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York 27 Sept<sup>r</sup> 1833

May it please Your Excellency

We have the honor to report to Your Excellency that we have deliberated upon the reference made to us by Your Excellency's Command on the 14<sup>th</sup> of September Inst<sup>o</sup>, in respect to an application addressed to Your Excellency by the Government of the Territory of Michigan, requesting that certain persons now inhabiting this Province may be apprehended and sent to that Country to answer to a charge preferred against them for assaulting and beating the Sheriff of the County of Wayne, and rescuing a prisoner from his custody.

We observe that the recent act of the Legislature of this Province, intitled

"An

"An Act to provide for the apprehending  
"of fugitive Offenders from Foreign  
"Countries and delivering them up  
"to Justice," (a copy of which we annex  
to this Report) gives a discretion  
to the Governor and Council in  
carrying into effect its provisions,  
declaring in express terms, that  
"it shall not be incumbent upon  
"them to deliver up any person  
"charged if for any reason they  
"shall deem it inexpedient so to do."

We take it for granted, however,  
notwithstanding the general terms  
in which the reference is made to us,  
that we are not expected to express  
our opinion upon what would  
or would not be a proper exercise  
of this discretion. It does not,  
indeed, occur to us that any question

of

of political expediency is presented  
by the case, and if any were, we  
should abstain from offering  
an opinion upon it. It is to the  
legal considerations connected  
with the case, that we have confined  
ourselves; and in this view of it  
we beg respectfully to state, that  
these prisoners having been once  
already apprehended and in  
custody, in this Province upon  
this same charge and liberated  
by the decision of the Governor  
and Council, after a consideration  
of the case, upon an application  
made by the Government of  
Michigan, We should not think  
it fit that the Governor and Council

Should

Should authorize a second apprehension of the parties and exercise a second time the power and discretion given by the Act. - This course, we think, could not be approved of unless in the case of some atrocious Offender, new and strong evidence should be discovered, which it was not in the power of the Foreign Government to produce upon a previous application and for the want of which the prisoners were upon such first application discharged; or perhaps in a case, where some official or legal formality had by mere accident been overlooked on the first occasion.

Independently

stated is not within it. Looking upon the act of pointing or presenting the pistol as one for which all the rioters were equally responsible it forms an aggravation of their riot and assault, but it does not change the legal character of their crime. It would probably lead to a higher fine or a longer imprisonment, but not to a punishment of another kind.

The riot, as it is described, was an outrageous one, and the battery of the Sheriff appears to have been violent and cruel.

The direct object and intent, however, seems to have been the rescue of the prisoner rather than to take the life of the Sheriff. And even

Supposing

supposing that the facts would well support a conviction for an assault on the Sheriff with intent to murder him, still by our law such intent would be merely an aggravation of the Riot and Assault: it would not alter the technical character of the crime or the description of punishment, however much it might enhance the fine or lead to increasing the term of imprisonment.

The conclusion, therefore, which we have come to is that these parties are not charged with any of the offences enumerated in the Statute annexed; and consequently that the Lieutenant Governor and Council are not authorized by its provisions to send them out of the Province.

It has not escaped our attention  
as a peculiar feature in this case,  
that two of the persons, whom the  
Government of this Province is  
requested to deliver up, are persons  
recognized by the Government of  
Michigan as slaves and that it  
appears upon these documents  
that if they should be delivered  
up, they would by the laws of the  
United States be exposed to be  
forced into a state of slavery,  
from which they had escaped  
two years ago, when they fled from  
Kentucky to Detroit; that if they  
should be sent to Michigan,  
and upon trial be convicted  
of the Riot and punished, they  
would after undergoing their  
punishment, be subject to be

Taken

Taken by their masters and con-  
-fined in a state of slavery for  
life; and that on the other hand  
if they should never be prosecuted,  
or if they should be tried and  
acquitted, this consequence  
would equally follow. Among  
the documents before us, we  
perceive there are papers, which  
have been delivered to the Govern-  
-ment in behalf of the alleged  
victims, in which this inevitable  
consequence is urged as a reason  
against their being sent back  
to Michigan and in which it  
is intimated that to place the  
slaves again within the power  
of their masters is the principal  
object; and that the Government  
of Michigan in making application

for



each other than the laws of each will allow. We express no opinion except in reference to the Statute recently passed here for regulating this particular matter. We consider the Legislature to have declared in that Statute their will in what cases fugitives from foreign Countries should be surrendered; and we have, therefore, considered whether the persons in question, as they are not charged with murder, forgery, or larceny, could upon the facts before us be convicted of any other offence punishable in this Province by whipping or pillory or by confinement at hard labor. We apprehend they could not

be

be, but that the offence of which they might be convicted would be punishable by fine and imprisonment merely without adding hard labor to the sentence. Riot, a Battery of the Sheriff in the execution of his duty, and the rescue of a person legally in his Custody but not charged with felony, or other crime, are the offences, with which upon the statements before us they are liable to be charged:— and all these are offences, which in the known and ordinary administration of the Law in this Province would be punished in no other manner than by fine and mere imprisonment. Instances we doubt not may be brought from

distant

distant times, in which one or other  
of the above offences has been pu-  
-nished in England by Pillory or  
Whipping or by other unusual and  
disgraceful punishments; and  
we do not say that these cases  
although they may be old, are so  
decidedly void of all authority,  
that a Judgment, which should  
now be passed in conformity to  
them would certainly be held to be  
erroneous and bad.

But we conceive that in England  
such punishments have long  
ceased to be assigned to the Offences  
in question; that in this Province  
they have never been assigned to  
them; and that recent Statutes  
which have been passed in  
England tend strongly to shew

that

That Parliament did not regard  
them as punishments, which in  
later times could be properly  
attached to such Offences without  
express Legislative sanction.

We observe that there is evidence  
of one of the persons charged having  
pointed a loaded pistol at the  
Sheriff. If it had been further  
stated that he had pulled the  
trigger, or otherwise attempted  
to discharge the pistol, the act  
would have been one which in  
England is felony, having been  
first made so by Lord Ellenborough's  
act passed in 1803 - but that Act  
does not extend to this Province  
and was never adopted or in-  
force here; and if it were other-  
-wise, still this case upon the facts

stated

to the degree of the crime for which  
he was committed - And this  
prisoner being committed for  
no crime and certainly not for  
any felony, his rescue would  
according to our law be a misde-  
meanor only and a misdemeanor  
of that kind that the persons  
convicted of it, would be punished  
by fine and imprisonment or either  
of them, and not by any other  
description of punishment.

The Statute referred to provides in  
explicit terms that the persons  
subject to be delivered up under it  
to the justice of a Foreign Country  
are those only who shall be charged  
"with murder, forgery, larceny or  
other

"other crimes committed without  
"the jurisdiction of this Province,  
"which crimes if committed within  
"this Province would by the laws  
"thereof be punishable by death,  
"corporal punishment, by pillory  
"or whipping or by confinement  
"at hard labor." We are not  
aware whether the laws of the  
Territory of Michigan do or do  
not authorize the giving up  
offenders charged with crimes  
not embraced in the above very  
comprehensive description; but  
however that may be, it is evident  
that the conduct of this and of  
other Governments in respect to  
the delivering up of offenders can  
be no farther reciprocal towards  
each

Independently of the consideration  
that this case has been already  
acted upon by this Government,  
the documents before us place it  
in this light - The prisoners with  
the exception of Blackburne and  
his wife are charged with assault-  
ing and beating the Sheriff of  
Wayne, and rescuing a prisoner  
from his custody. - Blackburne,  
being the prisoner alluded to,  
is charged with joining in the  
riot and battery of the Sheriff  
and with unlawfully rescuing  
himself - The wife of Blackburne  
we cannot find to be sufficiently  
charged with any offence known  
to our Laws, which do not acknowledge

a state of slavery; for the imputa-  
-tion of conspiring with the rioters  
and contriving the rescue is  
supported by no evidence, and  
seems to rest on conjecture.

The prisoner Blackburne, it  
appears from the documents  
before us was not committed for  
felony, nor for any crime, nor  
imprisoned for any cause, which  
by our laws could be recognized  
as a justification of imprisonment.  
We mention this not from any  
doubt that the prisoner was in legal  
custody according to the laws of  
Michigan, but because the rescue  
of a prisoner constitutes by our law  
a greater or less offence, according

to



for them is rather influenced  
by the interest and wishes of the  
Slave-Owners than by any desire  
to bring the parties to trial for  
the alleged riot.

No consideration of this kind  
has had any weight with us; for  
in the first place, as regards the  
insinuation against the motives  
of the Government of Michigan,  
if we had any thing to do with  
them, we should consider (as no  
doubt this Government would  
consider in any similar case)  
that courtesy towards the Gov<sup>ts</sup>  
of a Foreign Country requires us  
always to assume that it has no  
motive or design on these occasions  
which is not just and fair and in

Short,

short none but such as is openly  
avowed.

And in the next place as  
to the consequence spoken of - If  
it would follow in course from  
the laws of the United States it  
is not probable that the Executive  
Government there could prevent  
the slave masters from asserting  
their rights under those laws,  
and it is therefore reasonable  
to suppose that the consequence  
may really follow, which the parties  
concerned have represented. Still  
if in this case the black people,  
whose arrest is applied for, had  
been shown to have fled from a  
charge for any such offence as  
would clearly come within our  
statute, we do not conceive that  
we could on that account have

advised

advised a course to be pursued,  
in regard to them, different from  
that which should be pursued  
with respect to free white persons,  
under the same circumstances.

When we say this, we should  
desire it to be understood that  
we are as clearly of opinion, on  
the other hand, that the with-  
drawing from a state of  
slavery in a Foreign Country  
could not here be treated as  
an offence with reference to  
our Statute already alluded  
to, so that any person could be  
surrendered up under that  
Statute upon such a ground here-  
-ly.

We beg leave to express to Your  
Excellency our regret for the delay  
that has occurred in answering  
the

The reference which Your Excellency  
and the Honorable, the Executive  
Council have thought fit to make  
to us. Among other causes which  
have led to it was a doubt at  
first entertained among us,  
whether we could properly give  
an opinion, in this manner,  
upon a matter which under  
possible circumstances might  
give rise to a Judicial pro-  
ceeding, in which the same  
question would come before  
us or some one of us for  
decision. An examination  
of the subject has removed  
this doubt, and we now sub-  
mit our opinion to Your  
Excellency with such explanations

as seemed to us to be material

We have the honor to be  
yours

W. B. Robinson. C. J.

L. P. Sherwood. J.

J. B. Macaulay. J.