

*Trial and Punishment
of the Patriots
Captured at Windsor
in December 1838*

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TRIAL AND PUNISHMENT OF THE PATRIOTS CAPTURED AT WINDSOR IN DECEMBER 1838

By FRED LANDON

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The closing weeks of the year 1838 saw border attacks against Upper Canada on both the St. Lawrence and the Detroit Rivers, incidents which were in part a sequel of the troubles of 1837 but which differed from the violence of 1837 in that most of the participants in the events of the later year were Americans. In the minds of some of these people there may have been a vague ideal of freeing the Canadian people from what they had been told was a tyranny exerted across the seas. For the most part, however, the invaders were young men, out of work, lured into the adventure by their own restlessness and by the promise of liberal rewards when Canada was conquered.

The attack upon Windsor in the early hours of December 4, 1838, had nothing in it of the heroic, nor had it any such leadership as that given by Von Shoultz at Prescott. The Windsor affair was poorly planned, badly carried out and was doomed to defeat from its inception. Within a few hours of their landing the members of the Patriot force were either hurriedly making their way back across the river or were seeking to evade capture by flight into the woods. In the next few days forty-four prisoners were rounded up and were sent to London for trial by court martial.

The trials began in the London court house on December 27, 1838 and continued until January 19, 1839. Colonel John Bostwick of the 3rd. Middlesex Regiment was the President of the court while Lieut-Col. Henry Sherwood of the 2nd. North York Regiment acted as Judge Advocate. The chief witnesses against the captured prisoners were four of their own number, David McDougall, George Putnam, William Bartlett and Sidney Barber. One of the prisoners, Abraham Tiffany, of Albany, was acquitted but the others were all sentenced to death with a recommendation for mercy in the case of the four witnesses for the crown.

The penalty of death was carried out in the cases of six, three being hanged while the Court Martial was still in progress, under authority

received from York, and three others being hanged at a later date. The first sentence to be carried out was in the case of Hiram Benjamin Lynn whose execution took place on January 7th, 1839. Daniel Davis Bedford followed on the 11th and Albert Clark on the 14th. No more executions then took place until February 4th when Cornelius Cunningham was the victim. Two days later there was a double hanging, that of Joshua Gillam Doan and Amos Perley.

Accounts of these executions which appeared in the London Gazette were copied in other Upper Canada newspapers. Of Lynn's execution the Gazette gave the following description:

“On Monday morning the 5th between the hours of 8 and 9, Hiram Benjamin Linn, who had acted as adjutant among the brigands, was placed upon the gallows erected from a window of the jail. In consequence of mortification from his wound he was very weak. The death warrant having been read, and the service performed by the Rev. Mr. Cronyn, the drop fell which was to launch him into eternity. After struggling between two and three minutes, he remained quiet in death, a horrid spectacle of wild ambition and lawless adventure. Being cut down, his body was placed in a coffin and conveyed to the grave”.

The Gazette report of succeeding executions gives similar details of these tragic events:

“On Friday following, at the same time and place, Capt. Daniel Davis Bedford was also executed, when he died without a struggle. The sheriff permitted his body to be given to his friends who conveyed it to Norwich for interment. We have not yet heard from that quarter but we have no doubt but ‘the friends of liberty’ for miles around made a grand parade of his funeral.

“Albert Clark was hanged on Monday of the 14th. The rope slipped to the back of his neck and he struggled for some time.

“Not many attended to witness these executions, owing doubtless to the early hour at which they took place. Capt. Robertson's troop attended as a guard.”^[1]

Lynn, who was the first to be executed, had also been the first to be placed on trial when the court opened on December 27. He appeared in court with a wounded arm, having been shot by the person who captured him. Of his appearance in court the Gazette observed:

“There was nothing extraordinary in his person or countenance—presenting the common appearance of an American mechanic who had

probably been out of regular employment for a couple of months. He appeared to be very uneasy, and frequently expressed his anxiety to have the trial brought to a close; he seemed to take it for granted that he was guilty, and could not see the utility of going so minutely into evidence to prove a truth so apparent.”

An interesting reference to Lynn may be found in the narrative of George N. Hazelton, printed in Vol. XXI of the Michigan Pioneer and Historical Collections. Hazelton, who was a resident of Ann Arbor, was acquainted with Lynn and tried to dissuade him from joining the Patriot force at Detroit.

“The next I heard from him”, says the narrative, “was by letter from the keeper of a Canadian prison, informing me he had had a prisoner by name of H. B. Linn from Ann Arbor, Michigan, who had been tried, convicted and executed as a rebel against the English government and the night before his execution slept quietly in his coffin. He seemed to consider him a remarkable man. In some respects this was true. Left an orphan when quite young, he had fought his way to manhood, had no faculty for making friends, looked upon the world as cold and selfish. His sympathies were always with the oppressed, and believing the cause he had enlisted in a just one brought him to his tragic and untimely end”.^[2]

Daniel Davis Bedford, the second to be executed, had had his trial on December 29. For his participation in the Duncombe uprising of December 1837 he was in jail for a time but was later pardoned. To be now found a second time in arms against the government of the province proved a serious matter for him. After his execution his body was removed for burial to the Quaker settlement in Norwich township where his grave may be seen today in the Friends’ burying ground, Quaker Street, North Norwich township. The stone over the grave bears the following inscription:

Daniel Bedford
a native of
Newcastle Dist. C. W.
died
Feb. 11, 1839
age 27 yrs.

[The date of death is incorrect. Bedford was executed on January 11, 1839.]

Of Clark, the third man to be hanged, there is little information available. He was a citizen of the United States, 21 years of age.

Cornelius Cunningham was also a citizen of the United States but had been living in the London District for some years carrying on the business of a wagon-maker at Beachville. He was described as “a very shrewd and active man”.

Amos Perley was from New Brunswick and was a relative of Captain Charles Strange Perley who sat on the court martial. On January 30, 1839, the prisoner Perley wrote to his kinsman asking him to have his body looked after and decently buried. Captain Perley furnished everything necessary for laying out the body decently but for some reason did not look after his burial which took place with that of Joshua Doan in the Friends’ burying ground at Sparta.

Of all those executed at London a greater amount of tradition has come down until regard to Doan than with regard to any of the others. This is probably because of the prominence of the family and of the man himself in the life of the district. Whereas the others were aliens or had been in the province but a short time, Doan came from the finest pioneer stock and was a man of high spirit and adventurous disposition. Before his execution he made a voluntary statement in which he declared that he had been seriously misled as to the state of affairs in Upper Canada and blamed his ignorance of developments during 1838 upon the fact that during this time he had been an exile in the United States.

The bodies of Perley and Doan were taken by sleigh to Yarmouth and buried side by side at Sparta. A funeral service was held in the meeting house and the sermon was preached by Sarah Haight, a member of the Friends. Doan was regarded by his friends as a martyr and fifty years afterwards this view was still reflected in the settlement. The exact position of the graves in the Friends’ burying ground is uncertain but tradition has it that the two men are buried at the end of the long row of Doan graves but somewhat apart from them. At the end of the row, there stands today the double stone marker to Jonathan and Jane Doan, the parents of Joshua. They were married in 1786 and Joshua, born in 1811, was the youngest of ten children. He had just passed his twenty-seventh birthday when he died.

After the six executions and the acquittal of Abraham Tiffany there remained thirty-seven prisoners in London jail. In the last week of March Sir George Arthur transmitted to the sheriff at London, James Hamilton, an order to send on to Toronto twenty-three prisoners whom he named, eighteen of whom were to be transported and five to be pardoned and deported to the United States. The fourteen who would still remain at London were described in Arthur’s letter as “young men to whom it is

proposed to grant a free pardon at no very distant period if the state of feeling on the opposite frontier shall render such a proceeding compatible with the security of the province". The sheriff was authorized to inform them of the clemency which was being shown.^[3]

On the morning of April 3, 1839, the prisoners ordered to Toronto were called out, fettered, and placed in wagons. For eighteen of them this was the beginning of a journey that was to take them to the other side of the world, to the penal colony of Van Diemen's Land. In Elijah Woodman's diary is this description of their departure from London:

"April 3, 1839. Very early this morning we were unlocked and bread served to each man with a small piece of meat with orders to be ready immediately to take our departure. Soon the jailer appeared and commenced calling two by two until all were in the waggons that stood ready to receive us. . . We started and passed along Dundas Street, getting a nod of the head from a few true friends who took an interest in our fate."

From Toronto the party of prisoners destined for exile were taken to Kingston and there locked up with the prisoners taken at Prescott who had been tried by court martial. Late in September word came to move the combined group to Quebec to embark. There were eighteen from London and sixty-four from Kingston, making eighty-two in all. At Quebec they were joined by fifty-eight Lower Canada prisoners and all were put aboard the transport Buffalo. At five o'clock on the morning of September 28 the anchor was weighed and on October 3 the ship dropped its pilot who brought back with him the last letters to be forwarded to relatives and friends.^[4]

The prisoners who remained at London were soon set free. The St. Catharines Journal of April 30, 1839, quoted from the Niagara Chronicle: "A batch of sixteen 'Windsor patriots' were today brought to this place in the steamer Burlington for the purpose of being delivered over to the American authorities. We understand the sheriff will give them up to the sympathetic Lewistonians tomorrow".

So closed, as far as London District was concerned, the trials of the Windsor prisoners. The unhappy fortunes of the men who were sent to Van Diemen's Land have been narrated in half a dozen or more autobiographic sketches written after return from exile. Some of them never returned and most of them passed into oblivion when the Buffalo cast off from the port of Quebec. The arrival back in his own country after twenty-two years absence of one of the prisoners sentenced at Kingston was recorded in the Brockville

Monitor of June 19, 1860.^[5] This returned exile was John Berry, formerly a resident of the sixth concession of Elizabethtown and the owner there of 200 acres of land.

“John Berry”, said the Monitor, “was an ardent Patriot. . . . Imprisoned in the jail of Brockville for his supposed complicity in the treasonable courses of the disaffected, and then released, he eventually fled across the St. Lawrence and travelled to Oswego, visiting many of the Hunters’ Lodges, as the patriot secret meetings were termed, on his way upward. At Oswego he fully connected himself with the disaffected Canadians who then swarmed there and took an active part in their subsequent proceedings.

“John Berry was among the unfortunate men who surrendered themselves at Prescott. After lying in gaol at Kingston for months he was tried there by a militia general court martial and at which Judge Draper^[6], then attorney-general, was prosecutor for the crown and was sentenced to transportation for life. His first three years in Van Diemen’s Land were spent in macadamizing the public roads, after which, as is the usual practice with well conducted convicts there he was hired to a farmer and sent to take care of his sheep flocks. Three years ago he was discharged by the government from further servitude and at once determined on returning to Canada. A New York whaling ship happened to be in port and on this he engaged as a hand for his passage and board, as it presented the only available means of a return home. After leaving Hobart Town the whaler sailed southward . . . Cape Horn with all its tempest was safely rounded and two weeks ago last Sunday John Berry was safely landed in New York. From thence he journeyed to Cape Vincent, crossed to Kingston and took the boat to Brockville. Judge Draper happened to be on board, recollected John Berry, shook hands with him and generously helped him onwards. On last Monday Berry landed in Brockville after an absence of 22 years since he had left for Oswego.”

[1] This account of the executions, taken from the *London Gazette*, was reprinted in the *St. Catharines Journal* of Saturday, January 26, 1839. The date of Lynn’s execution should be January 7, not January 5. The Rev. Mr. Cronyn who attended the condemned men was Rev. Benjamin Cronyn, first rector of London and at a later date the first Bishop of the Diocese of Huron. He came to London in November 1832.

- [2] *Michigan Pioneer and Historical Collections*, Vol. XXI, pages 377-8.
- [3] The five men pardoned at this time were David McDougall, George Putnam, Sidney Barber, William Bartlett and H. P. Goodrich. The eighteen selected for transportation were Samuel Snow, Elizur Stevens, John Chester Williams, J. Burwell Tyrrill, John Seymour Gutridge, James Milnes Aitchison, John Sprague, Robert Marsh, Riley Monson Stewart, Henry V. Barnum, Alvin B. Sweet, James Peter Williams, William Nottage, John Henry Simmons, Elijah Crocker Woodman, Chauncey Sheldon, James Dewitt Ferro and Michael Morin.
- [4] Public Archives of Canada, Minutes of Executive Council of Upper Canada, March 16, 1839, State Book L. page 460 gives the names of the 82 men from Upper Canada who were transported. *L'Ami du Peuple*, of Montreal, September 28, 1839, gives an account of the departure from Montreal of both the French-Canadian and the Upper Canada prisoners and gives a list of the French-Canadian exiles.
- [5] Reprinted in the *Stratford Beacon*, June 29, 1860.
- [6] Col. the Hon. William H. Draper was commander of the 2nd. North York Regiment at this time.

TRANSCRIBER NOTES

Mis-spelled words and printer errors have been corrected. Where multiple spellings occur, majority use has been employed.

Punctuation has been maintained except where obvious printer errors occur.

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