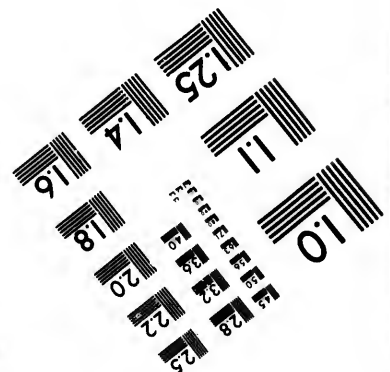
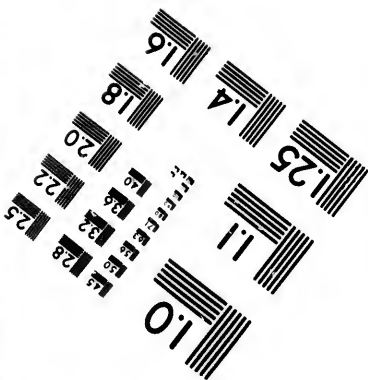
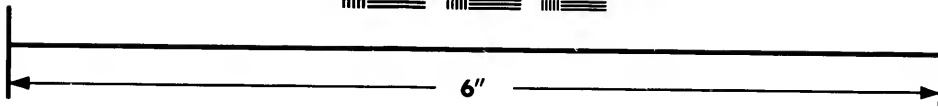
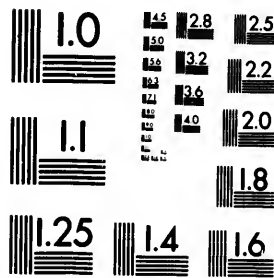


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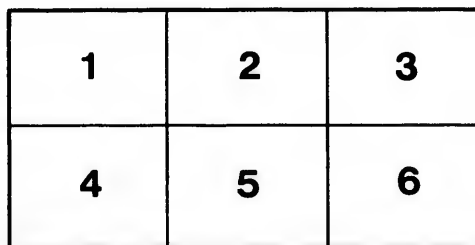
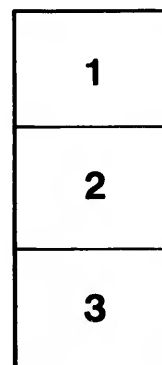
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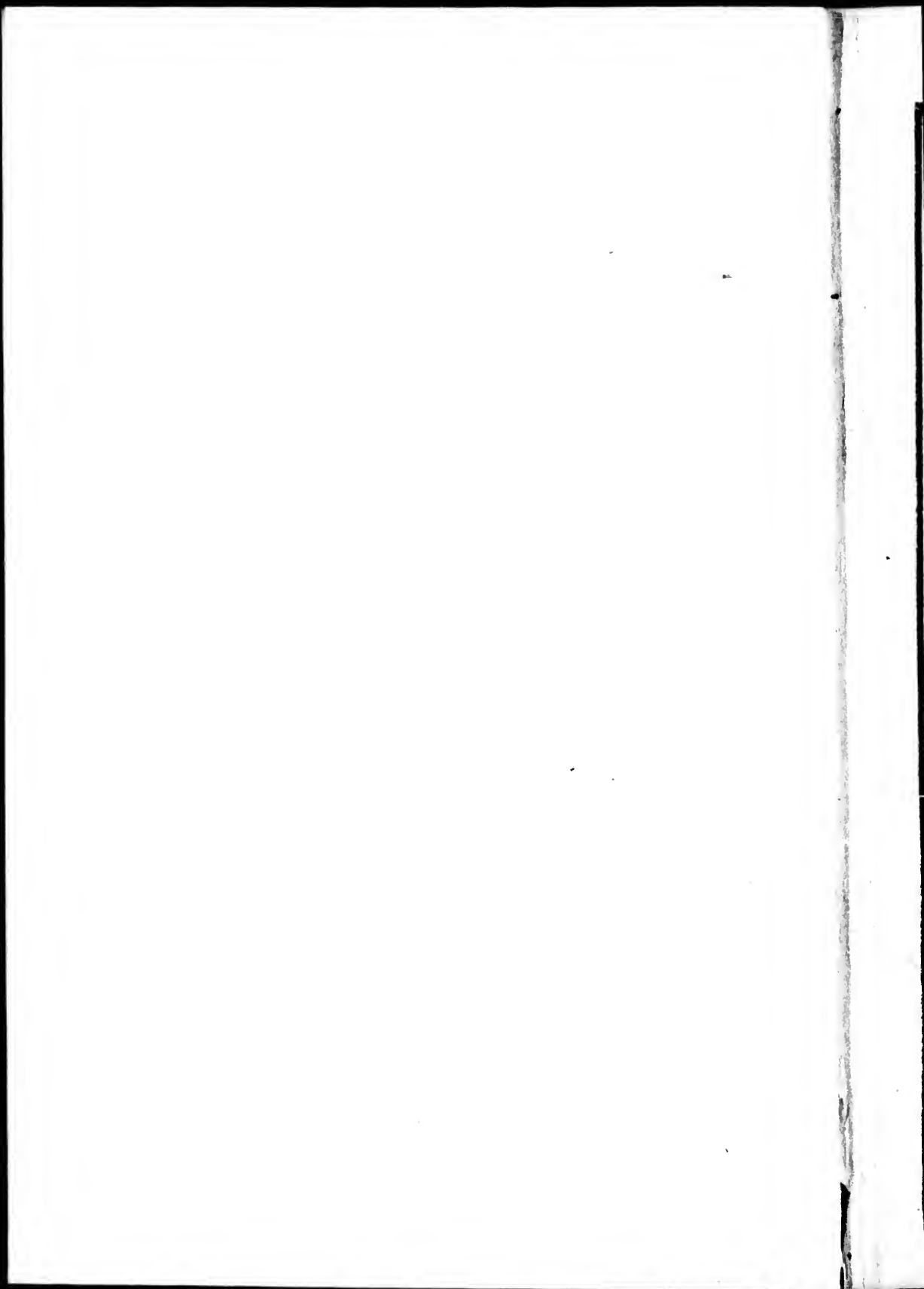
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MESSAGE

FROM

His Excellency Sir Francis Bond Head,

LIEUTENANT GOVERNOR OF UPPER CANADA

IN ANSWER TO THE ADDRESS

OF THE

HOUSE OF ASSEMBLY,

OF THE 5th FEBRUARY, 1836.

WITH

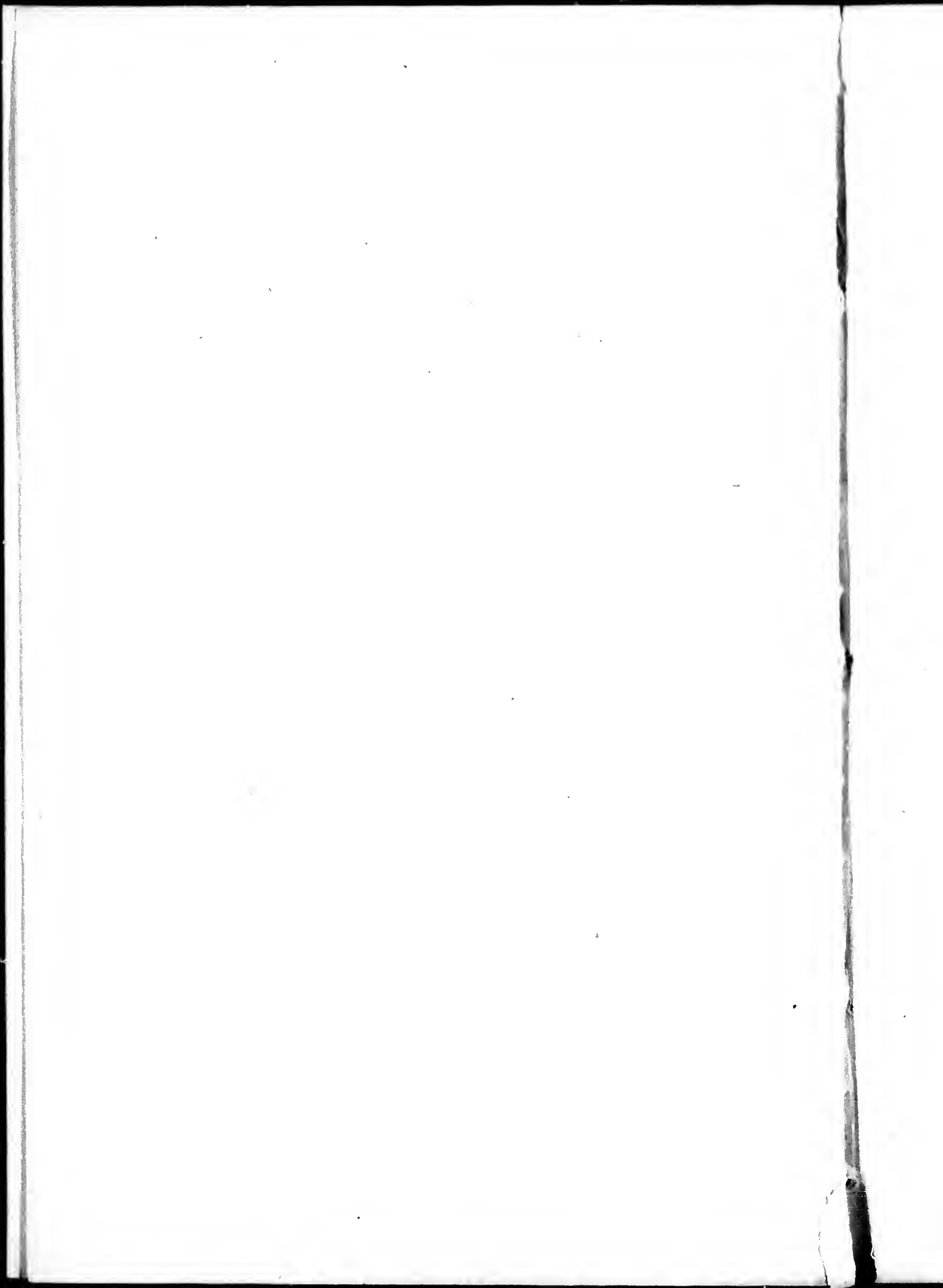
SUNDRY DOCUMENTS,

REQUESTED BY THE

House in said Address.

Ordered by the House of Assembly to be printed

—◆—
1836.



MESSAGE

FROM

His Excellency Sir Francis Bond Head,

LIEUTENANT GOVERNOR OF UPPER CANADA :

IN ANSWER TO THE ADDRESS

OF THE

HOUSE OF ASSEMBLY,

OF THE 5th FEBRUARY, 1836,

WITH

SUNDRY DOCUMENTS,

REQUESTED BY THE

House in said Address.

Ordered by the House of Assembly to be printed.

TORONTO:

M. REYNOLDS.



1836.

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MESSAGE.

F. B. HEAD,

The Lieutenant Governor transmits to the House of Assembly, the following answer to its address of the 5th instant :

It appears to the Lieutenant Governor that this address contains, 1st. A statement of the opinions of the House on various subjects of high importance to this Province.

Items contained in address.

2nd. A request that the Lieutenant Governor should himself give the House certain explanations.

3rd. A request that the Lieutenant Governor should transmit to the House copies of certain documents and despatches which are mentioned.

The Lieutenant Governor assures the House of Assembly, that every opinion stated in their address, shall receive his attentive and deliberate consideration.

His Exc'y will attentively consider.

With respect to the explanations, as also the copies of the documents and despatches which the House of Assembly has requested from the Lieutenant Governor, he will now proceed to consider these subjects, seriatim, in the order in which they appear in the address.

1st. The Lieutenant Governor transmits herewith to the House of Assembly, according to its request "a copy of the cor-

Certain correspondence sent as desir'd

“ response desired to be obtained by
 “ our address to His Excellency Sir John
 “ Colborne, dated the 19th of January,
 “ 1835, relative to the removal of the late
 “ Attorney General and Solicitor Gener-
 “ al, the appointment of the present At-
 “ torney General, and the re-appointment
 “ of the Solicitor General.”

Another despatch
 in Gov. Office but
 may not be sent.

The Lieutenant Governor informs the House of Assembly, that there also exists in the Government office, one other despatch on the above subjects marked “ confidential” and which he withholds from the House, because it is not even left to his discretion to impart it.

Lt. Gov. explains.

The Lieutenant Governor, however, briefly explains to the House of Assembly, that Lord Goderich’s order of the 8th of March, 1833, for the retirement of the Solicitor General, was subsequently reversed by His Majesty’s government, in consequence of exculpatory explanations which that officer made during his visit to England.

Retirement of So-
 licitor General sub-
 sequently reversed.

Correspondence on
 expulsions transmit-
 ted.

2nd. The Lieutenant Governor transmits herewith to the House of Assembly, according to its request “ a copy of the
 “ correspondence concerning the several
 “ expulsions of a member of this House, in
 “ the last Parliament.”

Certain apparent
 contradictions requi-
 red to be explained.

3rd. The House of Assembly request copies of any despatches, “ that would
 “ serve to explain to this House, the appar-
 “ ent contradictions between the Royal in-
 “ structions, relative to the dismissal or re-
 “ signation of public officers, when they
 “ cease to give a conscientious support

" to the measures of the Government, and
 " the continuance in office of persons
 " composing the Executive Council, and
 " legal advisers of the Government, not-
 " withstanding their opposition to many
 " urgent and beneficial measures of re-
 " form so often and loudly called for by a
 " large majority of the people of the Col-
 " ony, and recommended by the Earl of
 " Ripon, as set forth in his despatch of
 " the 8th November, 1832, which opposi-
 " tion and utter contempt of the wishes of
 " the people, and the recommendation of
 " His Majesty's Government as aforesaid,
 " will most strikingly appear by reference
 " to the Journals, in regard to the pro-
 " ceedings had on the said despatch, which
 " was sent down to both Houses by His
 " Excellency Sir John Colborne, in compli-
 " ance with the instruction of the Earl of
 " Ripon, to make it public in Canada; by
 " which reference it will most distinctly ap-
 " pear, that the above description of per-
 " sons have not only opposed the carrying
 " into effect the said recommendation, but
 " offered the greatest indignity to His Ma-
 " jesty and his ministers, by voting to send
 " the said despatch back to His Excellen-
 " cy, in opposition to a motion for printing
 " and publishing it; and on another oc-
 " casion, opposed and prevented the pas-
 " sage of an address of thanks to his Ma-
 " jesty for his prompt attention, display-
 " ed in said despatch, to the wishes and
 " interests of the people of the colony,
 " by moving another address in amendment
 " of a censurable character upon his Ma-
 " jesty's minister, for writing and trans-
 " mitting the said despatch; which address

“ was afterwards presented to his Excellency, as the address of the House, although never carried through its several stages.”

No despatches affording explanation desired.

In reply to the above request, the Lieutenant Governor informs the House of Assembly, that no despatches exist in the Government office, affording the explanation desired.

The Lt. Gov. transmits lists of the Ex. C'l and of the legal advisers of the Gov. &c. &c.

4th. The Lieutenant Governor transmits herewith to the House of Assembly, according to its request “ a statement of the several persons who compose your Excellency's Executive Council and of Your legal advisers, with the dates of their appointments, and at which they were severally sworn into office.”

The House requests further information respecting these officers.

5th. The House of Assembly requests, “ that Your Excellency will please to inform this House, whether it is considered that their appointments and continuance in office are in strict conformity with the spirit of the Royal instructions, and that they are taken from among that class of His Majesty's subjects who have given a conscientious support to those measures of the Government, which are enumerated in the despatch of the Earl of Ripon, as aforesaid.”

The appointment of the Ex. C'l and C'n Officers, the prerogative of the crown.

As the *appointment* of the individuals alluded to, is the prerogative of the Crown, the Lieutenant Governor cannot presume to offer to the House of Assembly any opinion on that subject; but, with respect to the question, whether their *continuance* in office is in strict conformity with the spirit of the Royal instructions, contained

in Lord Ripon's despatch of the 8th of Nov. 1832, the Lieutenant Governor conceives, that the real meaning of those instructions was, to arm the Lieutenant Governor of this Province, with power to require, and if necessary, to insist on the resignation of any, or all individuals, holding official situations, who should openly or latently, oppose the measures of his Government.

Their resign. may be insisted on, if opposed to the measures of the government.

The Lieutenant Governor will certainly not hesitate to avail himself of this power, should he ever feel it his painful duty to do so, but he considers it would not be a fruitful application of his time, were he now retrospectively to attempt to determine, whether these individuals ever had or had not opposed any measure of the Government of his predecessor, who is responsible to His Majesty alone, for his decisions. He, therefore, feels he is bound, in justice, to infer, that as his predecessor did not see occasion to dismiss these officers, their continuance in office up to the present date, is in strict accordance with the spirit of the Royal instructions, which never required that these gentlemen should inflict upon themselves the penalty awarded, in case they should oppose the measures of the Government.

This the Lt. Gov. feels bound to do, if absolutely necessary

And as these officers were not dismissed by his predecessor, must infer that they acted in accordance with royal instructions.

6th. The House of Assembly state,
 " that in reply to the representations of
 " this House to His Majesty, against the
 " composition of the Legislative Council,
 " the despatch of Lord Glenelg refers
 " with approbation to the report of the
 " Committee of the House of Commons,
 " on Canada affairs, in the year 1828, and
 " we cannot, by any possible ingenuity,

Desp. of L'd Glenelg refers with approbation to the rep. of Com'rs on Canada affairs of 1828.

Said rep't & desp.
not reconcileable
with the late app'ts
to leg. council.

The persons so
appt'd being opposed
to the principles con-
tained therein and to
the wishes of a maj'y
of the people, they
therefore request co-
pies of the correspon-
dence respecting the
app't of those pers'ns

“ reconcile the principles laid down in that
 “ report and that despatch, with those
 “ acted upon in the recent appointment to
 “ seats in the Legislative Council, (if we
 “ may believe general report,) inasmuch
 “ as all those said to be lately appointed to
 “ the said Council, who were members of
 “ the last Parliament, (including the gentle-
 “ man who has, during the present Session,
 “ already taken his seat,) took a most con-
 “ spicuous and prominent part in the con-
 “ temptuous proceedings on the Earl of
 “ Ripon’s despatch; which a reference to
 “ the Journals of this House will most am-
 “ ply shew; and all said to be so appointed,
 “ have always been understood to be vio-
 “ lently opposed to the principal measures
 “ of improvement and policy, so long re-
 “ quired by a large majority of the people;
 “ thereby increasing, if possible, instead of
 “ diminishing the great obstacle to the re-
 “ form necessary to be accomplished, in
 “ order to secure to the people of this Colo-
 “ ny, peace, happiness and prosperity,
 “ and the full enjoyment of their civil
 “ and religious rights and privileges. We
 “ therefore desire to obtain copies of any
 “ communications between the Colonial
 “ Office and the Government of this Co-
 “ lony, relating to the late appointments
 “ to the Legislative Council, or those of
 “ any other persons whose appointments
 “ have not been acceded to, or confirmed
 “ by the King; and to be informed who,
 “ among those lately appointed, have ta-
 “ ken the oath as Legislative Councillors,
 “ and who, if any of them, have declined
 “ accepting of the appointment; and we

“ request Your Excellency as early as
 “ may be, to call upon any such as have
 “ been so appointed, either to accept the
 “ said appointment, and take the neces-
 “ sary oath, &c. or to decline the same.”

As the Lieutenant Governor is incom-
 petent to judge of the principles which re-
 gulated the conduct of his respected pre-
 decessor, it is totally out of his power to
 attempt to reconcile to the House of As-
 sembly, the recent appointments to the
 Legislative Council with the report and
 despatch alluded to by the House of As-
 sembly. But, although these appointments
 are the prerogative of His Majesty, and
 although the recommendations from which
 they proceeded ought not to transpire, the
 Lieutenant Governor nevertheless trans-
 mits to the House of Assembly, according
 to its' request, “ copies of any communi-
 “ cations between the Colonial Office and
 “ the Government of this Colony relating
 “ to the late appointments to the Legisla-
 “ tive Council, or those of any other per-
 “ sons whose appointments have not been
 “ acceded to or confirmed by the King”
 and moreover the Lieutenant Governor in-
 forms the House, that those gentlemen
 who have been lately appointed, have
 been already required to take the oath as
 Legislative Councillors.

7th. The House of Assembly states
 “ We therefore trust that Your Excellen-
 “ cy will take immediate steps in fulfil-
 “ ment of the gracious wishes of the King,
 “ to carry into effect his benevolent inten-
 “ tions, as desired by the great body of
 “ the people of this Colony, by calling up-

Also, to know if
 they have taken the
 oath &c. and reques-
 ting they may be cal-
 led to do so or de-
 cline the same.

Lt. Gov. not com-
 petent to decide on
 the conduct pursued
 by his predecessor.

These appt's the
 prerog. of the King
 and altho' not usual-
 ly done, his Exc'y
 transmits copies of
 the corres. request'd.

The persons recent-
 ly appt'd have been
 required to take the
 oath.

The House trusts
 His Exc'y will call
 upon the B'p (of Regi-
 opolis) & the Archb.
 (of York) to resign
 either their seats in
 L. C'1 or their offices

“ on the said Bishop (of Regiopolis) and
 “ Archdeacon (of York) either to withdraw
 “ from the Legislative Council altogether,
 “ or resign their other offices.”

The Lt. Gov. will
 act up to the opinions
 contained in L'd R's
 desp. of 8 Nov 1832

The Lieutenant Governor is not aware that His Majesty has expressed any “intentions” on the above subject, but opinions have been very clearly expressed by Lord Ripon in his despatch of the 8th Nov. 1832, to the full extent and meaning of which the Lieutenant Governor assures the House he shall feel it his duty strictly to attend.

The House requests
 His Exc'y to lay be-
 fore them any fur-
 ther instructions he
 may have received.

8th. The House of Assembly re-
 quest, “ that Your Excellency will lay be-
 “ fore us any other information or instruc-
 “ tions that you may have received (if any)
 “ from His Majesty's Government beyond
 “ what has already been sent to us, rela-
 “ tive to the administration of the Gov-
 “ ernment.”

The Lt. Gov. hav-
 ing been command'd
 to communicate the
 substance, has alrea-
 dy laid the whole of
 those instructions be-
 fore the House.

In reply to the above request, the Lieutenant Governor, feels it will be only necessary for him to remind the House of Assembly of the following extract of the message he communicated on the 30th ultimo. “ The Lieutenant Governor was
 “ commanded by his Majesty to communi-
 “ cate the “ *substance*” of his instructions to
 “ both Houses of the Provincial Parlia-
 “ ment ; but considering it would be more
 “ satisfactory to them to receive the *whole*,
 “ he accordingly transmits it herewith.”

The House requires
 inform'n in ans. to
 their remon's on the
 subject of the P. rev.
 and the improvident
 act to the C. 'Cy.

9th. The House of Assembly requests
 the Lieutenant Governor will transmit
 “ any other information or instruction in
 “ answer to a resolution transmitted to

“ His Majesty, through His Excellency
 “ Sir John Colborne, which resolution was
 “ reported to this House; by the Finance
 “ Committee, and adopted by the House
 “ as containing our views on the import-
 “ ant question of the appropriation of the
 “ proceeds of the natural resources of the
 “ country, by the Legislature, and strong-
 “ ly remonstrating against the charter and
 “ improvident sale to the Canada Compa-
 “ ny, which has proved, and is likely to
 “ continue to prove, exceedingly injurious
 “ to the Province.”

In answer to the above request, the Lieutenant Governor re-assures the House of Assembly, that he has received from His Majesty's Government, no other information or instructions on the subject beyond what he has already communicated.

The Lt. Gov. re-assures the House that he has rec'd no further inform'n or instructions.

10th. The Lieutenant Governor transmits herewith, to the House of Assembly, according to its request “ Copies
 “ of answers to any other resolutions or
 “ addresses of this House transmitted to
 “ His Majesty by its order.”

The Lt. Gov. transmits answers to other addresses of the house.

11th. The House of Assembly requests the Lieutenant Governor to transmit copies “ of correspondence between
 “ His Majesty's Government and the Gov-
 “ ernment of this Province, especially re-
 “ lative to the address reported by the
 “ committee on grievances and adopted
 “ by this House on the complaint of an
 “ outrage on William Forsyth of the Nia-
 “ gara Falls hotel.”

The House requests corres. relative to the case of Mr. Forsyth.

In reply to this request, the Lieutenant Governor informs the House of As-

This case now under consid'n and decision will be made

known to the House
when received.

sembly, that the case of Mr. William Forsyth, with the documents relating to it, are at this moment under the consideration of His Majesty's Government; and that as soon as the Lieutenant Governor receives His Majesty's final decision, it shall immediately be communicated to the House.

The Lt. Gov. transmits copy of Sir J. C's despatch of 12th September last.

12th. The Lieutenant Governor transmits to the House of Assembly according to its' request "the copy of the despatch of His Excellency Sir John Colborne to the Secretary for the Colonies dated the 12th of September last."—The despatch dated the 16th containing His Excellency's observations on some of the topics embraced in the Seventh Report on Grievances, the Lieutenant Governor cannot transmit without the sanction of the Secretary of State.

The desp. dated 16 Sept. His Ex'y is not at liberty at present to transmit.

The House requ'sts corres. in all matters of gen'l inter't to the Prov. ref'd to in des. sent down to the H. on Saturday last.

13th. The House of Assembly requests the Lieutenant Governor, to transmit to the House "copies of all other communications between the Colonial office and the Executive Government of this Province, on matters of public or general interest to the inhabitants of this Province, since the period of the general election of members to serve in the House of Assembly, and referred to in the despatch of the Secretary of State, sent down to this House on Saturday last, as being for Your Excellency's guidance and instruction."

The House must feel that it was not the intention of His M's Gov. to divulge to one branch of the

In reply to this request, the Lieutenant Governor observes to the House of Assembly, that in his instructions alluded to, he certainly was referred for informa-

tion by the Colonial minister, "to the correspondence of my predecessor and myself with the Officers who have successively administered the provincial government" but he is sure the house will feel that it was not either the intention or wish of his majesty's government that the Lieutenant Governor should (as requested by the house) unreservedly and without even a specification of the documents desired, divulge to one Branch of the Legislature, a voluminous correspondence which from its nature, must unavoidably relate to many questions belonging exclusively to the other two branches; but must also unavoidably contain subjects of a strict confidential nature, besides others, the publication of which would merely tend to revive by-gone discussions.

The Lieutenant Governor takes this opportunity of appealing to the liberality and good sense of the House of Assembly for consideration, that, as a stranger to this Province, totally unconnected even with the political differences which have existed in the mother country, he has but lately arrived here, entrusted by our most Gracious Sovereign with instructions, the undisguised object of which, is, firmly to maintain the happy constitution of this country inviolate, but to correct cautiously, yet effectually, all real grievances.

The House of Assembly is deeply interested in the importance and magnitude of the task he has to perform—and he is confident it will, on reflection, be of opinion that the Lieutenant Governor of this Province had better look steadily forwards to

Leg. corres. relating exclusively to the 2 other branches, some of which would only tend to revive by-gone discussions.

The Lt. G'r appeals to the liberality and good sense of the H. of A. for the consideration of His Exy's recent arrival in this Prov. and the importance and magnitude of the task he has to perform.

His attention to the future prosperity of the Prov. precludes his occupying himself with the occurrences of the past, to attend to both impossible.

its *future* prosperity and improvement—that he had better attract into Upper Canada the superabundant capital and population of the mother country, by encouraging internal peace and tranquillity—than to be observed occupying himself only in re-considering the occurrences of the *past*.

The Lieutenant Governor does not assert, that the latter occupation would be totally useless, but he maintains, that the former is by far the more useful, and that to attend to both is impossible.

The Lt. Gov. transmits a statement of the proceedings taken by the Gov't relative to a "defalcation" by the late col. of the Port of Kingston.

14th. The Lieutenant Governor transmits to the House of Assembly according to its' request "a statement of the proceedings and steps taken by the Government relative to a special matter contained in the third report of the committee on finance of last session in reference to a defalcation of monies by the late collector of the town of Kingston, which defalcation had for several years been reported and appeared in the public accounts, but which was omitted to be stated by the Inspector General in the last accounts sent down to this House without any authority to do so from the Legislature."

GOVERNMENT HOUSE, }
15th February, 1836. }

DOCUMENTS

ACCOMPANYING MESSAGE.

Copy.

No. 118.

Downing Street, }
6th March, 1833. }

SIR,

By the accounts I have lately received of the proceedings of the Legislature of Upper Canada, I have learnt that the Attorney and Solicitor General of that Province, have in their places in the Assembly taken a part directly opposed to the avowed policy of His Majesty's Government.

Attorney and Sol. Generals have opposed the policy of His Majesty's Government.

As members of the Provincial Parliament Mr. Boulton and Mr. Hagerman, are of course bound to act upon their own view of what is most for the interest of their constituents and of the Colony at large, but if upon questions of great political importance they unfortunately differ in opinion from His Majesty's Government, it is obvious that they cannot continue to hold confidential situations in His Majesty's service without either betraying their duty as members of the Legislature, or bringing the sincerity of the government into question by their opposition to the policy which His Majesty has been advised to pursue.

As representatives of the people they have a right to act for the interest of their constituents, but in such opposition cannot retain their situations.

His Majesty can have no wish that Mr. Boulton and Mr. Hagerman should adopt the first of these alternatives, but on the other hand, he cannot allow the measures of His Government to be impeded by the opposition of the law officers of the Crown.

Measures of Government may not be impeded by Crown Officers.

In order therefore that these gentlemen may be at full liberty, as members of the Legislature, to follow the dictates of their own judgment, I have received His Majesty's commands to inform you that he regrets that he can no longer avail himself of their services, and that from the time of your receiving this despatch they are to be relieved from the duties imposed upon them in their respective offices.

His Majesty can no longer avail himself of their services

You will transmit copies of this despatch to Mr. Boulton and Mr. Hagerman.

Copies of this despatch to be sent to Messrs. Boulton and Hagerman.

I have the honor to be,
Sir, &c.

(Signed)

GODERICH.

M. General Sir John Colborne, K. C. B.

&c. &c. &c.

A true copy,

J. JOSEPH.

Copy.
No. 121.

Downing Street, }
20th March, 1833. }

S:R,

In reference to my despatch No. 118 of the 6th January last, I have the honor to acquaint you that His Majesty has been pleased to appoint Mr. Jameson to be Attorney General of Upper Canada. Mr. Jameson has been for some time Chief Justice of Dominica, and I have every reason to think that you will find his ability and discretion of great advantage to you in the administration of your government. He will take the earliest opportunity of proceeding to assume his duties.

Mr. Jameson, late
Chief Justice of Do-
minica, appointed
Attorney General.

Solicitor General
to be taken from the
Bar of Upper Canada

With respect to the office of Solicitor General it is considered desirable that you should enjoy the assistance in that capacity of a gentleman possessed of local experience and already conversant with the public business of the Province. I have therefore received His Majesty's commands to desire that you will furnish me with the name of some gentleman belonging to the bar of Upper Canada, who may be submitted to His Majesty as a fit person to receive the appointment of Solicitor General. You will of course lose no time in making to me the necessary communication on this subject, and in the mean while you will probably deem it advisable to confer an appointment to act as Solicitor General on the same individual whom you may recommend to fill that office permanently.

I have the honor to be,
Sir, &c.

(Signed) GODERICH.

A true copy,

J. JOSEPH.

M. General Sir John Colborne,
K. C. B. &c. &c. &c.

No. 1.

Copy.

Upper Canada, }
York, 31st Jan'y 1832. }

MY LORD :

In forwarding this address to the King from the House of Assembly expressing their attachment to His Majesty, and their gratitude for the happiness which is enjoyed by this Colony, I think it necessary to inform your Lordship that this address has probably

Conduct of Mr.
Mackenzie calls forth
an address expressive
of attachment to His
Majesty.

been called forth in consequence of the conduct of Mr. Mackenzie the editor of the Colonial Advocate.

His Majesty's Ministers, were, I believe made acquainted with the character of this man, and with the mischievous tendency of his publications, before my appointment to this Government. He has not ceased for the last three years to publish and circulate statements evidently with an intention of keeping up excitement in the Province, and encouraging disaffection.

During the last summer and autumn after calling meetings in the Townships in the County of York, he proceeded to the Gore and Niagara Districts, and to some of the Eastern Districts, for the purpose of calling together the farmers and such persons as he might be able to collect at a short notice, with the assistance of his agents, and inducing them to adopt certain resolutions which he had prepared for their inspection.

These meetings were sufficiently numerous for the object which he had in view—to circulate his statements widely through the Province, and to enable him to bring his petitions before the Provincial Parliament and to forward copies of them to your Lordship.

Soon after the opening of the Session, he was expelled from the House of Assembly for a libel on the House; and on the day of his expulsion, he circulated handbills inviting the people to proceed in a body to the Government House, and to request the Lieutenant Governor to dissolve the Parliament; and the following day about 200 persons presented an address to me, a copy of which is enclosed (A); the intention of Mr. Mackenzie in following this course, and in conveying a petition to me, which he knew could not be complied with, was evidently to raise a clamour against the Executive Government, and encourage a belief that his expulsion had been effected through my interference.

He was re-elected on 2nd January, received a gold medal from some of his supporters in York, and took his seat the next day; but on again inserting the libel in his paper, for which he had been expelled, and sending the number of the Colonial Advocate containing it to all the members of the House, he was expelled and declared incapable of sitting in the House of Assembly during the present Parliament—Mr. Mackenzie then sent forth the atrocious address (B) to the people, and to the soldiers of the 79th Regiment in Garrison at York, to which I beg leave to call the at-

C

Mr. Mackenzie accused of encouraging disaffection.

Mr. Mackenzie accused of calling meetings in several districts, and inducing the people to adopt certain resolutions.

These meetings numerous and occasioned petitions to His Lordship.

Mr. Mackenzie, having been expelled the House of Assembly for libel, with the people, request His Excellency to dissolve the House.

This done evidently to raise a clamour

Mr. Mackenzie re-elected, and again expelled for continued libel.

Sends forth an atrocious address.

tion of your Lordship, as well as the Colonial Advocate, marked C.

About 300 persons attend his meeting, (but few of them farmers.)

Certain resolutions adopted, and subscription opened to bear his expenses to England.

By perseverance, cunning and falsehood, a spirit of discontent is continually kept up in Home and Johnstown districts, but the general good feeling will be sufficient to counteract his publications.

Few of the farmers on whose support he counted, attended the meeting called by him. About 300 persons however, were attracted by his notices to listen to his harangue; the resolutions were adopted, and the petition to the King approved of, which he had prepared. He also proposed that a subscription should be immediately raised for the purpose of providing him with means to proceed to England with the petition.

This formidable demagogue has certainly contrived by his perseverance, cunning and falsehood, to cause and keep up a spirit of discontent among many ignorant farmers, particularly in the Home and Johnstown Districts; but the good feeling which generally prevails through the Province, at present, will be found quite sufficient to counteract the effect of his publications.

I have the honor to be, &c.

J. COLBORNE.

To The Right Honorable
VISCOUNT GODERICH,
&c. &c. &c.

No. 33.

Copy.

Upper Canada.
York, 18th June, 1832.

MY LORD,

His Excellency regrets the proceedings of House of Assembly in expelling Mr. Mackenzie.

Members necessary to expulsion unconnected with Government.

I have had the honor to receive Your Lordships despatch of the 2nd of April, marked, "confidential," relating to the expulsion of Mr. Mackenzie, from the House of Assembly, and beg leave to state, that it was with great regret that I observed the course which the Assembly pursued at the commencement of the session with reference to his conduct; being persuaded that by drawing the attention of the House to his calumnies, he would be probably placed in the very situation in which he wished to exhibit himself.—But most of the members who insisted on his expulsion are altogether unconnected with the Executive Government, and, so far from being influenced by its opinion or supposed views, they appear desirous of making a display of their independence. The usual practice of Mr. Mackenzie has been to assert that he is persecuted by the Magistrates, and that the measures adopted to expose him have been projected and

secretly encouraged by persons under the influence or control of the Executive Government. It is, however, evident, that a man who has edited such a paper as the "Colonial Advocate" for eight years must have raised up against him enemies in every part of the Province. The object, apparently, of Mr. Mackenzie last session was to ascertain the extent to which he could carry his insults to the House. The members generally averse to sanction any summary proceeding, would, I believe, have readily received him after his first expulsion, had he not forced them to proceed against him by his repeating a libel with an audacity and defiance that rendered it very difficult for them to adopt any course calculated to counteract the effects of his efforts to keep alive excitement in the Province. A prosecution on the part of the Crown even recommended by the House, would have prolonged the excitement, and have embarrassed the local government in a greater degree than any other mode of proceeding, for there are few individuals in the Province who have any doubt of the seditious character of his publications, or of his intention to encourage disaffection. The annexed copy of a letter which he forwarded to me in the year 1829, will shew that he has long wished to establish it as a fact that he is persecuted by government, and calumniated by a certain number of papers under its control; but while he was writing this plausible statement, demanding my interference to prevent the editors of papers from attacking his conduct, he knew that the only paper in the Province connected with the government (the Loyalist) had been discontinued at my recommendation. The injudicious acts of his opponents, at some public meetings at which he attended, offer, he imagines, another proof of the persecuting system supported by the local government.

Mr. William Kerr, a Magistrate of the Gore district, it is said, either sanctioned by his presence or encouraged the ill treatment which Mr. Mackenzie received from some young men of the town of Hamilton. In regard to this charge it may be necessary to remark that the account of the transaction has only reached me through the public Journals. There are many Magistrates, I have no doubt, unfit for their situation, in a Province, located as this has been; but it is unreasonable to expect that a Magistrate should be removed from the commission of the peace on an *ex parte* statement.

Mr. Mackenzie complains of the influence of the Executive Government.

Editing Colonial Advocate must raise up enemies.

Would have been readily received after first expulsion, had he not repeated the libel.

A Crown prosecution would have prolonged excitement.

Few in the Province have any doubt of his intention to encourage disaffection.

Mr. Mackenzie wishes to establish as fact that he is persecuted by Government, and papers under its control, altho' he knew that the only paper connected with Government had discontinued.

Mr. Kerr sanctioned ill treatment of Mr. Mackenzie.

Only known thro' public journals.

Many Magistrates in the Province unfit for their situation.

Annexed communication will explain

Address presented by Mr. E. Ryerson, framed obviously for renewing an excitement on certain questions.

Understood that document attached to address was written by a cousin of Mr. Ryerson's, and that Mr. Mackenzie used the Methodist Meeting House at Brockville for political meeting.

Thought proper to direct the attention of the Conference to such proceedings, & express disapprobation.

Institution raised up instead of a neglected Grammar School, ought not to have been depreciated by Methodist Ministers,

Masters chosen solely on account of qualifications.

Mr. Mackenzie has labored for more than seven years to create disaffection in the Province, in a man-

The annexed communication in answer to a complaint against a Magistrate, will explain the course generally followed in cases in which the conduct of the Magistrates has been impugned.

I must request also the permission of your Lordship to offer some remarks on the address presented to me by Mr. Egerton Ryerson, two days before the opening of the last session of the Provincial Parliament, and framed obviously with the intention of inserting it in his Journal, and renewing at the commencement of the session an excitement on certain questions which were under the consideration of His Majesty's Government.

Having understood that the document attached to the address was written by a cousin of Mr. Ryerson, a Baptist Minister, and that the Episcopal Methodist Chapel at Brockville, had been used a few weeks previously to the presentation of this address, by Mr. Mackenzie on his visit to the Johnstown district for his political meetings, and with the annexed report from the Indian Department before me, I could not consistently forward the address of Mr. Ryerson without directing the attention of the conference to proceedings calculated both to injure the Episcopal Methodists as a religious body, and the interests of the Province, and expressing my disapprobation, although it could not fail to give a temporary advantage to factious individuals.

With respect to the remarks on the institution which has been raised up instead of a neglected Grammar School it was my intention to impress on the conference that it was well adapted to the present views of the Colony; and therefore ought not to be condemned or depreciated by the Episcopal Methodist Ministers, who had formed their opinions without having had opportunities of judging of the utility of the liberal establishment endowed by His Majesty; and that the classical masters were elected in the first instance, at my request, from Oxford and Cambridge, solely on account of their acquirements and qualifications; and that no regulation existed as to future election of masters.

Mr. Mackenzie has now labored for more than seven years, I believe, with activity and perseverance, to create discontent and disaffection in the Province. He possesses in a peculiar degree that cunning and effrontery which it is probable will generally attract the

attention of some part of the population, and ensure the partial success of any demagogue.—He has had recourse to every species of calumny, falsehood, and deception, which would promote his views, and get his Journal and Almanacks into circulation in the townships in which his misrepresentations are likely to make any impression; and by addressing his statements particularly to the natives of the United States, settled in Upper Canada, and inviting them to petition that their own magistrates, officers of militia, and Legislative Council, may be elected by the people; and by taking advantage of every temporary excitement, and of the injudicious acts of several of his opponents, he has enjoyed a popularity in this District for a longer period than persons of this description and character usually retain their mischievous influence. His efforts, however, contributed more to injure the Province, at Home, by turning from it a respectable class of emigrants, than to realize any of his projects; and he now finds himself checked by most of the respectable and intelligent classes of society, and firmly opposed by the exertions of a large number of inhabitants in each district entirely unconnected with the government.

The colony is affectionately attached to the mother country; and I shall be exceedingly disappointed if it do not long remain happy and contented, and proof against the selfish intrigues of the turbulent person who is the principle subject of this communication.

I have the honor to be, &c.

J. COLBORNE.

To the Right Hon'ble

VISCOUNT GODERICH,

&c. &c. &c.

(Enclosure in the above.)

YORK, August 11th, 1829.

SIR:

An opinion has gone forth, that the Government of the Province secretly approve of the grossest personal abuse when applied to persons, who, like myself are at variance with the principles upon which your Excellency has stated you would be guided in the administration of the affairs of the Province. This opinion is no doubt held by those persons up and down the country who laud your measures and seldom or never see any thing to blame in your management—for the torrents of personal calumny which come from those persons, week after week, in

ner which ensures the partial success of any demagogue.

He has had recourse to calumny, falsehood and deception to get his Almanacks and Journal into circulation, and invited natives of United States to petition for elective officers of militia, magistrates & Legislative Councillors.

Enjoys popularity in the Home district

Province injured by turning from it respectable emigrants.

Mr. Mackenzie now finds himself checked and opposed by most of the respectable classes.

Colony affectionately attached to the mother country.

It is believed that the Government secretly approves of personal abuse of persons at variance with the principles of the administration.

Provincial Press degraded and morals of people tainted, and Government lowered in the estimation of foreigners.

an unwearied stream seems, as it were to increase of late rather than diminish. By such exhibitions of the weakness and wickedness of human nature, the provincial press is degraded, the morals of the people tainted, and your Excellency's Government, if it be a good one, lowered in the estimation of foreigners, on-lookers of these shameful squabbles. Ireland long tried the experiment of encouraging a cordon of super loyal presses at the public cost, as it is well known some of these are kept up in part, of which I complain—the result is before the world.

Niagara Herald rather worse than usual specimen of demi-official vituperation.

Perusal will afford His Excellency an opportunity of checking the evil

If left unnoticed, will produce evil consequences.

Encouragers of these calumnies will find a day of reckoning.

Requires that Mr. Crooks may be obliged to produce certain authorities to substantiate the charges made against Mr. Mackenzie.

If done, Mr. Crooks will act in future with more discretion.

I shall not trouble your Excellency with a bundle of newspapers, owned and conducted by Magistrates, Government Schoolmasters, Adjutants, Judges, Post-masters and others, whose official station adds weight to their improper statements, but shall select one particular number of the "Niagara Herald," of which John Crooks, Esquire, one of His Majesty's Justices of the Peace for the Niagara District, and Post-master of the town of that name is the known and publicly avowed proprietor, to lay before your Excellency, as rather a worse than usual specimen of demi-official vituperation. A perusal of its contents will afford your Excellency an opportunity of checking an evil, which if left unnoticed by you may (as experience tells me) not be productive of the consequences which the admirers of such papers anticipate. Such language may hurt my feelings and give me pain and uneasiness, and no doubt does so; it may render unhappy for a time some of the members of my family, and the respectable persons composing the central committee may regret to see themselves (by name) bandied about as traitors, similar to those executed last war at Burlington heights—and all this without a shadow of truth, although stated on the authority of a British Magistrate—but in the end those who encourage such calumnies, will I fear have a day of counting and reckoning of a nature they do not now anticipate. As an individual held up to scorn by Mr. Crooks, I seek no damages, and I shall not harrass myself by entering upon a tedious legal process in the courts (with one new trial after another for years,) on the condition of which I forbear to remark; it would afford me no pleasure to see Mr. Crooks degraded from the Magistracy, or turned out of the Post Office. All I ask is that he may be required to bring before the public the authority on which he has undertaken to assert, that the committee on religious freedom are traitors, plotting against the government, and to substantiate the charges he has made against me, as an individual member of society, and of that committee, I know he cannot do this, and therefore shall, secondly, ask that he be required to give as public a contradiction to his calumnies as may be in his power. If this is done, it will not only cause him to act with more caution in future, remembering the station he bears as a British Magistrate, but will

also aid in rendering more decent those presses which at present seem but to exist for the purpose of applauding Your Excellency, and spreading defamation and calumny against the House of Assembly and its members, the central committee, and those persons who, like myself, think fit to express an opinion that Your Excellency's mode of government is unconstitutional, opposed to free government, and forgetful of the best interests of the people of Canada. I once more ask Your Excellency, as a man, and as a Magistrate, high in authority, to manifest your willingness to put an end to calumny, to read the paper herewith sent, and then to follow the golden rule in your proceedings thereon.

His Excellency, as a man and a Magistrate, asked to read the paper sent, and follow the golden rule.

I have the honor, &c.

WM. L. MACKENZIE.

Despatch from Sir John Colborne, transmitting resolutions from certain inhabitants of the town of Kingston.

Copy.

No. 43.

York, Upper Canada, }
8th July, 1833. }

Sir,

At the request of Mr. John S. Cartwright, the chairman of a public meeting held at Kingston on the 23rd of May, I have the honor to transmit to you a copy of the resolution adopted on that occasion respecting the removal of Mr. C. A. Hagerman, from the office of His Majesty's Solicitor General for Upper Canada.

I have the honor to be,
Sir, &c.

(Signed) J. COLBORNE.

The resolutions were sent in original and no record kept of them in the government office.

The Right Hon'ble

E. G. Stanley, &c. &c. &c.

A true copy,

J. JOSEPH.

Despatch from Sir John Colborne, transmitting to Secretary for the Colonies, an address from certain inhabitants of the town of Kingston.

Copy.

No. 44.

*Upper Canada, York, }
10th July, 1833. }*

SIR,

I have the honor to transmit to you the accompanying address to His Majesty from certain inhabitants of the town of Kingston in this Province.

I have the honor to be,

Sir, &c.

(Signed)

J. COLBORNE.

MEM.—The address referred to, from certain inhabitants of Kingston to the King, was transmitted in original, and no copy of it kept at the government office. It contained an expression of approval of the law officers of the Crown being removed from their offices.

To the Right Hon'ble

E. G. Stanley, &c. &c. &c.

A true copy,

J. JOSEPH.

No. 31.

*Downing Street, }
12th September, 1833. }*

SIR,

I have the honor to acknowledge the receipt of your despatch of No. 43, of the 8th of July last, enclosing a copy of certain resolutions adopted at a public meeting, held at Kingston, on the 23rd of May last, respecting the removal of Mr. C. A. Hagerman, from the office of His Majesty's Solicitor General of Upper Canada.

I have the honor to be,

Sir, &c.

(Signed)

E. G. STANLEY.

A true copy,

J. JOSEPH.

Major General,

Sir John Colborne, K. C. B.

&c.

&c.

&c.

STATEMENT of the Names and dates of Appointments of the present Members of the Executive Council, and of the Law Officers of the Crown and when sworn into office respectively.

NAMES.	DATE OF APPOINTMENT.	WHEN SWORN IN.
Peter Robinson,.....	Executive Councillor,	5th July,.....1827,
George Herchmer Markland,..	Executive Councillor,	6th Feb'y,.....1828.
Joseph Wells,.....	Executive Councillor,	6th Feb'y,.....1828.
Christopher A. Hagerman,....	Solicitor General,....	7th April,.....1831.
Robert S. Jameson,.....	Attorney General,....	19th Oct'r,.....1829.
		22d June,.....1833.
		26th March,....1833,

JOHN BEIKIE,
Clerk Executive Council.

Executive Council Office,
Toronto, 12th February, 1836. }

Persons compos'g
Executive Council.

And names of the
Law Officers.

Certain Gentlemen recommended by Sir John Colborne to be summoned to the Legislative Council.

Copy.

No. 70. *Toronto, (Upper Canada,)* }
18th November, 1834. }

SIR,

I have the honor to state that in consequence of the decease of several of the members of the Legislative Council since the year 1830, the period at which the last appointments to the Council were made; I beg leave to suggest that :

Messrs McLean,
Morris, Macaulay,
Hamilton and Van-
koughnet recommen-
ded to be appointed
to the Leg Council.

Mr. Archibald McLean, *of Cornwall.*
*Mr. William Morris, *of Perth,*
Mr. John Macaulay, *of Kingston,*
Mr. Geo. Hamilton, *of Hawkesbury, &*
Mr. Philip Vankoughnett, *of Cornwall,*

may be recommended to His Majesty to be called to the Legislative Council.

The qualifications of each of these gentlemen, which induce me to recommend them for this promotion, are contained in the annexed return.

I have the honor to be,

Sir, &c.

(Signed) J. COLBORNE.

The Right Hon'ble,

E. G. STANLEY,

&c. &c. &c.

* Note of these Gentlemen—Mr. Morris alone, has taken the oath and assumed his seat in the Legislative Council, up to the present date, viz : the 15th February, 1836.

Mr. ARCHIBALD McLEAN—A native of the Province, son of the late Neil McLean, a member of the Legislative Council—is an extensive proprietor of land, represented the county of Stormont in several Parliaments, and was Speaker of the last Assembly.

Mr. WILLIAM MORRIS—A native of Scotland, and an opulent Merchant—entered the Province before the late war, has represented the county of Lanark in five successive parliaments.

Mr. JOHN MACAULAY—An opulent Merchant, of Kingston, and a large proprietor of land—a native of the Province, and a son of a U. E. Loyalist; and from his character, intel-

ligence, and acquirements, possesses great influence.

Mr. GEORGE HAMILTON—A native of Ireland, and an intelligent Merchant, engaged in the Lumber Trade on the Ottawa—he has resided in the Province since the year 1818 or 1819, but has been connected with it for a longer period.

Mr. PHILIP VANKOUGHNETT—A native of the Province, a son of a U. E. Loyalist, and during several Parliaments represented the county of Stormont.

A true copy.

J. JOSEPH.

Copy of a Despatch appointing sundry persons Legislative Councillors.

Copy.

No. 24.

Downing Street,
26th February, 1835. }

SIR,

I have the honor to acknowledge the receipt of your Despatch No. 70, of the 18th November last, recommending the undermentioned gentlemen for the appointment of Legislative Councillors of Upper Canada, viz :

Mr. Archibald McLean,
Mr. William Morris,
Mr. John Macaulay,
Mr. George Hamilton,
Mr. Philip Vankoughnett.

Messrs. McLean,
Morris, Macaulay,
Hamilton, and Van-
koughnett, appointed to the Legislative Council.

Having submitted the names of these gentlemen to the King in Council, His Majesty has been pleased to approve of your recommendation, and I enclose herewith the necessary documents for summoning them to the Council accordingly.

I take this opportunity of transmitting to you, for your information and guidance the copy of a despatch which appears to have been addressed by Lord Goderich to the Governor of Lower Canada, and which I consider may equally apply to the Province under your government; and I have to request that in accordance with the arrangement therein proposed, you will require the usual Fee of £9 15s. 6d, from each of the

£9 15s. 6d. to be
paid for each man-
damus.

new Councillors for his respective Mandamus, and transmit the same to Mr. Wilder of this department.

I have the honor to be,

Sir, &c.

(Signed) ABERDEEN.

Major General

SIR JOHN COLBORNE,

K. C. B., &c. &c. &c.

A true copy. J. JOSEPH.

Extract of Despatch from Sir John Colborne to the Lord Glenelg, His Majesty's Secretary of State for the Colonies, dated

Toronto, 16th Sept. 1835.

"With these explanations if your Lordship should think it expedient to lay the names of Dr. William Warren Baldwin and his son Mr. Robert Baldwin before His Majesty, I have to request that Mr. Isaac Fraser, an intelligent and influential settler, a son of a U. E. Loyalist, residing near Bath in the Bay of Quinte, in the Midland District, may be also so recommended for the Legislative Council."

Truly extracted.

Extract of a Despatch from the Right Honorable, the Lord Glenelg, His Majesty's Principal Secretary of State for the Colonies, to Lieutenant Governor, Sir John Colborne, dated Downing Street, 2d July, 1835.

"I have the honor to acknowledge the receipt of three despatches from yourself, the first dated the 23rd of March, and marked "confidential;" the others dated on the 15th and 20th of May. Nos. 15 & 21."

Truly extracted.

J. JOSEPH.

Note.—The above mentioned despatch, Nos. 15 and 21, transmitted the address of the House of Assembly to the King, complaining of the Legislative Council in rejecting certain measures adopted by the Assembly, and the resolutions of the Assembly claiming the right to control and appropriate the Crown Revenue.

No. 55.

Copy.

Mis:

Toronto, 12th Sept. 1835.

MY LORD,

I have the honor to acknowledge the receipt of your Despatch of the 2d July, and to ac-

quaint your Lordship that in a few days I shall be able to enter fully into the subjects to which it refers, and to offer my observations and opinions to your Lordship on the questions which I consider as requiring the most serious attention of His Majesty's Government.

I have to forward the accompanying book containing the Report from the Select Committee of the House of Assembly on Grievances, and the documents to which it refers—by the annexed notes from the Clerk of the Assembly your Lordship will perceive the manner in which the Report was introduced, and the subsequent proceedings of the House relative to its reception.

I have &c.

(Signed) J. COLBORNE.

The Right Honorable

The Lord Glenelg,

A true copy, J. JOSEPH.

Copy.

Memorandum shewing the purport of each of the six reports made to the House of Assembly by the Committee on Grievances previous to the seventh and principal report presented on the 10th of April, 1835.

1st report desires information from the Blue Book ; on the subject of the Jury Laws and referring to Lord Howick's letter on the same, accompanied by an address requesting information on the appointments of Commissioners of the Peace, and it desires to ascertain the amount of balances of monies paid by the Canada Company in the hands of the several public accountants, banks, &c.

2nd Report—Relative to the Post Office Department, with an address to His Excellency for information (inserted in the last and principal report.)

3rd Report—Accompanied by a resolution for the adoption of the vote by Ballot—a bill to prevent vexatious law suits, &c—a bill to amend the law of libel ; a bill to diminish the expense of advertising sheriff's sales, and a bill to provide for the distribution of the Statutes, and that they be printed by contract.

4th Report—Reports a resolution on the petition of Thomas Appleton, teacher Toronto, that £85 4s. be paid to him as teacher of a common school in the years 1822, 1823, 1824, 1825, 1826 and 1827 (contained also in the principal report.)

5th. Report—On petition of William Forsyth, late of the Niagara Falls, (contained in principal report.)

6th. Report—On petition of John McCarroll complaining of misapplication of £50 road money by Robert Keevan, a Commissioner.

7th Report—the last and principal one printed in one volume.

Copy.

*Lieut. Governor's Office, }
York, 26th July, 1818. }*

Sir,

Letter from Mr. Se'cy Rowan to the Ins. G'l on the subject of a sum said to be outstanding in the hands of the late collector at Kingston.

Mr. Crooks and the Master of an American Vessel, seized, as contravening the laws, in carrying freight from Port to Port in this Province, under regular clearance from the several Custom Houses, have made a representation to His Honor, the Administrator, which has been laid before the Executive Council, on whose opinion and advice, His Honor is pleased to direct, that the Vessel and cargo be released to the owners, on the personal security of either, to the amount of their respective value, on a fair estimate, to answer such judgment as may follow upon the information filed against the vessel and cargo, in the Court of King's Bench.

I have the honor to be,

Sir, &c.

SAMUEL P. JARVIS,
Secretary.

To C. A. Hagerman, Esq.
Collector of Customs,
Kingston.

Copy.

*Government House, }
21st December, 1835. }*

Sir,

Letter from Mr. Se'cy Jarvis to Mr. Hagerman directing that a certain vessel seized by him should be given up to the owners on their personal security.

I am directed by the Lieutenant Governor, to acquaint you, with reference to the Report of the Finance Committee appointed by the House of Assembly last Session, that he requests you will report how many years the sum of two hundred and eighty-four pounds, fifteen shillings and five-pence, stated to be outstanding in the hands of Mr. Hagerman, late collector at Kingston, has been returned as due to the public, and that you will call on the accountant, if you have not already done so, for a full statement of the case, and on what authority he detained, in his

hands, on closing his accounts with the late Inspector General, the amount alluded to by the Finance Committee.

His Excellency requests information also, as to the opinions of the different Committees on Finance, since the year 1827, by whom this disputed claim appears to have been investigated, and under what circumstances it was not mentioned in the accounts submitted to the House of Assembly last Session.

If the accountant on closing his accounts in 1828, retained the sum in question as a debt due by the King's government, on account of a seizure made by him, and which he could not legally permit to be given up, all the circumstances respecting the case should have been reported for the information of His Majesty's government, by the Inspector General, and the balance claimed, should have appeared in the accounts of the funds under the control of the Lords Commissioners of His Majesty's Treasury.

I have the honor to be,

Sir, &c.

(Signed) Wm. ROWAN.

The Honorable
G. H. Markland,
Inspector General.

*Government House, }
30th December, 1835. }*

Sir,

In returning to you the accompanying statement respecting a balance still appearing in the public accounts as due by Mr. Hagerman, I am directed by the Lieutenant Governor to acquaint you that if the claim in question was permitted by the late Inspector General to remain unsettled for eleven years before Mr. Hagerman closed his accounts in 1828; and that he then entered his name among the balances due by Collectors as a public defaulter, the accountant has certainly reason to complain.

Letter from Col.
Rowan to Ins. Gen'l
on the subject of Mr
Hagerman's claims.

This claim has frequently been laid before committees of the House of Assembly, without the accountant being able to obtain his discharge; His Excellency therefore requests that the circumstances of this case may be again brought before the Committee of Finance that may be appointed in the next session,

in order that the claim may be allowed or referred for the decision of His Majesty's government.

I have the honor to be,

Sir,

(Signed)

W.M. ROWAN.

The Honorable

George H. Markland,

Inspector General.



Sir John Colborne, Knight Commander of the most Honorable Military order of the Bath, Lieut. Governor of the Province of Upper Canada, Major General commanding His Majesty's Forces therein, &c. &c. &c.

No. 490. To the Honorable JOHN HENRY DUNN,
Receiver General of the said Province.

Lt. Govr's warra't
for £211 5 11½ stg.
in favor of C. Hager
man, Esq. formerly
Collector of the port
of Kingston.

You are hereby directed and required, out of such monies as are in or shall come to your hands for defraying the civil expenditure of this Province to pay or cause to be paid unto Christopher A. Hagerman, Esq.

£211 5 11½ } Or to his assigns, the sum of two
Sterling dollars } hundred and eleven pounds five shil-
at 4s. 6d. } and eleven pence half-penny Sterling,
equal to £234 16 6 Canada Currency, being the amount of a claim on the Crown fund conditionally admitted, per the annexed order in Council.

He having been in the actual discharge of his duty during that period.

And for your so doing this, with the acquittance of the said C. A. Hagerman or his assigns, shall be your sufficient warrant and discharge.

Given under my hand at Toronto, this }
twentieth day of January, 1836. }

(Signed) J. COLBORNE.

By His Excellency's command,

(Signed) W.M. ROWAN.

Examined.

George H. Markland,
Inspector General.

Toronto, 22d December 1835.

SIR :

In compliance with the request contained in your note of this day's date, that I should furnish for the information of His Excellency the Lieutenant Governor a detailed statement of the facts and grounds upon which I claim a discharge from all future responsibility as a public accountant, I have the honor to submit the following remarks, and at the same time beg to express my sincere gratification at the prospect of a decision upon a subject which I have long desired to bring to a conclusion.

Some time previous to the opening of the navigation in 1817, the masters and owners of several British vessels represented to me (then being collector of His Majesty's customs at Kingston) in a formal manner, that their business was greatly injured by foreign vessels engaging in the coasting trade of the Province in contravention of the Navigation Laws of the Empire, and required me to interfere in my official character as collector for their protection, and as far as depended on me to put an end to a practice clearly illegal, and highly detrimental to the shipping interests of the Colony.

Under such circumstances it is plain that the only proper course for me to pursue was to consult the laws and to enforce them. Upon reference to the statute 7 & 8 Will. 3, chap. 22, entitled "*An Act for preventing frauds, and regulating abuses in the Plantation Trade,*" I found that foreign vessels were expressly prohibited from carrying cargoes from one British port to another in any of His Majesty's Colonies or Plantations, and by the 4th sec. of the same statute I found that Governors of Colonies were required to *take an oath* upon entering on the duties of their office, *to do their utmost to maintain these laws*, and in default of their doing so, were made liable to dismissal from office and the payment of a fine of £1,000 sterling. Notwithstanding the plain and imperative provisions of this statute and others bearing on the same point, I thought it advisable to take the specific instructions of the Government on the subject, and to guard (as far as depended on me) against any charge of injustice for enforcing laws of which individuals might allege ignorance, I decided on giving these instructions when received, all the publicity in my power. I accordingly wrote to the Inspector General requesting

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Letter from C. A. Hagerman, Esq. formerly Collector at the Port of Kingston to the Inspector General in explanation of a claim set up by him for a share of a vessel and cargo seized for a breach of the navigation laws.

Letter from C. A.
Hagerman, Esq. &c.

him to inform me in what manner I should act in cases of complaint of foreign vessels being engaged in the coasting trade---in answer to which application I received as my guidance the opinion of the Attorney General, to whom the subject had been referred, of which the following is a copy :

Attorney General's
opinion on the
case.

"I am of opinion that foreign vessels found engaged in the coasting trade are liable to seizure and condemnation if laden in, or carrying from any one port or place in the Colonies to any other port or place in the same."

(Signed)

D'ARCY BOUTLON,

Att'y General.

Dated 28th April, 1817.

In pursuance of the intention above alluded to, I caused this opinion to be inserted for several weeks, at my own expense, in the newspapers published in Kingston for the information of the public.

In the month of June following a complaint was made to me that a schooner, built in the United States owned by a citizen of that country, and resident there, and wholly navigated by aliens and then lying in the harbour of Kingston had, in violation of the laws referred to, engaged in the coasting trade, by receiving on board and carrying from Burlington Bay at the head of Lake Ontario, to Kingston, a cargo of flour. That it was my imperative duty to notice this complaint and seize the vessel and cargo, will I take it for granted, be admitted, and that I should have incurred a heavy responsibility and rendered myself liable to immediate dismissal from office for neglecting the instructions that had been sent me, is equally certain. The vessel and cargo was accordingly seized and the circumstance reported to the proper officer.

The master and owner of the vessel, and the gentlemen to whom the flour belonged shortly afterwards, as I am informed, petitioned the Lieutenant Governor of the Province, praying restoration of the property seized, alleging ignorance of the law, and stating that they had been misled by the collector at Burlington Bay, not having apprised them of its existence, and intimating as an additional excuse the very ground which had originally led to the seizure, viz: that foreign vessels had been in the practice of violating the navigation laws with impunity. It does not appear however from any papers that I have seen

that the Collector referred to, knew that the vessel in question was a foreign bottom, and owned by a foreigner, as mentioned, although had such been the fact, it would not have altered the question as respected the liability of the vessel to condemnation, it might have subjected that officer to the responsibility of indemnifying the parties for the injury they had sustained through his misconduct, nothing more.

Letter from C A
Hagerman, Esq, &c

It is obvious that the Governor could not comply with the prayer of this petition.—*First*, Because his doing so would be in violation of his oath, and the duty expressly enjoined upon him, by the statute above referred to; and *secondly*, because it would be an interference with the rights and emoluments of a public officer over which he had no controul, to which he was by law entitled, for the performance of a responsible, disagreeable and hazardous duty, and which he had executed in obedience to instructions from His Government, in a manner leaving no room for censure or complaint.—Accordingly upon a reference to the Executive Council, it was declared by that body that, “they would not presume to recommend any order to the Collector of Kingston for the actual release of the vessel and cargo” but “satisfied that an irregular practice had prevailed of transporting even public stores from one port to another in the Province under sanction of the government and its officers.” It was recommended that the vessel and cargo should be delivered up to the respective owners, upon security being given to the amount of the value of each to answer the event of an information, and that in case of difficulty to the *Foreign Master* to give such security, *that it should be provided by the Government, with the assurance that in the event of legal conviction the proportion of the seizure to which the Crown and the person administering the government would be entitled, would not be exacted, leaving only, therefore, the share to which the collector had a claim to be exacted.* This report of the Council *was never communicated to me* (conclusive as it appears to me to be in favour of my claim) and it is only within the last week while collecting facts for this statement that I for the first time saw it. A letter however was addressed me by the private secretary of the president then administering the government, in which I was briefly directed to give up the vessel and cargo to the respective owners upon their entering into their *personal security* to answer the result of the informa-

Letter from O A
Hagorman, Esq, &c

tion to be filed by the Crown Officer.—This of course was promptly complied with on my part, the vessel was valued at £255 cur'cy—the flour at £364 currency, both items being reduced as low as it was possible to bring them with any regard to reason & truth. The master of the vessel was a stranger, and declared himself unable to give any security beyond his own Bond. I have never to my recollection seen him since, for the flour I took the bond of William Mitchell, Esq., at that time a wealthy and respectable Merchant in Kingston, but who afterwards died, and as I am told in embarrassed circumstances. This bond (now of no use) is in my possession.

These proceedings having occurred the information was filed and a trial took place, when the jury owing to some defect in the proceedings, or from misapprehension of the facts, returned a verdict for the claimant. This verdict however, was so manifestly contrary to law, and if acquiesced in would have been attended with such evil consequences, that the Attorney General felt himself bound to move for a new trial, upon which occasion the law and every fact relating to the seizure was brought before the court of King's Bench, and fully argued; the judgment of the court was afterwards solemnly pronounced, establishing the validity of the seizure, and its liability to condemnation, and as a consequence, setting aside the verdict of the jury, and ordering a new trial. These proceedings are on record in the court of King's Bench, and of course can at any time be referred to.

Immediately, or very soon after this decision, the owner of the flour (as I have been informed) solicited the Government to stay the prosecution, and preferred a memorial to that effect, which was transmitted to England for the consideration of the Home Government. No official, and indeed I may say no direct communication of the steps at any time taken, was ever made to me. I was not asked to consent to any discharge of or delay in the prosecution; nor was I in any manner consulted, or advised with on the subject, notwithstanding the large personal interest I had in the result. If therefore delay has occurred in deciding on the claimants petition, it cannot be traced to any fault of mine, in truth with respect to it, I have no particular interest, the Government had distinctly disavowed any design to interfere with my rights, and had proceeded in the implied recommendation of the Executive Council, that the master of the vessel

should be indemnified from public funds in the event of condemnation—the Courts of highest authority had declared the seizure liable to condemnation, and so far the ends of the prosecution were attained—and it is not improbable that it was considered by the Executive unnecessary and inexpedient to incur further expense in the proceedings.

Letter from C A
Hagerman, Esq. &c

It would I apprehend be considered only reasonable that under the circumstances I should have been immediately credited with my portion of the seizure made—it was my unquestionable and undisputed right, founded upon the express provisions of a British statute and which no authority short of an Act of Parliament could deprive me of. I do not mean to say that any injustice was *intended* me, quite the contrary, I believe the delay in the settlement of the matter arose from a desire to be first informed of the decision of the King's government on the claimant's petition, and whether authority would be given to remit the portion of the seizure *due to the crown*, as recommended by the Council, that *the whole matter* might in such case be disposed of at once.

In my communications with the late Inspector General. I constantly urged that the matter should be finally disposed so far as related to me—he never in any instance intimated a doubt of my right to credit for one third the value of the seizure—on the contrary always admitted it, as did every other member of the Government with whom I had any communication on the subject; and in which opinion, as I shall presently shew, the Legislature for the last seven years tacitly, at least, concurred.

Feeling however, that it was desirable to close discussion on the point, I addressed a letter to Mr. Baby the late Inspector General of public accounts on the 16th June, 1826, calling his attention officially to the subject, and stating, that if Government had decided on abandoning the prosecution, I should then claim indemnity for expenses incurred as well as my portion of the seizure, to this letter I received no official reply, but was informed by Mr. Baby, that upon enquiry of the then Attorney General, Mr. Robinson, he found that no answer had been received to the claimant's petition. In 1828 I was appointed to a judicial situation in the Province when I resigned the office of collector, and when it became necessary to close my public accounts--I accordingly paid up all the balances of public money in my hands, reserving with the con-

Letter from C A
Hagerman, Esq, &c

currence of Mr. Baby, one third the amount at which the seizure was appraised and the expenses incurred in securing it, a statement of which verified on oath accompanies this letter.

From that period to the present, no objection has been raised in any quarter to my retaining this indemnity—legally—equitably—and undeniably my due.—Until last winter a return was made to the Legislature shewing the sum outstanding in my hands—two successive Parliaments have passed away to whom the returns at each session were transmitted. On one or two occasions Mr. Baby of his own suggestion inserted a note at the foot of the returns stating my claim—and committees of the House of Assembly have inquired into the circumstances, and on being informed of them, expressed no sort of disapprobation of the course that had been pursued, and thus tacitly, as I have before stated approving of it.

Still, however, it was no pleasant thing for me to see my name inserted in the returns annually laid before the Legislature, and I was of course anxious to be relieved from the further responsibility and to receive my quietus as a public accountant; and I accordingly again pressed the subject on the notice of government in January last. Upon enquiry into the subject at that time, you were so fully satisfied of the reasonableness of my claim, that although without the express authority of government you could not grant me a discharge, you thought it but justice that my name should be omitted from the list of persons appearing to be in arrear with the government, and when called upon for explanation by the finance committee you stated your reasons for doing so: without disputing or expressing any opinion on the justice of my claim, the committee objected to the course you had taken upon the ground that “as the sum arising from the seizure would not have been at the disposal of the legislature (seizures being crown revenue) the indemnity should have been taken from the *crown revenues*, and not from the Provincial funds,”—thus in fact adopting a principle I had all along contended for; in truth at the time I closed my accounts, as before stated, a sum covering *all duties* collected by me was paid to the Receiver General, and in distributing the money this fact ought to have been observed by the Inspector General, Mr. Baby, and a discharge given me for this account, leaving the unsettled balance ap-

plicable to the account for seizures, &c.—and this under any circumstances should now be done.

Upon giving the foregoing statement of facts, the consideration, I have no doubt it will receive, I do not imagine that it will be considered unreasonable in me again most earnestly, but respectfully, to urge my claim to a final discharge. The claim I have set up, arose, as I have shewn, from the performance of an imperative and at the same time unpleasant and responsible duty; with respect to which I had no alternative between acting as I did and loss of office, and violation of law, in addition to which I may add, that were I now to relinquish my right, I should sustain a direct pecuniary loss to a considerable extent. It is well known that Collectors in this Province have no means whatever of rewarding their Deputies and other assistants necessary to a Custom-House establishment, except from seizures—and in my case those persons always received the largest proportion of them—it is also proper to observe that there are no public store-houses or wharves for the reception and security of Custom-House seizures.—All these expences fall on the Collector, and in the present instance amounted to a considerable sum. Without adverting to circumstances sufficiently well known, I may, I hope be permitted to add, that *I am not that officer of Government* from whom pecuniary sacrifices should be exacted.—And while I disclaim all intention of employing the language of complaint at the delay which has occurred in giving me the benefit of a plain and admitted right—a delay arising from no fault of mine, but from acts of the government over which I had no control, and to which I was in no respect a party; I trust I shall be excused for thus again earnestly preferring the claim to a discharge, which I have endeavoured to shew, and I hope have succeeded in shewing ought long since to have been granted me.

I have the honor to be

Sir,

Your most obd't humble serv't,

C. A. HAGERMAN.

The Honorable
George H. Markland,
Inspector General, &c. &c. &c.

Letter from C A
Hagerman, Esq &c

HIS MAJESTY'S GOVERNMENT,

To C. A. Hagerman, late Collector of Customs at the Port of Kingston, Dr.

Letter from C A
Hagerman, Esq, &c

To my portion of the seizure of a schooner valued at,...	£255	0	0
To 184 bbls of wheat flour va- lued at,.....	322	0	0
To 42 bbls of Rye flour va- lued at,.....	42	0	0
Being one-third of.....	£619	0	0
To amount of storage and unloading of flour, wharfage and securing schooner and sundry incidental expenses incur'd in making the seizure and keeping it in a place of safety until delivered to claimants by order of Government,...		28	8 10
	<u>£234</u>	<u>15</u>	<u>6</u>

(Signed) C. A. HAGERMAN.

Toronto, 22d Dec. 1835.

Christopher Alexander Hagerman of Toronto,
Esquire, maketh oath and saith that the foregoing ac-
count is just and true in all its particulars to the best
of his knowledge and belief.

(Signed) C. A. HAGERMAN.

Sworn before me at Toronto, this }
28th day of December, 1835. }

(Signed) J. B. MACAULAY, J. K. B.

Copy.

8th January 1836.

It is respectfully recommended that the within
statement of Mr. Hagerman's claim be transmitted to
the Executive Council for their consideration and
report.

(Signed) GEORGE H. MARKLAND,
Inspector General.

Approved.

(Signed) J. C.

Copy of a Report of the Executive Council, approved by His Excellency the Lieutenant Governor, on the claim of Christopher Alexander Hagerman, Esq., late Collector of the Customs at the Port of Kingston.

In Council, 15th January, 1836.

With reference to the accompanying statement of Mr. Hagerman, it is respectfully reported, that this claim upon the government appears to be fully established, and it is therefore recommended that the sum of £234 15 6 be paid to him out of the Crown Funds, upon his furnishing a bond conditioned to repay the amount should the claim not be admitted by the Lords Commissioners of His Majesty's Treasury.

Report of Executive Council on Mr. Hagerman's claim.

It is also recommended, that a copy of Mr. Hagerman's claim, together with this order of Council be transmitted to such Finance Committee of the House of Assembly, as may be appointed, in order that they may not be ignorant of the nature of the claim, and the manner of its adjustment.

JOHN BEIKIE,

Clerk Executive Council.

Copy.

Know all men by these presents, that I, Christopher Alexander Hagerman, of the city of Toronto, in the Province of Upper Canada, Esquire—am held and firmly bound unto our Sovereign Lord the King, in the sum of four hundred and sixty-nine pounds, eleven shillings of lawful money of the said Province, which sum well and truly to be paid to our said Lord the King, his heirs or successors, I bind myself, my heirs, executors and administrators, firmly by these presents, signed by my hand, and sealed with my seal at Toronto aforesaid, this 17th day of January, in the year of our Lord one thousand eight hundred and thirty-six.

Bond for amount of claim payable in case the same should not be allowed by the Lords of the Treasury.

Whereas the said Christopher Alexander Hagerman, as late Collector of the Customs for the port of Kingston, in this Province, has advanced a claim on His Majesty's government for the sum of two hundred and thirty-four pounds fifteen shillings and six pence, currency, and whereas the honorable the Executive Council, by their report approved of by His Excellency, the Lieutenant Governor, bearing date the fifteenth day of the present month of January, have declared that the said claim appears to be fully established, and

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that therefore the said sum of two hundred and thirty-four pounds fifteen shillings and six pence, should be paid to him the said Christopher Alexander Hagerman out of the Crown fund—upon the said Christopher Alexander Hagerman executing a bond conditioned to repay the amount, should the claim not be admitted by the Lords Commissioners of His Majesty's Treasury.

Now the condition of this obligation is such, that if the Lords Commissioners of His Majesty's Treasury, upon an examination of the claim of the said Christopher Alexander Hagerman and the report thereon made by the honorable the Executive Council as aforesaid, shall disallow the same, and direct the amount to be paid the said Christopher Alexander Hagerman in pursuance of the said report to be refunded by him—if he the said Christopher Alexander Hagerman upon receiving notice of such disallowance of the said claim, shall forth-with repay the said sum of two hundred and thirty-four pounds fifteen shillings and six pence, to His Majesty's Receiver General for Upper Canada, or to such other persons as the Lieutenant Governor or person administering the government of the Province shall appoint to receive the same, then this obligation to be null and void, otherwise in full force and virtue.

(Signed) C. A. HAGERMAN, [L. S.]

Signed, sealed, and delivered }

in presence of }

(Signed) WM. C. KEELE, Toronto.

Approved.

(Signed) ROBT S. JAMESON,
Attorney General.

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