefinite distance. That in consequence of this extraordinary doctrine your Memorialist is apprehensive that, under the provisions of this new Provincial Act, the Chief-Justice will not hesitate to issue bench warrants for the purpose of arresting several persons now resident at the Red River Settlement, and that, if such warrants be submitted to, or enforced, he will bring away the accused parties to a distance of two thousand miles, without their having any opportunity of carrying witnesses along with them, or the means of obtaining an impartial jury, or a fair trial. Your Memorialist ought also to observe, that as the settlers at Red River have obtained the opinions of several of the most eminent Counsel in England that the Red River cannot be considered as situated in Canada, it is not unlikely that warrants issued (under the new Act) for the apprehension of any of the settlers at that place, will be forcibly, and, as your Memorialist conceives, lawfully, resisted.

That your Memorialist further submits that as the provincial enactment above mentioned, is of an unusual and extraordinary nature, your Memorialist conceives it ought to have contained a clause suspending its operation till the pleasure of Your Royal Highness should have been known;—that in consequence of the omission of such a clause, and the opportunity thereby allowed for the bill to be immediately acted upon, your Memorialist has sustained grievous prejudice:—that although the bill in question was passed in the month of November last, it appears that no copy thereof (as directed by the Act of 31 George III. c. 31,) has yet been transmitted to this country, by which omission a farther opportunity has been afforded of carrying the same into effect, before Your Royal Highness could have an opportunity of exercising Your constitutional Prerogative therein, and of determining whether the Act ought or ought not to be allowed.

Your Memorialist therefore humbly prays that Your Royal Highness in Council will take the said Provincial Act into consideration, and that notice may be given to your Memorialist, in order that he be heard by his Counsel thereon, for the purpose of having the said Act disallowed.

SELKIRK.

London, 23rd August, 1819.

(UPPER CANADA.)

An Act to authorise the inquiry and trial of crimes and offences committed within this Province without the limits of any described township or county to be had in any district thereof.

Whereas by an Act passed in the thirty-eighth year of His Majesty's reign, entitled "An Act for the better Division of this Province" large tracts of country are comprehended in the several districts of this Province which are not within the limits of any township or county therein: And whereas, crimes and offences have been committed and may hereafter be committed in such tracts of country, which it might be inconvenient to try in the particular district wherein the same may have been committed—Be it therefore enacted by the King'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, entitled "An Act to repeal certain parts of "An Act passed in the fourteenth year of His Majesty's reign, entitled An Act for "making more effectual Provision for the Government 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 crimes and offences committed in any of the said tracts of country or parts of this Province, not being within the limits of any described county or township, may be inquired of and tried within any district of this Province, and may and shall be laid and charged to have been committed within the jurisdiction of the Court which shall try the same, and such Court may and shall proceed thereon to trial, judgment, and execution, or other punishment for such crime or offence, in the same manner as if such crime or offence had been really committed within the district where such trial may be had, any law or custom to the contrary notwithstanding.

Provided always, that when and so soon as any new county or counties, township or townships, shall be laid out, described, and established in any of the tracts of Territory aforesaid, and shall be so declared by Law or by Proclamation under the Hand and Seal of the Governor, or Lieutenant-Governor, or Person administering the Government of this Province for the time being, by and with the advice and consent of His Majesty's Executive Council, all crimes and offences committed within the limits of any such new county or counties, township or townships, shall be inquired of, and tried in the district or districts wherein such new county or counties, township or townships shall be respectively comprehended, in like manner as such crimes or offences would have been inquired of and tried if this present Act had not been made or passed.

Commons House of Assembly, 21st of October, 1818,

(Signed) ALLAN MACLEAN, Speaker.

Passed the Legislative Council, 23rd of October, 1818.

(Signed) WILLIAM DUMMER POWELL, Speaker.

Assent to this Bill in His Majesty's Name,

(Signed) P. MAITLAND, Lieutenant-Governor.

27th November, 1818.