

The 1826 Ancaster Tar and Feathers Outrage Three Defendants' Perspectives

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Résumé de l'article

Vers minuit, le 3-4 juin 1826, le greffier de paix de Gore, George Rolph, a été attaqué par une foule, traîné hors de son domicile, menacé de lésions corporelles, puis recouvert de goudron et de plumes. Il a été accusé d'adultère avec une domestique à domicile. Étant donné que Rolph était le frère de l'avocat réformateur John Rolph, l'attaque et les procédures judiciaires qui en ont découlé ont attiré l'attention du monde entier et le procès civil fut bondé "presque jusqu'à l'étouffement". Cet outrage est resté dans l'oeil du public pendant plus de deux ans, alors que les frères Rolph cherchaient à obtenir justice et que d'autres outrages se produisaient. Cet article examine le contexte social et politique de l'outrage et les contestations judiciaires qui ont suivi, du point de vue des trois premiers accusés du procès. Il soutient que les facteurs personnels et non politiques ont été des motivations plus importantes que ce qui avait été reconnu auparavant. Il s'agit du premier article à examiner les perspectives des trois accusés.

The 1826 Ancaster Tar and Feathers Outrage

Three Defendants' Perspectives

by Ross D. Petty

Introduction

In 1820, much of the world faced citizen interest in revolution and reform that started with the American and French revolutions.¹ For example, several years of civil unrest in Western Scotland and Northern England culminated in a brief 1820 insurrection led by weavers in Paisley, Scotland protesting over working conditions and government reform. This insurrection forced both Alexander Robertson, future tar and feather defendant, and William Lyon MacKenzie, reform advocate and future newspaper editor, to

flee to Upper Canada.²

When they arrived, they found the province also was struggling with proposed reforms of a government primarily based on political appointments of members of a developing aristocratic class that would later be referred to as the Family Compact. These self-appointed members of the upper class (often called Tories here) believed they were better able to rule the province to maintain prosperity for all than the democratic masses who were empowered in America.³ They

¹ Wim Klooster, *Revolutions in the Atlantic World* (New York: NYU Press; 2nd ed. 2018).

² Peter Berresford Ellis and Seumas Mac A' Ghobhainn, *The Scottish Insurrection of 1820*, (Edinburgh: John Donald Publishers 1970), 155-57, 293. For a biography of William Lyon Mackenzie see Frederick H. Armstrong and Ronald J. Stagg, "Mackenzie, William Lyon" in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed September 16, 2021 <http://www.biographi.ca/en/bio/mackenzie_william_lyon_9E.html>.

³ Carol Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada, 1818-1841," *Law and History Review*, 13:1 (Spring 1995), 114-15; Graeme Patterson, "An Enduring Canadian Myth: Government and Family Compact," in *Historical Essays on Upper Canada: New Perspectives*, J.K. Johnson and Bruce G. Wilson eds., (Ottawa, QC: Carlton University Press, 1989), 485-511; Robert E. Saunders,

believed the natural order of society was hierarchical, aristocratic and protected by the British constitution, the rule of law, and the protection of property.⁴

These aristocratic beliefs were opposed by some people, commonly known as reformers, who sought greater democratization—particularly the popular election of government officials following an American model.⁵ Many reformers also were concerned about the land-owning and political rights for settlers from America who had been encouraged to migrate to Upper Canada from 1792 to 1815 and were the majority of the Upper Canada population during the 1820s.⁶ Some Tories fought against giving these American settlers rights, particularly the right to vote, in government forums and outside the law through the use of threatened and actual violence.⁷

Abstract

Around midnight on 3-4 June 1826, Gore clerk of the peace George Rolph was attacked by a mob, dragged from his home, threatened with bodily harm, and tarred and feathered. He was accused of adultery with a live-in servant. Since Rolph was the brother of reform advocate John Rolph, the attack and related legal proceedings drew international attention and the civil trial was packed “almost to suffocation.” This outrage remained in the public eye for over two years as Rolph brothers sought justice and as other outrages occurred. This article examines the social background and politics of the outrage and the subsequent legal challenges from the perspectives of the three original defendants in the trial. It argues that personal, non-political factors were more significant motivations than previously recognized. This is the first paper to examine the perspectives of the three defendants.

Résumé: Vers minuit, le 3-4 juin 1826, le greffier de paix de Gore, George Rolph, a été attaqué par une foule, traîné hors de son domicile, menacé de lésions corporelles, puis recouvert de goudron et de plumes. Il a été accusé d'adultère avec une domestique à domicile. Étant donné que Rolph était le frère de l'avocat réformateur John Rolph, l'attaque et les procédures judiciaires qui en ont découlé ont attiré l'attention du monde entier et le procès civil fut bondé “presque jusqu'à l'étouffement”. Cet outrage est resté dans l'œil du public pendant plus de deux ans, alors que les frères Rolph cherchaient à obtenir justice et que d'autres outrages se produisaient. Cet article examine le contexte social et politique de l'outrage et les contestations judiciaires qui ont suivi, du point de vue des trois premiers accusés du procès. Il soutient que les facteurs personnels et non politiques ont été des motivations plus importantes que ce qui avait été reconnu auparavant. Il s'agit du premier article à examiner les perspectives des trois accusés.

Within this broader struggle, this article examines a violent attack against

⁴ “What Was the Family Compact?” *Ontario History*, 49:4 (1957), 165-78.

⁵ Robert L. Fraser, “All the privileges which Englishmen possess’: Order, Rights, and Constitutionalism in Upper Canada,” in *Provincial Justice: Upper Canadian Legal Portraits from the Dictionary of Canadian Biography*. (Toronto: University of Toronto Press, 1992), accessed 16 September 2021, <http://admin.biographi.ca/en/special.php?project_id=49&p=41>.

⁶ Gerald M. Craig, *Upper Canada: The Formative Years, 1784-1841*, (Oxford: Oxford University Press 1963).

⁷ Douglas McCalla, *Planting the Province: The Economic History of Upper Canada 1784-1870* (Toronto: University of Toronto Press 1993), 249.

⁸ David Mills, *The Idea of Loyalty in Upper Canada 1784-1850*, (Kingston: McGill-Queens Univer-

the brother of a reform advocate. It was a physical attack. This "Ancaster Outrage" occurred around midnight on 3-4 June 1826, when Gore District clerk of the peace George Rolph was dragged from his home by a mob, all members disguised, beaten, threatened with all sorts of bodily harm, and tarred and feathered. The mob accused him of adultery with a live-in servant.

Since Rolph's brother John had been elected to the House of Assembly on a reform platform in 1824, this attack is often interpreted as an illegal attack by Tories against the newly developing reform movement.⁸ Indeed in a letter, John Rolph refers to the tenacity of his enemies' pursuit of "me and my brother."⁹ The attack and related legal proceedings drew province-wide and even international attention and the courtroom for this civil trial in August 1827 against three alleged attackers was packed "almost to suffocation."¹⁰ This outrage remained in the public eye for over two years as George Rolph, with his attorney

and brother John, sought justice against the attackers. Other outrages occurred later, perhaps inspired at least in part by the Ancaster Outrage. Eventually, government reform was accomplished after the Rebellion of 1837-38.¹¹

This article first examines the victim of the Ancaster Outrage, George Rolph, followed by background on the three initial alleged attackers. This focus on the people involved in the outrage offers new information on their motivations. The article then describes the attack itself in more detail and Rolph's subsequent four-part quest for justice. Finally, the article examines the ramifications of this outrage for both the individuals involved and Upper Canada society and politics generally including some of the later outrages. It concludes that dislike for Rolph and his alleged adulterous behavior was more of a motivating factor than previously recognized and that this outrage with little retribution against the attackers encouraged other "lawless" acts by apparent Tories that resulted in increased

sity Press 1988), 34-51; Paul Romney, *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet, and Legislature 1791-1899* (Toronto: University of Toronto Press 1986), 82-104; and Carol Wilton, *Popular Politics and Political Culture in Upper Canada: 1800-1850*, (Montreal: McGill-Queen's University Press 2000), 22, 36-43.

⁸ Riddell argues the outrage "was very largely political" rather than personal dislike of Rolph. William R. Riddell, "The Court of King's Bench in Upper Canada, 1824-1827," *The Canada Law Journal*, 49 (1913), 126-34, 128. In contrast, Dent notes the "outrage had arisen of private complications, and no political question arose in the course of the trial." John Charles Dent, *The Story of the Upper Canadian Rebellion* (Toronto: C. Blackett Robinson 1865), 168.

⁹ Toronto Metro Central Library, William Warren Baldwin Papers Collection, B105, Letter from John Rolph to W.W. Baldwin, 5 May 1829.

¹⁰ *Gore Gazette*, 25 August 1827, 102; "Tarring and Feathering," *New York Spectator*, 7 September 1827—nearly identical stories at *The United States Gazette* (Philadelphia), 7 September 1827, 2 and *The Lancaster Intelligencer*, 14 September 1827, 2-3. See also Leo A. Johnson, "The Gore District Outrages, 1826-1829: A Case Study of Violence, Justice, and Political Propaganda," *Ontario History* 83:2 (1991), 110.

¹¹ Dent, *The Story of the Upper Canadian Rebellion*.

rather than decreased support for the reform movement.

The Victim George Rolph

To fully understand the 1826 Ancaster tar and feather outrage and the subsequent attempts over two years to secure justice by the victim George Rolph, we must go back a decade earlier to the formation of the Gore district in 1816 from parts of the Home (York) and Niagara districts. This reorganization not only set up two new counties, Wentworth and Halton, but also established Hamilton as the district administrative town. The first half of the 1800s was a period of redistrictings necessitated by increasing settlement after both the American Revolution and the War of 1812. Each reorganization opened up various appointments to local government positions to be filled by appointment from the lieutenant governor advised by his executive council whose members he had appointed.

In 1816, George Rolph was called to the Bar of Upper Canada and then was appointed clerk of the peace, registrar of the surrogate court and clerk of the district court for the newly formed Gore district in the same year.¹² He was born

in 1794 in Thornbury, England where his grandfather and great grandfather namesakes were both attorneys. He and his family moved to Upper Canada in 1811. After his father died in 1814, George moved to Dundas in 1816.¹³ Rolph received his appointments because he came from a conservative Tory family closely associated with Col. Thomas Talbot—a Tory who had been personal secretary to Lt. Gov. John Graves Simcoe and a large landowner and settlement promotor.¹⁴ Rolph's family background also caused his appointment as a lieutenant to the 1st Reg. Norfolk militia in 1812 and captain in the 1st Reg. Gore militia in 1823.¹⁵ Rolph, the second largest landowner in town, had all the appearances of a successful Tory professional.

However Rolph was aloof and refused to associate with or support the other town elites.¹⁶ He chose not to attend their gala balls or assemblies and not to preside over or give toasts at their public dinners according to a draft address to the jury.¹⁷ His aloofness was a source of difficulty, particularly for Rolph as the clerk of peace where he had to assist the local magistrates with the administration of local government and petty justice.¹⁸ If

¹² J.K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841* (1989), 223.

¹³ Thornbury Roots, "George Rolph and Family." <<https://www.thornburyroots.co.uk/families/rolph/>> (accessed on 11 October 2021). George Rolph's father was a doctor like his brother John.

¹⁴ Robert W. Passfield, *Anglican Toryism in Upper Canada: The Critical Years, 1812-1840* (Oakville: Rock's Mills Press 2019), 125.

¹⁵ Johnson, *Becoming Prominent*, 223.

¹⁶ T. Roy Woodhouse, *The History of the Town of Dundas: Part 1* (Dundas: Dundas Historical Society 1965), 20-25.

¹⁷ Toronto Metro Central Library, William Warren Baldwin Papers B103, Draft Address to Jury cited by Josephine Phelan, "The Tar and Feather Case, Gore Assizes August 1827," *Ontario History*, 68:1 (1976), 17.

¹⁸ Romney, *Mr. Attorney*, 109.

Rolph were persuaded to leave, his position of clerk of the peace could be filled by someone who was more compatible with the aristocracy.

In 1824, George's brother John Rolph¹⁹ was elected on a reform platform to the legislative House of Assembly to represent Middlesex county (formed in 1820.)²⁰ The Assembly is the only part of the provincial government where members were elected (to terms up to four years). Members of the Executive Council (comparable to the British cabinet) and the Legislative Council (comparable to the British House of Lords) were appointed (typically for life) by the lieutenant governor. Among other issues, reformers sought to make the Executive Council responsible to the House of Assembly and even proposed that the members of Legislative Council be popularly elected.²¹ The election and notoriety of John Rolph added to the dislike Tories had for George Rolph even though the latter was not (yet) active in politics or the reform movement at the time of the

outrage.²²

The Accused Attackers

About ten months after the attack George Rolph filed a civil complaint in the District of Gore Assizes Court against the three gang members he felt he could identify: Col. Titus Geer Simons (a business man who at that time was a former sheriff of the Gore district²³), Dr. James Hamilton (a Gore magistrate since 1820) and Alexander Robertson (a merchant and son-in-law of Simons and friend of Dr. Hamilton from Scotland). All three were local militia officers. Perhaps these three were identified because Simons had a disabled right arm (from a War of 1812 injury) whereas Hamilton and Robertson likely spoke with a Scottish brogue since they had migrated from Scotland in 1818 and 1820 respectively. Simons was the eldest of these three and therefore likely to be their leader but the mob originated from Dr. Hamilton's house which was closer to Rolph's home. As a magistrate who worked with Rolph

¹⁹ John Rolph, originally trained as a lawyer and medical doctor. He was called to the bar in 1821 and was the fourth Bencher in Upper Canada. He practiced both medicine and law until 1832 when he transferred his legal practice to his brother George and became a member of the Medical Board after getting his medical license in 1829. He remained active in reform politics and was in exile in the United States from 1838-1843. Upon his return to Canada, he became a prominent teacher of medicine. See W.M. Canniff, *The Medical Profession in Upper Canada 1783-1850* (Toronto, ON: William Briggs, 1894), 590-603; Charles Godfrey, *John Rolph: Rebel with Causes* (Madoc, ON: Codam Publishing, 1993); and G.M. Craig, "Rolph, John," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed 20 September 2021, <http://www.biographi.ca/en/bio/rolph_john_9E.html>.

²⁰ Frederick H. Armstrong *Handbook of Upper Canadian Chronology* (Toronto: Dundurn Press 1985), 105.

²¹ Gerald M. Craig, *Upper Canada: The Formative Years, 1784-1841*, (Oxford: Oxford University Press 1963). U.S. senators were selected by state legislatures until the ratification of the 17th Amendment in 1913.

²² Wilton, "Lawless Law," 117-18, 128.

²³ Letter from Simons to Hillier, 19 April 1824, *Upper Canada Sundries*, Vol. 66, pp. 34963-34964.

in the Gore District Court of Quarter Sessions, Hamilton may have had the strongest reasons for attacking Rolph in the hope that he might resign his position of Clerk of Peace.

Simons, a third and fourth generation New Englander, was born in Connecticut but moved with his widowed father to what is now Vermont when he was about six years old. Titus Simons Sr. was prosecuted for his loyalist beliefs. In the fall of 1777, he joined a militia regiment in General John Burgoyne's army leaving twelve-years-old Titus Geer Simons at home family farm with his new mother and baby sister. The family migrated to Canada in 1779 joining about 1,000 other refugees and 2,000 loyalist troops there. They lived under difficult conditions in various refugee camps for about five years while Titus Geer experienced military life working with his father foraging for supplies and building fortifications.²⁴

Father and offspring sought land grants based on his military service and Titus Geer Simons also sought government appointments. He was appointed official government printer for Upper

Canada from 1797 through 1801. In April 1816, he was appointed sheriff of the newly formed Gore District but he was forced to resign nine years later. Fortunately, he and his family had received land grants in West Flamboro and developed a number of businesses on that property.

Simons strongly supported the status quo and had some experience attacking people who were not loyal to the government. In 1807, he and others informed on reformer Joseph Willcocks for statements he'd made against the government causing him to be dismissed as sheriff of the Home district.²⁵ Simons also sought to undermine his commander Col. Richard Beasley in the Second York militia by starting an inquiry into his conduct at the Battle of Lundy's Lane. This led to a court martial where Beasley was found not guilty on all charges except neglect of duty which was declared unintentional.²⁶ Despite this favorable result, Beasley was informed in a March 1820 letter of reprimand that his militia services were no longer needed because of his reformist political activities.²⁷ Simons was promoted to colonel of the Second Gore in April 1822.²⁸

²⁴ Ross D. Petty, "Titus Simons of Hartland, Vermont, and Flamborough, Ontario," *Vermont Genealogy*, 25:2 (Fall 2020), 99-110. See also Ross D. Petty, *Titus Simons: Father & Son Loyalists in the American Revolution and War of 1812* (Oakville: Rock's Mills Press 2022 –forthcoming).

²⁵ Willcocks was dismissed from his position as sheriff in April 1807. Douglas Brymner, *Report of Canadian Archives 1892* (Ottawa: S.E. Dawson 1893), 76-80.

²⁶ Library and Archives of Canada (hereafter cited as LAC), RG 9 I-B-1, Nathaniel Coffin to Titus G. Simons, 6 December 1819.

²⁷ Robert L. Fraser, "Beasley, Richard," *Dictionary of Canadian Biography*, vol. 1836-1850(VII), available at <http://www.biographi.ca/en/bio.php?id_nbr=3238> and David Richard Beasley, "Dissention and the Battle of Lundy's Lane" available at <http://www.davuspublishing.com/pdf_files/Beasley_and_Lundy_Lane.pdf>.

²⁸ Bruce Elliott, Dan Walker, Fawne Stratford Davis, *Men of Upper Canada: Militia Nominal Rolls*

Four years later, Col. Simons is likely the one who suggested the tar and feathering of George Rolph because the practice was well known in his native New England. The use of hot pine tar to attach feathers to a person's skin as punishment and humiliation dates back at least to medieval times but it did not become well known in North America until used (or threatened) by colonists on tax collectors before the American Revolution. In Simons' ancestral home of Salem, Massachusetts, three tax collectors were attacked with tar and feathers in summer-fall 1768 alone. The practice soon spread to other New England and North Atlantic colonies. The practice also was used or threatened against loyalists during the American Revolution and after for some returning loyalists becoming almost a trademark for the rebels. Nevertheless, as loyalists, Simons and his co-conspirators had no difficulty using the same practice against reformers, particularly because the practice was increasingly being used to punish behavior that the community considered immoral.²⁹

Dr. James Hamilton graduated from the Royal College of Surgeons in Edinburgh in 1816 at the age of twenty. Two

years later he settled in Ancaster as the only doctor in the area and spend most days traveling to visit patients. In 1820, he moved to West Flamboro and in 1823 he was appointed surgeon to the First Gore militia in April before marrying Ann Draper Hatt, daughter of a prominent community leader Richard Hatt, in December of that year.³⁰ During the trial, the *Gore Gazette* noted that: "Col. Simons and Dr. Hamilton had age and standing in society on their side. As for the young engaged in it, he looked upon merely as the tools in the hands of the older and more experienced plotters in the business."³¹

Although he was only a couple of years younger than Hamilton, Alexander Robertson (perhaps with others) was clearly the "young" in the above quote. He was Simons' son-in-law having married his daughter Matilda in 1824. He was a friend of Hamilton in Scotland and migrated to Ancaster upon his advice in 1820. Robertson was forced to flee Scotland after he had killed a man when a mob of reform protestors assembled outside his family home demanding firearms.³² For this reason Robertson likely had no love for reformers. He also

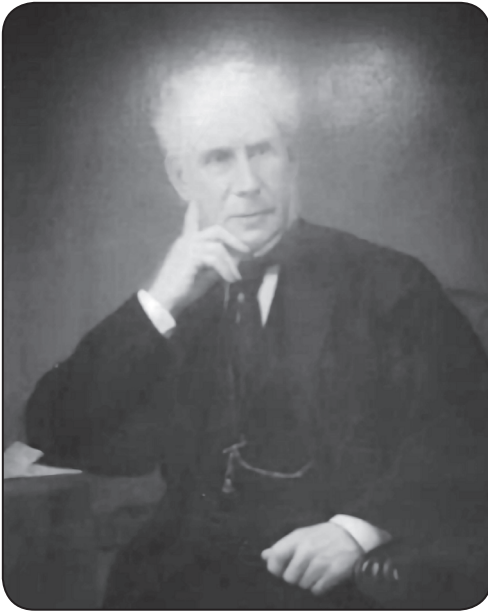
1828-29 p. 65. After Titus' death, William Chisholm was promoted to Colonel of the Second Gore in May 1830.

²⁹ Benjamin H. Irvin, "Tar, Feathers, and the Enemies of American Liberties," *The New England Quarterly*, 76:2 (June 2003), 197-238.

³⁰ Canniff, *The Medical Profession in Upper Canada*, 410-12; In collaboration with Bruce A. Parker, "Hatt, Richard," in *Dictionary of Canadian Biography*, vol. 5, University of Toronto/Université Laval, 2003-, accessed 25 October 2021, <http://www.biographi.ca/en/bio/hatt_richard_5E.html>.

³¹ *Gore Gazette* 25 August 1827, 102.

³² *Glasgow Herald* 7 April 1820, 1; *Glasgow Courier* 6 April 1820, 2; Berresford Ellis & Mac a' Ghobhainn, *The Scottish Insurrection*, 155-57; Derek Parker, *A History of Elderslie*, 18-19 (Elderslie: Elderslie Community Council 1983).



*The three defendants:
Above left: Dr. James Hamilton (1797-1877)
Above: Alexander Robertson (1798-1855)
Left: Titus Geer Simons (1765-1829)*

ertson managed to stop the duel without bloodshed after the first unsuccessful exchange of volleys.³³ As a new merchant, Robertson was concerned about his potential liability in the civil lawsuit and placed a notice in the 24 July 1827 *Gore Gazette* requesting that all those who had not paid their accounts with him should settle before 15 August. Otherwise, he would refer outstanding balances to his attorney for collection.

The Attack

According to the evidence presented in the civil lawsuit, Rolph contended that around midnight on the night of 3-4

was loyal to his friend Hamilton serving as the latter's second in a duel of honor sometime in the 1820s. With the help of the second for the other duelist, Rob-

³³ Henry H. Robertson, "Alexander Robertson," *Journal and Transactions of Wentworth Historical Society*, 4 (1905), 40-43.

June 1826, several members of the local Tory elite invaded his home after dining and drinking at Dr. Hamilton's nearby house. The group had discussed the rumored extra-marital relationship between George Rolph and his married servant Mrs. Evans and reportedly sought to punish him for such immoral behavior. Mrs. Evans and her young child had come to Canada with Rolph from England apparently fleeing from her abusive husband. By the time of the trial Mrs. Evans and child had returned to England so she did not testify.³⁴

The apparent trigger event occurred about a week before the actual attack when Mr. Evans arrived from England to visit his family in Dundas. He stayed at the inn and was trying to persuade his wife to return to England with him. This visit limited the time period available to attack Rolph before his alleged affair might stop with the departure of Mrs. Evans. This trigger moved the group from the inertia of complaining about the alleged affair to decide to attack and punish Rolph. Furthermore, the presence of Mr. Evans for a limited time allowed the group to bring him within the scope of their condemnation as well. Therefore, before the attack on Rolph, a gang of men, all disguised except one, visited Mr. Evans at the inn and

threatened to punish him for "selling" his wife. The gang carried Mr. Evans into the street and gave him "wholesome advice" about being a good husband. Afterwards, Evans did not appear hurt and seemed "quite satisfied" with his treatment according to a witness.³⁵

Next, a mob, probably with overlapping membership with the gang that attacked Evans, invaded the Rolph home. In contrast to the alleged satisfactory treatment of Mr. Evans, George Rolph did not receive the same from his attackers. They dressed in sheets, disguised their voices, and had blackened their faces or wore masks.³⁶ Paul Romney argues that they deliberately mimicked the conduct of a lower-class charivari, a gathering protesting some act of immorality, in an unsuccessful attempt to avoid identification as members of the social elite.³⁷ They dragged Rolph out of his bed and into the street while threatening dismemberment and castration. They stripped him naked while beating him and then applied tar and feathers to his body. They lost their feathers on the way to Rolph's house and had to get a fresh supply from one of Rolph's pillows.³⁸ They left the traumatized Rolph naked and lying in the street. They probably were frustrated

³⁴ Phelan, "The Tar and Feather Case," 17. One source suggests she left the Rolph household the morning after the attack. "Tarring and Feathering," *New York Spectator*, 7 September 1827.

³⁵ Archives of Ontario (hereafter cited as AO), RG 22-390-1, Box 1, Env. 2, Benchbooks of Justice James B. Macaulay, August 1827, 50; *Gore Gazette* 25 August 1827, 102; Robin Christine Grazley, "Nothing 'Improper' Happened: Sex, Marriage, and Colonial Identity in Upper Canada," (PhD Thesis, Department of History, Queen's University, 2010), 228-29.

³⁶ Riddell, "The Court of King's Bench," 126-34.

³⁷ Romney, *Mr. Attorney*, 114.

³⁸ *Ibid.*, 112. Simons later noted he was only ashamed of destroying one of Rolph's pillows. *Gore Gazette* 25 August 1827, 102.

by the fact that Mrs. Evans, his live-in servant by day and alleged adultery partner by night, was not in bed with Rolph.

After the outrage, the attackers and victim returned to their usual activities. Less than one month later on 1 July 1826, Col. Simons demonstrated his continued leadership and standing in the community by hosting a banquet of about one hundred people in honor of Lt. Gov. Peregrine Maitland. Maitland was visiting Burlington Heights to open the Burlington Bay Canal which connected Burlington Bay (later Hamilton) to Lake Ontario and the St. Lawrence River. The Gore militia and the Burlington Canal Commissioners were well represented and celebrated. Several songs were played by the marching band. As presiding officer, Col. Simons sat next to Maitland. Many others sought introductions to the lieutenant governor and many speeches and toasts were made in his honor.³⁹

Rolph's Four Part Quest for Justice

George Rolph, advised by his brother John and others, developed a four-

part plan for legal retribution.⁴⁰ Part one occurred in November 1826 when Rolph sent a letter to Lt. Gov. Maitland urging him to investigate magistrate Dr. James Hamilton as one of the attackers. Rolph argued it would be most painful and degrading to his office as clerk of the peace if he would have to continue to work with magistrate Hamilton. Maitland responded that Rolph should prosecute Hamilton and other suspects himself because without a guilty verdict from a jury, Maitland could take no further action.⁴¹

Part two of Rolph's plan occurred about ten months after the outrage when he took Maitland's advice and filed a civil complaint in the District of Gore Assizes against the three gang members he could identify: Simons, Hamilton, and Robertson. Rolph chose to file his civil complaint in the quarterly assizes civil court before a visiting judge and a local jury in order to limit the influence of the Gore magistrates. As clerk of the peace, Rolph maintained a list of eligible jurors and may have been able to influence the sheriff regarding membership on jury panels including his own. He sought £1,000

³⁹ John Robinson Simons, "The Fortunes of a United Empire Loyalist Family," 23 *Ontario Historical Society Papers and Records* 23 (1926), 479-80; Mary Weeks-Mifflin & Ray Mifflin, *Harbour Lights Burlington Bay*, (Erin: the Boston Mills Press 1989), 16.

⁴⁰ William Warren Baldwin and his son Robert also acted as plaintiff's counsel in this case. See Robert L. Fraser, "Baldwin, William Warren," in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed 18 October 2021, <http://www.biographi.ca/en/bio/baldwin_william_warren_7E.html>; and Michael S. Cross and Robert Lochiel Fraser, "Baldwin, Robert," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, accessed 18 October 2021, <http://www.biographi.ca/en/bio/baldwin_robert_8E.html>.

⁴¹ LAC, RG5 A1/80/43059-61, George Rolph to George Hillier, 16 November 1826; RG5 A1/80/43076-80, same to same – attaching an affidavit from Joseph Seers, 17 November 1826; RG5 A1/80/43341-6, J.B. Robinson to George Hillier, 1 December 1826, same to same, 2 December 1826. See also Romney, *Mr. Attorney*, 110.

damages for trespass on the premises and assault on his person.

The Civil Trial Proceeds

The jury trial began on 25 August 1827 before Mr. Justice James B. Macaulay who had been appointed as acting judge for the summer of 1827. Like Simons, Macaulay had fought in the War of 1812 including the Battle of Lundy's Lane. After the war Macaulay studied law with both Henry John Bolton (who represented the defense in the Rolph trial) and Bolton's father who had been attorney general. In May 1825, Macaulay was appointed to the Executive Council, so he was clearly a member of the Tory elite later referred to as the "Family Compact."⁴²

John Rolph highlighted the social class connotation of this case in his opening statement where he noted that the accused were all wealthy gentlemen of privilege. He congratulated members of the jury for being yeomen rather than gentlemen. He noted that no one of their rank had participated in this outrage.⁴³

At this civil trial, John Rolph argued that the attack against his brother was premediated. It was organized over dinner at Dr. Hamilton's home that had been previously scheduled for that purpose. The doctor had solicited at least one friend, John Paterson, to join them that night for the tar and feathering but

Paterson refused (and later testified). The attack occurred at night by people who were "masked and disguised" showing a plan to avoid being identified. They traveled a significant distance to carry out the attack (a spontaneous mob would have been more likely to dissipate over distance and time). Lastly, they had to purchase in advance and then prepare the tar and feathers.⁴⁴

In addition to this evidence that primarily implicated the dinner host Dr. Hamilton, Rolph presented evidence specifically against Titus Geer Simons. Witnesses testified that Col. Simons had told James M'Nally a neighbor that the attackers entered through the door rather than a window and that Rolph begged for mercy—suggesting Simons was part of the mob. Simons also said that the only thing he was ashamed of was that they lost their feathers and had to cut up one of Rolph's pillows. As a member of the landed elite, he apparently felt property damage to Rolph's pillow was more significant than injury and humiliation to his person. Another witness saw Simons outside in the village around 2 a.m. but could not tell if his face was blackened or disguised.⁴⁵

The defense team was led by Solicitor General Henry John Bolton (Mr. Justice Macaulay's mentor), in his capacity as a private attorney.⁴⁶ The two other defense lawyers, Allan Napier MacNab

⁴² "Macaulay, Sir. James Buchanan" in the *Dictionary of Canadian Biography* at <http://www.biographi.ca/en/bio/macaulay_james_buchanan_8E.html>.

⁴³ *Gore Gazette* 25 August 1827, 102.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Hereward and Elinor Senior, "Boulton, Henry John," in *Dictionary of Canadian Biography*, vol. 9,

and Alexander Chewett, appear to have been participants in the attack and refused to testify in order to avoid self-incrimination. George Gurnett, editor of the *Gore Gazette*, and Andrew Steven, deputy clerk for the crown (who was subpoenaed to testify and also argued the subpoena was improper) also refused to testify for this reason.⁴⁷ When the judge questioned the self-incrimination defense of these four potential witnesses in the civil trial, Bolton argued that the defense was proper in these circumstances. The judge deferred to the latter's purportedly greater legal knowledge in such matters and refused to compel the witnesses to testify by holding them in contempt and jailing them until they cooperated. The judge further indicated that the plaintiffs could sue the witnesses for damages if his ruling was overturned on appeal. This ruling prevented the plaintiff from calling witness to identify other perpetrators.

The defense did not try to establish the innocence of the accused but rather sought to exonerate them as vindicators of community outrage "who stood forward to vindicate the rights of an outraged community, deserved praise, rather than punishment." They "had merely acted in accordance with the community's wishes, in keeping with the ideals of a patriotic, Christian manliness."⁴⁸ Ma-

caulay refused to allow evidence that the attackers sought to separate Rolph from Mrs. Evans or merely punish Rolph for adultery since neither argument would legally justify the attack and there was no evidence Mr. Evans organized or participated in the attack.⁴⁹ Nevertheless, references were made to this defense when arguing to the jury. Defense counsel argued that Rolph's dismissal of Mrs. Evans' after the attack indicated that Rolph understood the community was opposed to his immoral behavior.

The jury seemed to understand and largely agree with this public morality defense returning a quick verdict requiring that Simons and Hamilton each pay £20 in damages—far less than the £1,000 requested. Gurnett's *Gore Gazette* published a full-page article on the trial and printed a few hundred separate single sheets of the report to be sold for a shilling each to raise money to help pay the damages.

Macaulay directed that the jury acquit Alexander Robertson which it did so he paid no damages. The only specific testimony involving Robertson was the sheriff who heard Robertson say he was not a party to the attack but was in Flamboro at the time and Robertson's brother William who said he did not believe his brother would have participated in the attack.⁵⁰

University of Toronto/Université Laval, 2003–, accessed 18 October 2021, <http://www.biographica.ca/en/bio/boulton_henry_john_9E.html>.

⁴⁷ AO, RG 22-390-1, Box 1, Env. 2, Benchbooks of Justice James B. Macaulay, August 1827, 51-53.

⁴⁸ *Gore Gazette* 25 August 1827, 102; Grazley "Nothing 'Improper' Happened," 226.

⁴⁹ LAC RG 5 A1, vol. 86, 47269-47270 Report of Justice Macaulay 10 November 1827; Grazley, "Nothing 'Improper' Happened," 228.

⁵⁰ AO, RG 22-390-1, Box 1, Env. 2, Benchbooks of Justice James B. Macaulay, August 1827, 53; *Gore*

The Appeal of the Civil Trial

Part three of Rolph's plan was an appeal seeking a new trial both on the amount of damages and Alexander Robertson's innocence. This latter issue was virtually ignored in the actual appeal.⁵¹ Rolph's team did argue on appeal that Robertson would have been convicted had the reluctant witnesses been compelled to testify: "it was generally believed that he was there."⁵² However no other evidence on this point was presented and the *Canadian Freeman* later stated that there was no doubt on either side that Robertson was innocent.⁵³ Robertson would be described as a "pious, sober, church-going looking gentleman."⁵⁴

The appeal occurred at the Court of King's Bench at the end of April 1828 before Justices John W. Willis and Levius P. Sherwood.⁵⁵ Despite a letter from one of Rolph's attorneys requesting that he stay, the Chief Justice of the Court of King's Bench William Campbell had travelled to England for health reasons and because he believed there was no case on the docket where the two remaining justices would disagree.⁵⁶ Soon, he would be

proven incorrect.

In this appeal, Solicitor General Bolton (again in his private capacity as defense counsel) argued that Steven was improperly subpoenaed and that Steven plus three others correctly claimed the right against self-incrimination in this civil trial. Bolton emphasized that two of these men were attorneys themselves and all were respected gentlemen in the community. Had their refusal to testify injured the plaintiff, he could have sued them for damages. In fact, the plaintiff presented sufficient evidence to win the case against two of the defendants to receive £40 in damages which the defense characterized as substantial—enough to qualify to be a juryman or run for the Assembly. Furthermore, the judge's alleged mistake of law on not forcing these people to testify was not justification for the burden of a new trial in a case where the plaintiffs were awarded substantial damages. Otherwise, any plaintiff could simply pay an alleged witness to refuse to testify and request a new trial whenever the initial trial award was deemed insufficient.

These arguments ignored the fact

Gazette 25 August 1827, 102.

⁵¹ Phelan, "The Tar and Feather Case," 17-23.

⁵² *Canadian Freeman*, 22 May 1828.

⁵³ *Canadian Freeman*, 6 July 1828.

⁵⁴ *Canadian Freeman*, 22 May 1828.

⁵⁵ The appeal was covered in the *Canadian Freeman* from 8 May- 5 June 1828. For more on the Justices, see Alan Wilson, "Willis, John Walpole," in *Dictionary of Canadian Biography*, vol. 10, University of Toronto/Université Laval, 2003–, accessed 20 October 2021, <http://www.biographi.ca/en/bio/willis_john_walpole_10E.html> and Ian Pemberton, "Sherwood, Levius Peters," in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed 20 October 2021, <http://www.biographi.ca/en/bio/sherwood_levius_peters_7E.html>.

⁵⁶ Phelan, "The Tar and Feather Case," 20-21.

that the judge deferred to the Solicitor General on this question of law and that the Solicitor General and Justice Macaulay told the courtroom if this ruling was wrong on the law, it could be overturned in a new trial.⁵⁷ They also argued that the trial court correctly found Robertson innocent and he should not be compelled to endure the stress of a new trial.

The co-counsels of John Rolph argued that the outrage was sufficiently notable that only a new trial would result in justice. They cited several cases where permissible testimony had been compelled despite the right against self-incrimination such as cases of associates in crime who testify not about their own activities but about the conduct of others. Furthermore, they argued, a blanket waiver of all testimony was inappropriate. Witnesses could be asked questions about evidence or who else participated which would not incriminate themselves. The judge should rule on a question-by-question basis on whether the witness would incriminate himself by answering. Such additional testimony might lead to Robertson being found guilty or a greater damage award against the others. While the Rolph team persuaded Justice Willis to vote in favor of a new trial and holding the recalcitrant witnesses in contempt, Justice Sherwood voted against a new trial. With the third justice out of town, the tie meant the motion for a new trial failed due to lack of majority support. This appeared to end the litigation

except John Rolph had developed an alternative plan.

Criminal Prosecution

Earlier in April 1828, the Rolph legal team set up step four of Rolph's quest for justice—criminal prosecution. This may have been their final goal this whole time pursuing the civil trial primarily to get testimony about other participants. Toward this end, Rolph's team compelled at least one witness to testify before a grand jury leading to a proposed criminal indictment in *King vs. Simons et al.* On Saturday 12 April 1828, George Rolph as clerk of peace advised the magistrates of the Court of Quarter Sessions that there were no more cases for the petite jury to hear so the petite jury was dismissed. The grand jury then presented its "Representation" to the magistrates during the court of Quarter Sessions.⁵⁸ The grand jury requested that the magistrates transmit the representation to the Court of King's Bench and the Attorney General for the latter to criminally prosecute the ten named defendants before the Court of the King's Bench. In addition to the three defendants from the civil trial, the "Representation" named seven new defendants: two of their defense attorneys who refused to testify in the civil trial—Allan MacNab and Alexander Chewett; two other presumed participants who similarly refused to testify: Andrew Steven, deputy clerk of the crown and George Gurnett, the editor of

⁵⁷ AO, RG 22-390-1, Box 1, Env. 2, Benchbooks of Justice James B. Macaulay, August 1827, 52.

⁵⁸ LAC, RG 5 A 1/88/48678-48679, copy of Representation, 14 April 1828.

the *Gore Gazette*; and three others: John Law, clerk of the district court and two other gentlemen—Peter H. Hamilton and John D. McKay.⁵⁹

The magistrates sought to control this prosecution and repeatedly offered to treat the document as an indictment and immediately consider the prosecution themselves in Quarter Sessions rather than wait for the next King's Bench session in September. After all, the offense of assault and battery was within the authority of this court. The named defendants who were present in court also wanted an immediate trial in Quarter Sessions controlled by their friends the local magistrates. Alan MacNab abusively argued that Rolph's attempt to bypass the local courts was an effort to discredit the charged individuals and create a public belief that this was an "official riot" conducted by government office holders.⁶⁰ He further predicted (correctly as it turned out) that the Rolphs would avoid actually conducting a trial because (MacNab predicted) they would lose. The arguments got so heated, Rolph refused to answer questions except in writing in order to avoid getting tripped up by repetitious questions.⁶¹

The magistrates ordered George

Rolph to prepare indictments for the grand jury which he did during a two-day break. The grand jury protested still insisting it had the right to send the representation to the higher court.⁶² On Tuesday 15 April 1828, after much argument, the court was prepared to begin trial when John Rolph produced a writ of mandamus signed by Justice Willis ordering the magistrates to stay all further proceedings against the defendants and send the indictments to the Court of King's Bench for trial before that court. The magistrates of the Court of Quarter Sessions fussed and fumed but ultimately decided to comply with the order from the higher court and required each defendant to post a £50 bond to guarantee their appearance at the future court session.⁶³ Although two men offered to post bonds for all of the defendants, Rolph insisted each person should have two sureties of £25 each with no overlap among the sureties. Two separate sureties for each defendant immediately volunteered from the court audience.⁶⁴

The *Gore Gazette* (whose editor was indicted) criticized the surprise production of a writ of mandamus as "disreputable," "trickery," and "dishonest" as well as "proof of such abandonment of all the

⁵⁹ LAC, RG 5 A 1/90/49965-49966, Appendix Letter etc., 19 September 1828. This is one of several "appendices" sent by George Rolph to Hillier. LAC, RG 5 A 1/49961-49962 19 September 1828.

⁶⁰ LAC, RG 5 A 1/88/48754-48757, affidavit of E. Leslie, 21 April 1828; RG 5 A 1/90/49969-49976 at 49971, affidavit of John Binkley, 19 September 1828.

⁶¹ LAC, RG 5 A 1/88/48680-48681, G. Rolph answers, 14 April 1828; LAC, RG 5 A 1/88/48807-48812, affidavit of J. Lesslie, 26 April 1828 at 48808.

⁶² LAC, RG 5 A 1/90/49967-49968, Appendix marked B, 19 September 1828.

⁶³ The magistrates would later explain their actions to Lt. Gov. Maitland. LAC, RG 5 A 1/89/48971-72, Representation of the Magistrates, 10 May 1828.

⁶⁴ *Gore Gazette*, 19 April 1828, 30-31.

principles which are essential to the character of a gentleman and an honorable man.” John Rolph reportedly considered a libel lawsuit challenging this portrayal in the *Gore Gazette* story. The *Gazette* responded that its story was substantively accurate (although not verbatim) and it was Rolph’s behavior, not the story, that may have cast John Rolph in an unfavorable light. The *Gazette* went on to argue that Rolph supported and praised the news media when it criticized the government but he hypocritically condemned the media for criticizing him.⁶⁵

While it appears Rolph had outmaneuvered the defense with a questionable tactic, the defense also engaged in questionable tactics as illustrated by Bolton’s arguments on self-incrimination. During the civil appeal, Justice Willis of the King’s Bench strongly denounced the actions of the Solicitor General for both privately representing defendants that potentially could be subject to criminal prosecution and then not criminally prosecuting those who refused to testify. Furthermore, when defense counsel Alexander Chewett and Allam MacNab

were accused of persuading several witnesses not to testify, the Solicitor General simply held to the supporting affidavits for eight months before delivering them to the Attorney General, so there was no witness testimony to aid in the appeal.⁶⁶

Although Rolph had won the right to a trial, he did not appear at the scheduled hearing in September 1828 thereby releasing the defendants from any further actions.⁶⁷ Two years and two months after the outrage occurred, litigation concerning it was finally over. Correspondence during this time period indicates that Rolph did not pursue the hearing because he thought the attorney general had a duty to criminally prosecute.⁶⁸ It also is likely that Rolph gave up because he believed he would not be successful in the criminal prosecution. The civil trial demonstrated that the Rolph attackers were determined not to testify making it difficult to tell who was in the mob. Furthermore, Justice Willis was suspended (“amoval”) from the Court of the King’s Bench in June 1828⁶⁹ and replaced by a conservative judge Christopher Hagerman.⁷⁰ Hagerman clearly believed in vigilante actions by the

⁶⁵ *Gore Gazette* 3 May 1828, p. 38.

⁶⁶ Romney, *Mr. Attorney*, pp. 111-15; Johnson, “The Gore District Outrages,” 113.

⁶⁷ *Ibid.*, 109-26.

⁶⁸ LAC, RG 5 A 1/90/49964-49966, George Rolph 19 September 1828 letter to Hillier, Appendix Letter A, 19 September 1828; Romney, *Mr. Attorney*, 113.

⁶⁹ The treatment of Justice Willis was a scandal itself. See Dent, *The Story of the Upper Canadian Rebellion*, 162-94 and Alan Wilson, “Willis, John Walpole,” in *Dictionary of Canadian Biography*, vol. 10, University of Toronto/Université Laval, 2003–, accessed 26 October 2021, <http://www.biographi.ca/en/bio/willis_john_walpole_10E.html>.

⁷⁰ Phelan, “The Tar and Feather Case,” 22; Johnson, “The Gore District Outrages,” 116 n.39; Robert L. Fraser, “Hagerman, Christopher Alexander,” in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed 18 October 2021, <http://www.biographi.ca/en/bio/hagerman_christopher_alexander_7E.html>.

aristocracy since he whipped early reform advocate Robert Gourlay in 1818 for publishing an unfavorable article about his brother. Gourlay was later jailed for sedition and expelled from the province in 1819.⁷¹ Hagerman also was married to a sister of trial court Justice Macaulay.

Although the criminal prosecution by the attorney general never occurred, Rolph could take some solace in his July 1828 election victory against nine other candidates for one of the two seats in the House of Assembly for the Halton riding of Gore. Reform advocates dominated the tenth Parliament of 1829-30 including defense team members John Rolph from Middlesex and Robert Baldwin from York after John Beverley Robinson was appointed Chief Justice in July 1829.⁷² While the Ancaster Outrage litigation was over, the struggle for political reform continued up through (and beyond) the Rebellion of 1837-38.⁷³

Later Outrages

Five days after the tar and feathering, a group of young elites broke into William Lyon MacKenzie's York (now Toron-

to) newspaper office (*The Colonial Advocate*) in broad daylight with no disguises. During this "Types Riot," they terrorized his mother and apprentices who fled, but no one was physically attacked. The attackers destroyed private property—the printing press and other equipment—with no resistance and even signs of approval from some observers who had gathered. Carol Wilton describes this outrage as "the most celebrated episode of conservative political violence in Upper Canada."⁷⁴ Paul Romney details how the riot grew out of a dispute between MacKenzie and James B. Macaulay as a church warden before he was appointed to be a judge. The dispute involved crude—almost obscene commentary about the lineage of Macaulay and John Beverley Robinson, then attorney general.⁷⁵ While the public arguments were explicitly personal, they were clearly part of the debate between Tories and reformers.

Fearing that Attorney General Robinson would not criminally prosecute with any rigor, MacKenzie brought civil charges in October 1826 and the defendants were ordered to pay Mackenzie £625 in damages—a relatively harsh

⁷¹ S. F. Wise, "Gourlay, Robert Fleming," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed 12 September 2021 http://www.biographi.ca/en/bio/gourlay_robert_fleming_9E.html; Wilton, *Popular Politics*, 27-36.

⁷² Frederick H. Armstrong *Handbook of Upper Canadian Chronology*, (Toronto: Dundurn Press 1985), 84-85, 98, 105; Robert E. Saunders, "Robinson, Sir John Beverley," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed 25 October 2021 <http://www.biographi.ca/en/bio/robinson_john_beverley_9E.html>.

⁷³ Dent, *The Story of the Upper Canadian Rebellion*. Alexander Robertson was a militia cavalry captain during the Rebellion of 1837-38. *History of the County of Middlesex* (Toronto and London: W.A. and C.L. Goodspeed 1889), 151.

⁷⁴ Wilton, "Lawless Law," 111-36, 111. Paul Romney describes the Types Riot as a *cause celebre*. Paul Romney, "From the Types Riot to the Rebellion: Elite Ideology, Anti-legal Sentiment, Political Violence, and the Rule of Law in Upper Canada," *Ontario History* 79:2 (1987), 113.

⁷⁵ Romney, "From the Types Riot to the Rebellion," 115-18.

punishment. The sting of the punishment was diminished, however, when the fine was paid through a collection taken up among the family and friends of the young men. The money Mackenzie won, ironically enough, allowed him to replace his printing press and continue publishing the *Advocate* which was in dire financial straits and may have soon failed had the June riot not occurred.⁷⁶

There were many other incidents of political violence during the late 1820s and 1830s including two in the Gore District at the end of 1827.⁷⁷ One of these was a November attack against Jacob Hagle, an elderly magistrate in Dundas. This attack, occurring after the Rolph verdict but before the appeal, was reportedly also motivated by morality rather than politics as the attackers contented Hagle was too old to take a wife, which he had done recently. Hagle accepted the reprimand and refused to prosecute. Some suggest this attack was made by the same group who attacked Rolph.⁷⁸ The attackers may have been emboldened by the small jury verdicts in the Rolph trial.

Outrages in the Gore District and Ancaster area subsided after the death of Col. Simons in August 1829 but became popular in the London District in the 1830s where coincidentally Alexander Robert-

son and his brothers then resided.⁷⁹ None of the later outrages were as notorious as the Ancaster Outrage and the Types Riot. Two other incidents are worth mentioning because of their unique aspects expose the scope of the various outrages that occurred at this time.

The Niagara Falls Outrage occurred in 1827 and is worth mentioning because it involved government officials performing their official duties rather than members of the ruling caste acting as private citizens.⁸⁰ The outrage was an attack by the military, under orders of the lieutenant governor, against the property of a Niagara Falls innkeeper William Forsyth. Although Forsyth had peacefully acquired and possessed this property and his property rights were not challenged in court, the army tore down his fences, a sheltered walkway, and a blacksmith's shop in order to maintain access to military reserve land at the edge of the falls needed for defense. The fences were intended to protect the innkeeper's crops but also prevent tourists from viewing the falls except from his inn. When the innkeeper rebuilt, the military returned and destroyed the property again. Attorney General Robinson successfully upheld the crown's claim to what it considered reserve property in a trial before

⁷⁶ *Ibid.*, 113-44.

⁷⁷ See e.g., Wilton, "Lawless Law," 111-36, 118-19.

⁷⁸ *Canadian Freeman*, 6 December 1827; Johnson, "The Gore District Outrages," 112.

⁷⁹ Wilton, "Lawless Law," 118.

⁸⁰ Similarly, abuse of the position of a governmental position, i.e., magistrate was suggested in an 1822 case against London-area innkeeper Singleton Gardiner, accused of not paying taxes. His property was seized without a hearing and he was sentenced to three months in jail for a minor assault against a magistrate when he was arrested. Romney, *Mr. Attorney*, 107-108.

James Buchanan Macaulay and associate judges Clark and William Dickson. Forsyth lost, receiving no damages. It was of little comfort that jury deliberations took twenty-four hours.⁸¹

Ultimately, Forsyth complained to the House of Assembly. A select committee report on his petition noted the irony that here the government acted without going to court as it should have in this case compared to other outrages that were “perpetrated without prosecution, and even followed by the patronage of the local government upon the wrongdoers.”⁸² Clearly this was a reference to outrages like the Ancaster Outrage and the Types Riot.⁸³ The committee called witnesses that the lieutenant governor refused to allow to testify and he prorogated (suspended) the Assembly after the witnesses had been jailed for three days. He was then transferred to Nova Scotia and Sir John Colborne was appointed in his place. By 1832 Forsyth had sold the property in question and the new owners successfully protected their rights in court. The *Report from the Select Committee of the House of Assembly of Upper Canada on Grievances* recommended in

1835 that Forsyth be compensated for his losses.⁸⁴ Paul Romney concludes that this incident and the other outrages “created the impression of a province ruled by men who were ready to punish any sort of opposition by violence and coercion.”⁸⁵

After losing seats in the election of 1828, it appears as though some Tories tried to defuse the accusations of political violence made against them by attempting to appear as reformers engaged in an outrage. In January 1829 some people in Hamilton hung an effigy of John Colborne for not freeing the imprisoned journalist, Francis Collins. This outrage gained province-wide notoriety in part because the Tories promoted it as an example of lawlessness by reformers and the *Gore Gazette* further reported that a gang of fifty resolute fellows from the Gore District were organizing to free Collins from jail in York by force. The House of Assembly conducted hearings on this “Hamilton Outrage.”⁸⁶ Tory witnesses again refused to answer questions about who was involved. The *Report of the Select Committee* concluded the report of a gang of fifty was the wishful thinking of one man and the outrage was “unworthy of public notice.”⁸⁷

⁸¹ Dent, *The Story of the Upper Canadian Rebellion*, 151-61; Robert L. Fraser, “Forsyth, William (1771-1841),” in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, accessed 22 October 2021 <http://www.biographi.ca/en/bio/forsyth_william_1771_1841_7E.html>.

⁸² John Rolph, “Report of the Select Committee on the Petition of William Forsyth to the Commons House of Assembly,” *Appendix to Journal of the House of Assembly of Upper Canada*, 115 (1828).

⁸³ Romney, *Mr. Attorney*, 116.

⁸⁴ *The Seventh Report from the Select Committee of the House of Assembly of Upper Canada on Grievances* (Toronto: M. Reynolds 1835), v, vi.

⁸⁵ Romney, *Mr. Attorney*, 121.

⁸⁶ Upper Canada, House of Assembly, *Journals*, 10 Geo. 1 (1829); *Gore Gazette* 7 Feb. 1829, 3 and 16 March 1829, 4; Johnson, “The Gore District Outrages,” 118, 119.

⁸⁷ W.W. Baldwin, chairman “Final Report of the Select Committee to which was referred the mat-

As a member of the Assembly, George Rolph did get the satisfaction of voting in favor of a motion to arrest Allan MacNab (whom Rolph had accused in his criminal complaint) for refusing to answer some questions about the Hamilton Outrage. MacNab spent ten to fifteen days in jail but was treated as a hero when he returned to Hamilton.⁸⁸

It is interesting that MacNab refused to testify about the views of his neighbours about this outrage but then contributed to the reward fund seeking information. Also of interest, Simons apparently started the reward fund with his pledge of £25, the largest individual contribution, but more money than his civil fine in the Ancaster Outrage which his attorneys had argued was “substantial.” Apparently, he was trying to demonstrate that his wealth was unimpaired by his previous fine and that he remained loyal to the King and his representatives.

Ultimately, total amount of reward for information on the Hamilton Outrage increased from £282 on 7 Feb 1829

to £527 on 16 March. Sponsors grew to over 110 participants including several who were criminally charged in the tar and feathering outrage. Dr. Hamilton pledged £10 as did Allan MacNab and Alexander Chewett. Alexander Robertson pledged £2 10 shillings and George Gurnett pledged £5. If the effigy outrage was in fact staged by Tories to vilify reformers, the reward program might have been mere window dressing.

The Aftermath of the Ancaster Outrage

Although only two attackers were held civilly liable, the Ancaster Outrage eventually had other repercussions for the parties involved. The continuing controversy caused the lieutenant governor not to reappoint Simons and Hamilton as magistrates at the end of 1827.⁸⁹ George Hillier, civil secretary to the lieutenant governor, further noted that if they had “grounds for disputing the justice or legality” of the verdict perhaps the outcome would have been different.

ters of the outrage committed at Hamilton and the alleged threatened release of Francis Collins by force,” *Journal of the House of Assembly of Upper Canada, From 8th January to 20th March 1829*, 10 Geo. 1 (1829) 43 Appendix.

⁸⁸ Woodhouse, *The History of the Town of Dundas*, 26; Johnson, “The Gore District Outrages,” 119; Peter Baskerville, “MacNab, Sir Allan Napier,” in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, accessed 18 October 2021 <http://www.biographi.ca/en/bio/mac-nab_allan_napier_9E.html>.

⁸⁹ LAC: RG7 G16/18/5, Hillier to Simons and Hamilton, 24 November 1827; RG5 A1/86/47297-47299, Simons to Hillier, 4 December 1827. Romney, *Mr. Attorney*, 122 says Hamilton’s dismissal did not take effect for several months and Simons was listed on the commission of the peace (the list of magistrates) in April 1828. Frederick H. Armstrong, *Upper Canada Justices of the Peace and Association 1788-1841* (Toronto: Ontario Genealogical Society 2007), 37, notes that Dr. James Hamilton served as a magistrate in Gore from 1820-1838 having received five commissions with no mention of any gaps in service. Finally, George Rolph’s 19 September 1828 letter to Hillier, Appendix Letter A, describes James Hamilton as “late” justice of the peace just as Titus Geer Simons was “late” sheriff, a position he lost earlier. LAC, RG 5 A 1/90/49964-49966.

As he had done with past set-backs, Simons first thanked Hillier for informing him of the decision. He also expressed his regret to having lost the confidence of the lieutenant governor.⁹⁰ Simons then interpreted Hillier's attempt to appear reasonable regarding a legal appeal as a possible opening to appeal on the facts and his trial tactics. In early 1828, Simons obtained and forwarded two affidavits from respected community members who swore Simons was with them on the night of the attack and could not have participated in it. The first was from John M.A. Cameron who swore that he and Simons conducted business that day into the evening until they heard screams and dogs barking from the direction of Dundas. They decided to investigate but at one point Cameron advised Simons to wait while he checked to see if it was safe. When Cameron returned Simons was gone.⁹¹ The second affidavit, written by George Patton, continued the same story. Patton was a clerk to Mr. Cameron at the time of the outrage but a merchant at the time of the affidavit. Patton claimed that he saw Simons standing alone and joined him. A small group of men approached and asked what they were doing and they replied they were waiting for Cameron. One person in the group recognized Simons and humbly begged his pardon. The group left and Patton and Simons walked home thinking Cameron would

overtake them but he did not.⁹²

Simons argued that these two affidavits proved his innocence and he was justified in not calling the affiants as witnesses in the trial. If he had called them, they would have to testify more generally and might have identified some of Simons' friends as possible participants. He did not wish his friends to potentially have to pay heavy damages for "a transaction which appeared to give such general satisfaction throughout the district." Furthermore, presenting defense witnesses would have given Rolph the right to the last word to the jury under procedural rules at the time. Simons argued that by not calling these witnesses, he disrupted the plaintiff's tactics to get new evidence in cross examination and secured the right to make the final argument to the jury. He argued this strategy was largely successful because only a light damage award was awarded.⁹³ As noted above, when arguing against an appeal, his attorneys characterized the total damage award from Simons and Hamilton as substantial.

Despite his loss of prestigious government positions, Simons remained interested in politics. For the 1828 elections, he wrote a letter to his fellow electors in support of John Beverley Robinson who was again re-elected to Parliament from York despite many other seats going to reformers. The 1 July letter, signed "A Yorkite" pleaded with the reader not to be blinded by prejudice or ignorance and

⁹⁰ LAC, RG 5 A 1/86/47287-89, Simons to Hillier, 4 December 1827.

⁹¹ LAC, RG 5 A 1/87/47652-56, Simons to Hillier, 10 January 1828.

⁹² LAC, RG 5 A 1/87/48347-50, Simons to Hillier, 12 March 1828. Simons blamed the two-month delay between these two affidavits and letters on his own ill health.

⁹³ Romney, *Mr. Attorney*, 110-11.

extolled Robinson's pride and loyalty as a British subject as well as his past service and knowledge of the law and his ongoing protection of liberty. The opposition was characterized as being barbarians who were arrogantly ignorant to think, based on no experience, that they could govern better.⁹⁴ Robinson was elected to represent the town of York for the third time.⁹⁵

In addition to the "de-magistrating" of Simons and Hamilton, George Rolph also suffered after the outrage. Not only did he immediately dismiss his servant Mrs. Evans, but he was suspended by the Gore magistrates as their clerk and they temporarily replaced him with John Burwell.⁹⁶ Rolph argued they lacked authority to dismiss him and seventeen members of the grand jury who worked with Rolph objected to his treatment noting he had performed his duties for thirteen years and they had never observed him acting improperly or in any way that would disrespect the legal system.⁹⁷ The magistrates requested that Lieutenant Governor Maitland dismiss Rolph but he refused to do so. In response, twenty-one magis-

trates dismissed him for misconduct in the discharge of his duties in open court on 16 April 1829. Five charges were listed to justify this dismissal including repeated disrespect and refusal to answer magistrate questions except through his attorney.⁹⁸ In a lengthy letter the magistrates explained their decision to the new (as of August 1828) Lieutenant Governor John Colborne who then affirmed Rolph's dismissal.⁹⁹ A select committee of House of Assembly held hearings presenting several witnesses and a petition signed by sixteen grand jurors in support of George Rolph's performance of his duties. The final 1830 committee report condemned the magistrates, in part for not allowing Rolph to defend himself.¹⁰⁰

To add insult to injury, George Rolph was defeated in the 1830 elections.¹⁰¹ Fortunately for him, he acquired his brother's law practice in 1832. This occurred after Judge Sherwood refused to issue written rulings: John Rolph tore off his lawyer gowns in protest and never practiced law again. Instead, he got a license to practice medicine in Dundas

⁹⁴ AO, Number F 906 in container B294760

⁹⁵ Frederick H. Armstrong *Handbook of Upper Canadian Chronology*, (Toronto: Dundurn Press 1985), 112.

⁹⁶ LAC, RG 5 A 1/88/48807-48812, affidavit of J. Lesslie, 26 April 1828 at 48808; LAC RG 5 A 1/88/48833-48835, G. Rolph to Hillier, 28 April 1828.

⁹⁷ LAC, RG 5 A 1/89/49360-49363, Statement of the Grand Jury in favor of Geo. Rolph, Esq., June 1828.

⁹⁸ *Gore Gazette* 20 April 1829, 2; Woodhouse, *The History of the Town of Dundas*, 26.

⁹⁹ LAC, RG 5 A 1/94/52174-52187, Lt. Gov. Colborne from the Magistrates of the Gore District, 9 May 1829 (the microfilm copy is difficult to read); Johnson, "The Gore District Outrages," 116. Colborne became lieutenant governor in August 1828.

¹⁰⁰ Report of the Select Committee of the House of Assembly, on the petition of George Rolph, Esq. against the proceedings of the magistrates of the Gore District (York: W.J. Coates 1830), <<https://www.canadiana.ca/view/oocihm.89477/3?r=0&s=1>> accessed 20 October 2021.

¹⁰¹ *Montreal Gazette*, 1 November 1830, p. 2. The 9th Parliament was dissolved in 1830 because of the death of King George IV and new elections were held that year.

in 1829. In 1836, George married Georgina Clement in Wales. Despite his embarrassment from the outrage and his personal unpopularity, he and new bride returned to Dundas where he lived until his death in 1875. He dedicated some of his land for a town park and was the clerk of the surrogate court for fifty-four years.¹⁰²

Col. Simons died in August 1829, much earlier than Rolph, but the ramifications of the outrage continued after his death. Alan Napier MacNab wrote a letter to John K. Simons, the deceased's brother, indicating that Dr. Hamilton and Col. Simons' estate were being levied for the price of the tar and feathers, which came to £90. He proposed that each of them (who shared in the "honor" of the tar and feathering) pay £10.¹⁰³ Presumably, all nine co-conspirators still alive and in the area were expected to share the financial burden.¹⁰⁴ Son-in-law Alexander Robertson was a co-executor on Simon's estate but left town after that joining his brothers in London at least by 1832. As an Ancaster merchant, his reputation with farmers might have been damaged by the trial even though he was not found guilty.

If Alexander Robertson had in fact participated in the attack, retribution may have occurred on 14 June 1829 when his aunt and uncle in Scotland suffered a

break-in, robbery, and assault. His Uncle William Robertson was stuck a total of five times and he and his sister were tied up while the thieves escaped.¹⁰⁵ In just over four months (compared to over two years in the outrage), two of the thieves were caught; they confessed and were hanged on 29 October 1829 before a large crowd in Paisley Scotland.¹⁰⁶ William Robertson forgave them for their attack. When Alexander Robertson, his wife, father-in-law, and close friend Dr. James Hamilton heard of the horrors of this attack, they might have drawn parallels to their attack on George Rolph (and perhaps Jacob Hagle). Perhaps they had regrets. In any event, they were still probably grateful not to have been criminally prosecuted and punished for their actions.

Conclusion

The brazen and cruel nature of the Ancaster Outrage, including the use of tar and feathers which was relatively rare in Upper Canada, has earned it a notorious place in history. The outrage was noteworthy because lawyers (although not among the original three defendants) participated in breaking the law against assault and then defended themselves and other elites from legal ramifications. Indeed, Attorney General Francis Beverley Robinson not only failed to criminally

¹⁰² Woodhouse, *The History of the Town of Dundas*, 26.

¹⁰³ Mabel Burkholder, "Out of the Storied Past: Colonel Titus Geer Simons Took Prominent Part in Affair at Dundas in which Resident was Tarred and Feathered," *Hamilton Spectator*, 1 August 1953, 138.

¹⁰⁴ Alexander Robertson and his wife moved to London Ontario around this time to join his brothers there. We don't know if he was one of the nine expected contributors.

¹⁰⁵ Precognitions (recorded testimony) AD/14/29/238.

¹⁰⁶ Alex F. Young, *The Encyclopaedia of Scottish Executions 1750-1963* (1998), 104.

prosecute the accused attackers but also withheld evidence that the defense attorneys had persuaded several potential witnesses not to testify. This is just one example of the legal profession in Upper Canada struggling with the tension between equal treatment under the law and the concept that the ruling elite, including lawyers, should be above the law.

This outrage has generally been seen as an early attack on reformers by Tory elites.¹⁰⁷ John Rolph himself characterized it and subsequent proceedings as generated by his enemies.¹⁰⁸ However, a strong case can be made that the primary motivation behind the attack was to punish a perceived adulterer who ignored his peers and was therefore disliked. The attack itself appears dictated by the arrival and anticipated departure of Mr. Evans, the estranged husband of George Rolph's alleged adultery partner. Without this trigger, the attackers might have been satisfied with gossip and the outrage might never have occurred. Furthermore, during the attack there were no threats against the reform movement or Rolph's brother nor any encouragement for George to be nicer to town elites or to resign his position as clerk of the peace. Their threats were limited to adultery. It was only when the magistrates attempted to dismiss Rolph that accusation arose of misconduct

in the discharge of his duties including being disrespectful. Lastly, the post-verdict attack on Magistrate Jacob Hagle for being too old to take a new wife suggests that at least some of the elite had a strong interest in community morality standards.

However, the attack did occur while John Rolph was in England seeking citizen rights for settlers in Upper Canada who had been born in America and encouraged to settle in Canada. The goal may have been to send a message to John Rolph, that he drop his attempt to take local reform issues to the British government. Furthermore, the broadening of the attack to include Mr. Evans suggests careful planning to disguise the anti-reform animus behind the attack. However, a mob that had been drinking since dinner seems unlikely to plan so carefully. Thus, the more likely explanation was that the outrage was motivated by concerns for community morality. One modern analyst agrees saying "this episode cannot be dismissed as mere political expediency."¹⁰⁹

Furthermore, in 1825, the year before the attack, John Rolph established his own (and perhaps his family's) belief that adultery was immoral by introducing a bill before the House of Assembly calling for the punishment of open and common

¹⁰⁷ Wilton notes only the 1818 whipping of reform advocate Robert Gourlay by Tory Christopher Hagerman as occurring before the Ancaster Outrage but she elsewhere noted that Gourlay was assaulted before that by a crowd including a magistrate named Duncan Fraser after a political meeting in Prescott in June 1818. Wilton, "Lawless Law," 118; Wilton, *Popular Politics*, 32.

¹⁰⁸ In a letter, John Rolph refers to the tenacity of his enemies' pursuit of "me and my brother." Metropolitan Toronto Library, WW Baldwin Papers Collection, B105, Letter from John Rolph to W.W. Baldwin, 5 May 1829. Of course, this was after the trial so Rolph may have been referring to opponents at the trial rather than opponents to reform.

¹⁰⁹ Grazley, "Nothing 'Improper' Happened," 229.

adultery.¹¹⁰ Since he presumably would not knowingly call for the punishment of his own brother, this was a strong denial of the rumors about his brother.

Regardless of whether adultery was the actual cause or a mere excuse for the attack, it presumably would not have occurred after Mrs. Evans returned to England with her husband. Whether later events such as the attack on Jacob Hagle would have occurred without the Ancaster Outrage is open to speculation.

Comparing the Ancaster Outrage with the Types Riot and Niagara Outrage shows a disturbing trend. The Ancaster attack was the most violent and the perpetrators attempted, with some success, to disguise their identities, in part by attacking at night. Arguably the perpetrators sought to conceal their identities (and perhaps their true anti-reform intent) by making the attack appear as a lower-class charivari. In the Types Riot, the attackers were more brazen, undisguised, and attacking in daylight. They were less violent but still terrorized MacKenzie's mother while not physically injuring her. Niagara was the most

brazen outrage with soldiers and a sheriff appearing in their official capacity to invade private property and destroying fences and buildings. At least there were no physical injuries and little emotional trauma. However, the fact that the lieutenant governor ordered the military to destroy this peacefully held property demonstrated to all that the ruling elites were willing to abuse their power both as private citizens and as government officers to achieve their goals.

Lastly, it appears that the attackers did not anticipate that Rolph (a licensed lawyer) would respond with not just litigation but with a sophisticated and time-consuming legal strategy aimed at limiting the ability of local magistrates to rule in this matter. As noted above, at the onset of litigation Robertson was so nervous about being fined that he called in all of the debts owed to him. Perhaps this lesson regarding the importance and sophistication of the law contributed towards Robertson's oldest son Thomas becoming a lawyer, member of Parliament, and ultimately judge in the court of chancery.¹¹¹

¹¹⁰ *Journal of the House of Assembly of Upper Canada*, sess. 1825-1826, pp.7, 15, 18; *The Canadian Freeman*, 1 Dec, 1825.

¹¹¹ See *A Dictionary of Hamilton Biography*, vol. II 1876-1924 (1981) 130-31 and *Hamilton Spectator* 7 September 1905, 10. One case heard by Mr. Justice Robertson harks back to his father and grandfather's trial for tarring and feathering an alleged adulterer. The case was Mrs. Lellis vs. Mrs. Lambert for alienation of affections of the former's husband. Mr. Lellis visited Mrs. Lambert's house late at night and left early in the morning causing a scandal that resulted in neighbours rolling him in the mud. While not as bad as being tarred and feathered, Justice Robertson, like his grandfather, showed no sympathy for the alleged adulterer. When Mr. Lellis testified claiming that he and his wife fought constantly over money and that she hit him with a stick, Justice Robertson commented: "So you are the hero of this story" eliciting laughter from those present. When Mr. Lellis finished testifying, the Justice remarked: "You have left a most splendid reputation behind you." When he charged the jury, he characterized Mr. Lellis as a "gay lothario." Not surprisingly, the jury found in favor of the estranged wife awarding her \$2,250 in damages—quite a bit more than the minimal £20 award against Justice Robertson's grandfather Titus Geer Simons in the civil tar and feather case. *Globe and Mail* 6 November 1895, 6.