PRELIMINARY INVESTIGATION

AND TRIAL OF

AMBROISE D. LEPINE

FOR THE MURDER OF

THOMAS SCOTT,

Being a full report of the proceedings in this case before the Magistrates' Court and the several Courts of Queen's Bench in the Province of Manitoba.

SPECIALLY REPORTED AND COMPILED BY

MESSRS. ELLIOTT AND BROKOVSKI,

OF THE CANADIAN PRESS.

1874

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Calendar, with Fees and Board rates, can be had from Prof. Bryce.

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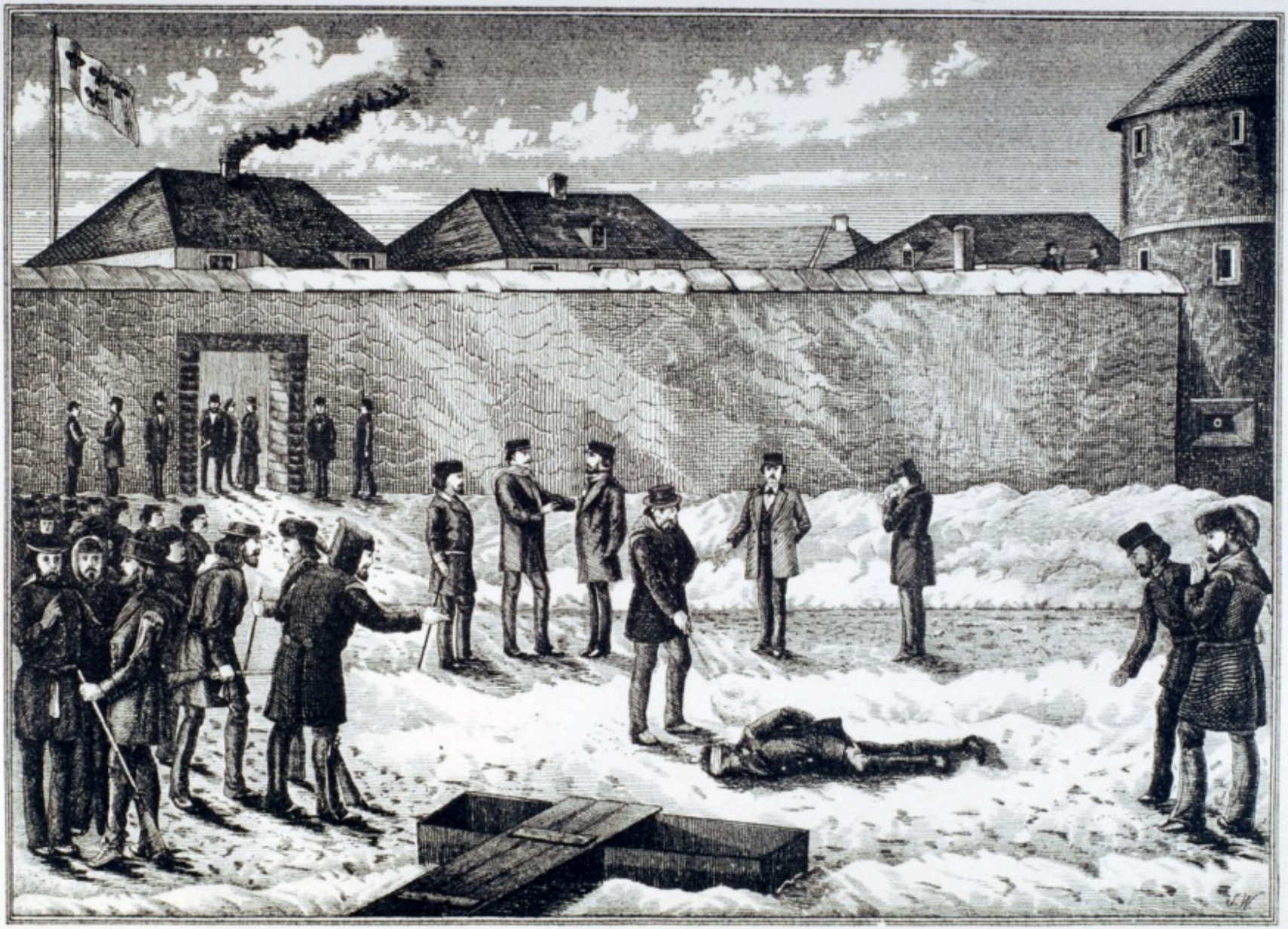


THE EXECUTION OF SCOTT.

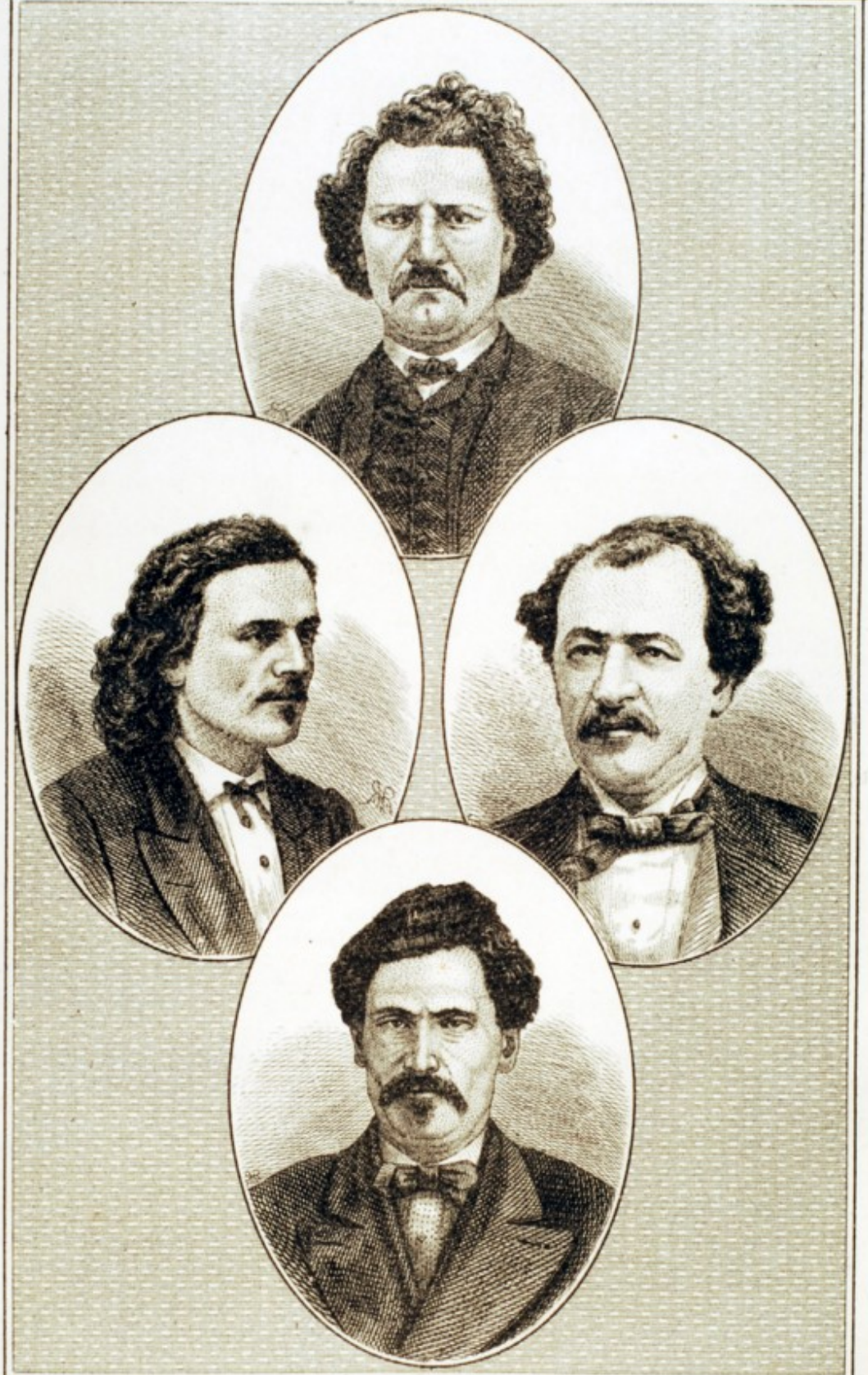
Printed by the BURLAND-DESBARATS LITHOGRAPHIC COMPANY,
Montreal, Canada.

PREFATORY.

Owing to the many mistaken opinions which prevail with regard to the facts and particulars connected with the murder of Thomas Scott, and also to the great demand for an impartial record of the evidence elicited both at the preliminary investigation and the trial of Ambroise D. Lepine, for the murder of the said Thomas Scott, we have been encouraged to publish the proceedings in the case, commencing with the preliminary investigation and ending with the sentencing of Lepine by His Lordship Chief Justice Wood. No opinions are expressed, our purpose being simply to give a fair and impartial record of the proceedings, the demand for which as we have already intimated, has been so great as to encourage us in the publication of the evidence, together with cuts of some of the celebrities connected, directly and indirectly, with the case

THE COMPILERS.

WINNIPEG, 4th January, 1875.



HON. J. A. CHAPLEAU. LOUIS RIEL. HON. JOSEPH ROYAL.

AMBROISE D. LEPINE.

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WINNIPEG, 4th January, 1875.

before me or some other of Her Majesty's Justices of the Peace, in and for the said County of Selkirk, to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this fifteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-three, at the town of Winnipeg, in the County of Selkirk aforesaid.

[L.S.]

[Signed,] JOHN H. O'DONNELL, J. P.

This warrant was placed in the hands of Constables Ingraham, Kerr and Dupont, who succeeded in making the arrest two days after (September 17th, 1873).

Lepine was confined in one of the rooms in Fort Garry, until the sitting of the Magistrates' Court.

From the date of Lepine's return to Manitoba from St. Paul, Minnesota, and up to that of his arrest, he was pursuing his ordinary avocation of a farmer, and had made no attempt at escape. The arrest created some excitement both amongst the French and English speaking nations of the Province, as no circumstances had transpired to lead to the belief that any arrests would be made at that time; by the former, it was received with indignation, but the English speaking, or what is termed the Canadian party, felt that there was some prospect of the matter of the Scott murder being thoroughly investigated, and that the arrest of Lepine was the first step towards this.

PRELIMINARY EXAMINATION OF AMBROISE LEPINE.

On Tuesday, September 23rd, 1873, Ambroise Lepine was brought before Mr Justice Betournay, sitting as Police Magistrate at Fort Garry, upon the charge that he did, on the 4th day of March, 1870, kill and murder Thomas Scott, at Fort Garry.

The examination was deferred for the production of evidence for the prosecution, and the prisonner was remanded until the following Friday.

ADJOURNED COURT.

The Court was opened pursuant to adjournment by Mr. Justice Betournay, and Gilbert McMicken, Esq., on the Bench.

Messrs. Cornish and Thibaudeau for the prosecution. Hon. Messrs. Royal, Dubuc and Girard for the defence.

Hon. M. Dubuc raised the question of jurisdiction, addressing the Court in French.

Hon. M. Royal repeated the argument in English, of which the following is the substance:

If the Imperial Statutes giving Canada legislative power (91st clause) were clear, there would be no room for raising a question of jurisdiction. The only clause upon which jurisdiction can be claimed is upon 34 Vic., cap. 14, sec. 2. Manitoba was not constituted like the other provinces prior to Confederation.

The circumstances of this country prior to transfer were entirely different, and the jurisdiction was exercised here by other provinces. Were the act cited clear, it would be a logical sequence to clause 146 of Imperial Act. We do not raise the question of constitutionality of the law. Your Honors are only to o nstrue the law. The next question is, whether Canada, in assuming the jurisdiction, did so in accordance with Imperial Statute. It may be said, seeing that Ontario and Quebec did exercise jurisdiction in the North-West before transfer,

that since Confederation the Dominion succeed to jurisdiction; but we claim that the Imperial Statutes giving jurisdiction to Ontario and Quebec in the North-West were never repealed, nor was that jurisdiction transferred to Canada. The first Act for giving Ontario and Quebec jurisdiction in the North-West was passed in 1803, which made offences amendable to the same, as in Ontario or Quebec. But in all cases the magistrates had to convey the criminal to Ontario or Quebec. This Act is based upon an old French law, existing in New France.

The second Imperial Statute bearing upon this matter was passed in 1821. The 6th and 7th sections of this Act gave similar power in civil cases. The 8th clause gives the Governor of Quebec power to issue commissions to administer law in the North-West, same as Ontario. The 11th clause gives the King power to issue commissions for the trial of offences in the North-West.

The 12th provides that such commission may not try an offence sujecting offenders to capital punishment or transportation, or upon any civil matter exceeding £200. Jurisdiction created by these Acts was of a limited and exceptional character.

For the offence of murder the offender had to be sent to Ontario or Quebec for trial.

If, as before said, it could be shown that Confederation had fused former jurisdiction of Ontario, Quebec and Canada, the course would be clear; but it cannot, it was exceptional. In 1841, Imperial Statute vested the powers of Ontario and Quebec before cited in United Canada.

If the same could be said of the British North American Act, the jurisdiction would be beyond dispute. Act of 1867 repealed Act of 1841.

The next Imperial Act upon this matter is that of 1868. The fifth clause of this Act says that from a certain day to be named by Order in Council, Canada shall succeed to full powers in Rupert's Land.

The Order in Council necessary was not passed till June, 1870. The address upon which the accession of the North-West was based, states that it is for the *future* welfare and government. Sixth clause of the Manitoba Act provides that there shall be no retroactive action. The Rupert's Land Act was passed in 1868, but the Order in Council which put it into effect was not passed until 1870.

Not till 1871 was the Manitoba Act framed, which clearly states that there can be no retroaction ; and we claim that this Court has no power to investigate matter of the kind now before it, that transpired prior to 1871.

Where, then, does the jurisdiction fall? Not upon the Local Government; not upon the Federal Government; but upon the Imperial Government. The Provisional Government was recognised at Ottawa by the reception of the delegates from the same.

Our position is, that from the time of the resignation of the Government of Assiniboia, in 1869, until Canada assumed the Courts by Act of Parliament in 1871, the jurisdiction in the North-West belonged to the Imperial Government.

The offence now for the consideration of the Bench partakes of a political feature; and seeing that we may reasonably expect efforts on part of witnesses to make the case so and so, we would abjure proceeding to it with caution.

Mr. Cornish, for the prosecution, said that it was not for this Court to determine upon jurisdiction; but the duty of the Bench was to determine whether the crime alleged has been committed, and whether there was sufficient grounds upon which to send the prisoner to his trial, at which time the arguments advanced to-day would be in place. A careful reading of the Statute quoted would clearly establish the claim of jurisdiction, bringing it down to the present ime.

But he did not propose to argue this point now.

This Court had simply to determine whether a *prime facie* case could be made out. He was sorry to hear his learned friend insinuate that there was a political significance; for he knew of none. The allusion to the Provisional

Government was also out of place. And if he understood what he (Mr. Royal) alluded to, it must have been a usurpation of Her Majesty's power.

Mr. Justice Betournay said that he could not determine the question of jurisdiction at this time; it would be determined in a higher Court, if there was evidence enough to send the prisoner there.

The Court then proceeded to examine the witnesses, the examination of whom occupied five days, during which an interval of adjournment took place.

On Thursday, October 9th, after the prisoner Lepine was brought into Court, he was asked by Mr. Justice Betournay if he had anything to say to the Court, in answer to which he read an address in French as follows:

"May it please the Court,—From the very first moment that I could be heard, I have respectfully repelled the accusation brought against me, and denied any magistrate appointed by the Government of Manitoba the right to issue warrants for deeds committed or actions done in the Settlement of the Red River between the 1st of July, 1869, and 15th of July, 1870. I have also in the meantime declined the competency of the Court to take cognizance of any accusation of this character. I beg to renew the same declaration.

"On the other hand, the accusation that has so suddenly been brought against me has taken, by the examination just now concluded, a character essentially political. That fact is clearly established by the evidence of all and every one of the witnesses; and these witnesses are not mine, but those of the prosecution. They have made those affirmations not at the instance of my counsel, but of the counsel for the prosecution. It is, therefore, the political man that is aimed at in this prosecution, and not the pretended murderer.

"In view of these facts, and in answer to the request of the Court, I beg to declare and to enter respectfully but energetically my protest against a proceeding by which the sworn faith is trampled upon, as well as the arrangements made at Ottawa in the spring of 1870, between the Dominion Government and the delegates of a Provisional Government recognised and supported by at least three-fourths of the population of the Colony of the Red River.

"I also do respectfully but energetically enter my protest against a proceeding by which myself, out of a thousand, is selected to bear exclusively the responsibility of acts done by a Government acting in the *plénitude* of powers with which the people of a country had publicly and voluntarily invested it.

"In conclusion, I repel with all my strength the heinous accusation directed against me, because it is false, mendacious, and got up, not by a spirit of justice, but by a spirit of injustice, and by political passions and feelings.

"Such is my declaration, that in my soul and conscience I deem it my duty to make to the Court, after I have heard and well weighed all the evidence that the counsel for prosecution has brought against me.

"[Signed]

"Ambroise Lepine.

"Fort Garry, Oct. 9th, 1873."

Mr. Dubuc addressed the Court on behalf of the prisoner in French, the substance of which was as follows:

First,—That it is not proved that Scott is dead. He has been seen wounded, but no medical man was present to say that these wounds caused his death.

Second,—That the death of Scott is not a murder, but a sad occurrence arising from political difficulties.

If it is not an ordinary murder, the part Lepine took was too remote to accuse him of murder, and he is only as guilty as any other man who took part with the Government of that day. If it is not a murder, it is then a political offence. The evidence shows that Scott was condemned by a council of war. There were two parties in conflict; one the Canadian party, headed by Colonel Dennis, who

had no more right to take Lower Fort Garry than the native party had to take Fort Garry. Colonel Dennis professed to be acting for the Canadian Government, whilst his authority was only from the Hon. Mr. McDougall, who was officially blamed by the Canadian Government for having issued a proclamation under the Queen's name without the sanction of the Government, as will be proved by a letter from the Hon. Mr. Howe to Hon. Mr. McDougall. The proclamation of McDougall destroyed the authority of the Hudson's Bay Company, and therefore the Government of Riel was the Government of the people, and therefore *de facto* the only government, there being no other in the country. There being two parties in conflict, the death of Scott was the result of that conflict.

The third reason is, that we protest against the jurisdiction of this Court, and therefore decline to accept its decision.

Mr. Cornish, on behalf of the prosecution, said:—That so far as the evidence of the proof of Scott's death, it had been proved to the Court most conclusively that Scott met his death at the hands of a number of men with arms, and that amongst the men who were active in thus causing Scott's death, it was clearly proved that the accused was one of these. That the written defence of the prisoner did not say that Scott had not been killed, that he had not had anything to do with it, but that it was done at a time when political feelings were high, and done under the political necessities of the time. That the question of jurisdiction put in by the prisoner could not be entertained here, as it was not for this Court to determine, but that it was the duty of a Supreme Court to do this, and that evidence enough had been adduced to warrant the present Court to commit the prisoner for trial at a higher Court, where the question of jurisdiction could only be considered. That there was nothing in the whole course of the prosecution to show that political feeling had anything to do with the present prosecution, nor was it so; for the whole tenor of the evidence was a positive proof of the truth of the accusation without any political motive. The question now before the Court was only to be considered by it, and that the evidence of Duncan Nolan clearly proved that Lepine was the man who led out Scott to the place of his death, and who had command of those who were instrumental in the death of Scott; and that the evidence of Mr. Bruce was given clearly, and went to show that Lepine was well aware of what was or was not to take place, as he had told him (Bruce) that some of the prisoners taken by Riel would have to be shot. The evidence of Chambers proved that Lepine, as the so-called Adjutant-General, gave the signal for the firing party to fire upon Scott, and that from the beginning of the evidence to the end of it, the actions of Lepine in causing Scott's death had been traced out clearly. That he did not intend to argue the question of judisdiction, as it was not for an inferior Court to say as to the jurisdiction of a superior one, but that he would now move that the prisoner be committed for trial.

The Court reserved its decision until the morning of Tuesday next, October 14th, at 10 a.m.

TUESDAY, Oct. 14.

Court opened at 10.30 a.m. Mr. Justice Betournay on the bench.

More than usual interest was seemingly taken in this morning's proceedings, as instanced by the unusual number of spectators. The prisoner was brought into court about 11 o'clock; and on his appearance, Justice Betournay proceeded to give his decision.

JUSTICE BETOURNAY'S DECISION.

"This is a preliminary examination upon a charge of murder preferred against the accused, Ambroise Lepine,—First: On the part of the defence, it was urged that there was no proof of the death of Scott. Second: That if Scott was mur-

dered, there is no proof that he was murdered by Lepine; and that besides, it was not an ordinary murder, but the action of a then existing government.

"Objection has also been taken to my having jurisdiction in the case.

"As to the first point, there is conclusive proof of the arrest and imprisonment of Thomas Scott, and his detention by a party of whom Lepine was apparently the leader. It has been sufficiently established by the evidence that Scott was shot on the 4th of March, 1870, by a party under the command of the accused, who, it appeared, had charge of Scott on the occasion.

"As to the second point, the presence of the prisoner on the occasion of Scott's death, and his participation in the crime of which he stands accused, render him guilty of it; and sitting as I do in this matter, I cannot recognise such a pretended government as that claimed by the defence. Now, as to the question of jurisdiction, I cannot sustain the views of the defence. It is my duty, under the law, to see if a sufficient case is made out to commit; it will rest with a higher tribunal to determine the question of jurisdiction.

"I find a made-out case. Therefore, my judgment is: That you, Ambroise Lepine, stand committed to the common goal of this Province until the next criminal Assizes for the Province of Manitoba of Oyer and Terminer and general gaol delivery, when bills of indictment will be preferred against you for the offence with which you stand charged."

Upon the conclusion of the examination and commitment for trial, Lepine was conveyed to the Provincial Penitentiary at Lower Fort Garry for safe keeping, there being no jail at that time in the town of Winnipeg.

NOVEMBER TERM.

PLEA AGAINST JURISDICTION OF THE COURT.

During the following month of November, an extra-term of the Court of Queen's Bench was held and which was opened on Wednesday, November 12th. Mr. Justice McKeagney on the Bench. At this term, on Saturday, November 15th, a True Bill was found by the Grand Jury against Lepine, upon the following Indictment:

CANADA,
PROVINCE OF MANITOBA.

COURT OF QUEEN'S BENCH,
(CROWN SIDE.)

NOVEMBER TERM, 1873.

The Jurors of Our Lady the Queen upon their oath present,—That Ambroise Lepine, on the fourth day of March, in the year of Our Lord one thousand eight hundred and seventy, at Upper Fort Garry, a place then known as being, lying, and situated in the District of Assiniboia, in the Red River Settlement, in Rupert's Land, and now better known as being, lying and situate at Winnipeg, in the County of Selkirk, in the Province of Manitoba, Dominion of Canada, feloniously, wilfully and of his malice aforethought, did kill and murder one Thomas Scott, against the form of the Statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and Dignity.

HENRY J. CLARKE, Q.C.,

Attorney-General.

The following are the names of the twelve Grand Jurors : N. T. Lonsdale (foreman), J. T. Grant (half-breed), Alex. Murray (half-breed), W. Fraser, J. Higgins, W. Henderson, Geo. Setter, D. Cassitor (half-breed), W. A. Farmer, U. Delorme (half-breed), B. Lavalette (half-breed), B. Falcon (half-breed).

On the 15th, Lepine was arraigned upon the Indictment found against him by the above Jurors.

On being asked by the Clerk of the Court as to his plea, the counsel for the prisoner, Hon Mr. Royal, said that before the plea of the prisoner was given, he questioned the jurisdiction of this Court in the matter.

The Attorney-General argued that a plea must be entered, or failing that, the prisoner must enter a *demurrer* at once.

His Lordship decided that the matter should lay over until Monday, in order that a *demurrer* should be prepared against the jurisdiction of the Court.

This was objected to by the Attorney-General, but His Lordship decided that the case lay over until Monday.

Accordingly, on Monday, November 17th, the prisoner was again placed at the bar, when he put in a written protest against the jurisdiction of the Court.

Hon. Mr. Royal asked the Court that in this case a plea of jurisdiction of this Court would be put in on behalf of the prisoner, and submitted the question to the Court as to whether the prisoner could put in a plea of " Not guilty," subject to the plea of jurisdiction. That there had been precedent for this at last Court.

The Hon. Attorney-General, on behalf of the Crown, objected to the stand of prisoner's counsel, that this Court had no jurisdiction in the matter, and that the asking of a plea for the prisoner of " Not guilty " was an unusual course ; but the prosecution was not one of vengeance, but one of justice ; and that, in order that the matter might be brought to an issue, he would consent to a plea of " Not guilty " being entered, after which he would join issue with his learned friend as to the jurisdiction of this Court.

The prisoner was then arraigned and pleaded " Not guilty."

Hon. Mr. Royal quoted legal authorities to show that the question of geographical territory, or limits, could not apply in the case now before the Court, and that cases involving capital punishment could not be tried by any Court within this Province, but according to Imperial Statute the case must be sent to Upper or Lower Canada for trial, and that in this view he was borne out by Chief Justice Gray in his work of " Legal Reviews."

The Attorney-General objected to this quotation, as it had not been given by Col. Gray as a Chief Justice, but as a private person merely writing a book.

Hon. Mr. Royal held, that even if written by him as Mr. or Col. Gray, this work was an authority to be quoted and relied upon.

The question arose, did the British North American Act transfer the jurisdiction from the Lower Provinces to this, and when did this take place? That by the Imperial Act of 1867 the jurisdiction of the Courts held by the Hudson's Bay Company was taken away from them, and the Act returning this privilege to them did not come into force until June 23rd, 1870, by the passage of an Order in Imperial Council proclaiming the Act passed in 1868 as in force in Rupert's Land. Whenever this question of jurisdiction was talked of in Canada, the same answer was given by all, that sec. 2, chap. 14 of the Dominion Statutes settled the matter ; but he would say that the Dominion had no power to pass such a law with regard to jurisdiction in the North-West, as there had been no transfer of this Province between 1868 and 1870, and therefore the Dominion had not the power to pass any law establishing territorial jurisdiction over any crimes called felonies, and that any person committing these between those periods must be sent to the Lower Provinces for trial. That the power given to this Province in criminal matters was exceptional, and that

according to the laws cited, he did not believe that this Court had the power to try the prisoner, but that he ought to be sent down either to the Province of Quebec or Ontario to be tried.

ARGUMENT ON THE PLEA TO THE JURISDICTION OF THE COURT OF QUEEN'S BENCH.

The Hon. Attorney-General Clarke, Q.C., in reply to the Hon. Mr. Royal, said:

My Lord,—The pretention of the learned counsel for the defence, although there is really nothing in it when the sophistry in which it was enveloped is brushed away, compels us to glance back over a period of about 200 years to the reign of King Charles the Second of England. To do this with any degree of precision must necessitate the occupation of so much of the valuable time of this Court, that I must not attempt it, and consequently will confine my argument to the narrow limits necessary to show your Lordship that over that vast extent of territory over which King Charles the Second gave exclusive rights and jurisdiction to "*The Governor and Company of Adventurers of England trading into Hudson's Bay*," commonly called the "*Hudson's Bay Company*," — that vast extent of territory over which several Imperial Acts of Parliament gave limited jurisdiction to the Governor of Lower Canada, and to the Governor of Upper Canada, and to the Governor General of United Canada—that over all that territory, a very small spot of which now constitutes Manitoba, your Lordship, as a Judge of the Court of Queen's Bench of this Province, has as certain and undoubted jurisdiction as it is possible for law to constitute and establish, or for time and usage to consecrate and render permanent and lasting.

My Lord, I must now most respectfully draw your attention to the fact that must be patent to every one, viz.: that the powers and jurisdiction secured to "*Hudson's Bay Company*" by the charter granted by Charles the Second, and which were again and again recognized by Acts of Parliament, were never taken away or contested by any recognized legal authority up to the time—15th of July, 1870 — when the whole of the North-West Territories were transferred to and became part and parcel of the Dominion of Canada, under and by virtue of the provisions of the "*British North American Act*, 1867." That being the case, how can there be any serious question raised as to the undoubted jurisdiction of this Court? No such question can be sustained by logical reasoning, much less on any legal grounds; and to me it is perfectly plain that the whole object of the prisoner's counsel is to throw obstacles in the way of the prisoner's trial, and if possible send it over to the next term of this Court, hoping that something may be done elsewhere in the meantime to save the prisoner, and others quite as guilty and far more cowardly than him, from the consequences of their cold-blooded and diabolical crime, committed on the fourth day of March, 1870, when in their brutal ferocity they slaughtered a defenceless man outside the walls of Fort Garry.

My Lord, I need hardly ask you if you have made yourself acquainted with the "Hudson's Bay Company's" charter; I am certain that you have. That being the case, can you doubt your jurisdiction as a Judge of this Court? Impossible! if you are satisfied that the Hudson's Bay Company did, by a solemn Act, cede and transfer to Canada all their rights and powers to and in these North-West Territories, and that under and by virtue of an Imperial Act of Parliament, which precludes the possibility of any question being raised as to whether they could legally transfer their powers as a Government. Where,

then, can the question arise as to the jurisdiction of this Court to try the prisoner Lepine and his fellow criminals, Riel and others, for the murder of Thomas Scott, at Fort Garry, in March, 1870? Where is there room for a doubt?

The counsel for the prisoner has treated us to-day to a printed re-hash of the arguments used by his partner on the question of jurisdiction before the magistrate at the preliminary examination of the prisoner, previous to his commitment for trial before this Court, with only one part of that argument left out or dropped, that is, the pretention that the prisoner and Riel and a few others were a *de facto* Government, and that as such their victim was legally put to death. I think it is just as well that they have let that pretence drop, and yet it was just as sound in fact and in law as any or all of their other pretences; and I think, my Lord, we will be able in a very short time to show such to be the case. Let us see how the Imperial Act 43 George III., cap. 138, affects this case, or what effect it had *quod ad* the jurisdiction of the Hudson's Bay Company. By that statute it was enacted, That all offences committed within the Indian Territories, or parts of America not within the limits of Lower or Upper Canada, or of any civil government of the United States of America, *shall be and be deemed to be offences of the same nature, and shall be tried in the same manner, and subject to the same punishment as if the same had been committed within the Provinces of Lower or Upper Canada.* Now, my Lord, was murder a crime in Lower Canada and in Upper Canada at the time of the passing of that Act? Certainly it was. If so, what does the Act declare? Why, simply, but with very great certainty, that murder when committed in the Indian Territories shall be tried and punished in the same way that the same offence would be tried and punished in either of these Provinces. That is the provision of the Act of 1803, the 43 George III., cap. 138, which seems to have escaped the attention of the counsel for the prisoner, but which your Lordship will perceive completely established the criminal law of England, then in force in the two Canadas, in the Indian or North-West Territories. With the remaining provisions of that Act, giving power to the Governor of Lower Canada to appoint Justices in the Indian Territories, for the proper hearing and committing for trial in Lower Canada, and also giving to the Governor of that Province, if the case seemed to require it, power to order the trial to take place in Upper Canada, your Lordship is no doubt quite well acquainted, so that I need not dwell on the subject, but proceed to examine the next Imperial Act relating to this country, which is the Act passed in 1821, being the 1st and 2nd George IV., cap. 66, which *extended the Act of* 1803 *to all the Territories of the Hudson's Bay Company.* It also gave power to the Crown to issue commissions under the Great Seal, to empower justices to hold Courts of Record for the trial of criminal offences, and also of civil cases, "*notwithstanding anything contained in the Hudson's Bay Company's Charter.*" My Lord, why did the Imperial Parliament deem it necessary to so strongly mark the intention of the Act? Simply because the Hudson's Bay Company by its charter, up to that time, had positive and concurrent jurisdiction, and it became necessary to prevent any doubts which might arise as to jurisdiction in the Hudson's Bay Territories; and for fear that any doubts might still remain, the last section clearly sets forth *that all the rights, privileges, authorities and powers conferred on the Hudson's Bay Company, shall still remain in full force, virtue and effect, as if the Act had never been passed.* This, my Lord, will satisfy the greatest legal hair-splitter in Canada, that the Hudson's Bay Company's power to punish crime under the laws of England was never questioned. Now, let us see what is done by the Act of 1859, 22nd and 23rd Vict., cap. 36. It recites the principal provisions of both the former Acts, 43 George III., cap. 138, and 1st and 2nd George IV., cap. 66; its provisions empower the Crown, either by commission or Order in Council, to authorize such justices as might be appointed, to try in a summary manner all crimes, misdemeanors and offences whatsoever, and to punish by

fine or imprisonment, or both. It also provides that in cases punishable by death, or in which, in the Justice's opinion, fine and imprisonment would be inadequate to the offence, they might try the offender in the ordinary way, or send him to Upper Canada to be tried under the Act 1st and 2nd George IV., cap. 66, or they could send him to British Columbia, to be tried by any court having jurisdiction of like offences committed there. This Act is *declared not to extend to the territories of the Hudson's Bay Company.* What then was the object of the statute? It is very clear *that it was to provide for the administration of justice in the Indian Territories, outside of the jurisdiction of the Courts established under the Company's charter, and leaving to the courts established by the Hudson's Bay Company within their own territories, the powers, authority and jurisdiction that belonged to them;* the same power that, up to the transfer of this country to Canada, was exercised by the general Court, the power to hear, try and determine capital felonies, a power that was exercised by that Court and its sentence carried into execution. Now, my Lord, I ask myself, is there any doubt as to the full power and jurisdiction of this court to try the prisoner at the bar? and I reply to the question with the Hudson's Bay Company's charter before me—with all the Imperial Acts relating to this country before me—with the statutes of the Dominion of Canada and of this Province before me: No! If there is any force in statutory enactments; if there is any meaning in the word justice; if there is any power in the Crown of Great Britain to punish crime, this Court has legal jurisdiction, power, and force to satisfy the ends of justice, and to punish any crime committed within these North-West Territories, wherever the Hudson's Bay Company's power extended. I do not think, my Lord, that it can be doubted that all the powers given by the Imperial statutes to the Governors of Lower Canada and Upper Canada, were transferred, on the union of the Provinces, to United Canada, by the Act of 1840, 3rd and 4th Victoria, cap. 35, sections 45, 46 and 47, so that, up to the time of Confederation, the Province of Canada was vested with all those powers, and the *British North America Act*, 30th and 31st Victoria, cap. 3, 1867, vests all those powers in the Governor-General of the Dominion of Canada, by sec. 12, so that any and all powers or jurisdiction given by any of the Imperial statutes to the separate Provinces of Upper Canada and Lower Canada, or to their Governors, or to the United Province of Canada, or its Governor, by the Act of 1840, were by the Imperial Act of 1867 vested in the Dominion of Canada and its Governor-General respectively. Now, my Lord, I must draw your attention to the very lengthy extracts read by the learned counsel for the prisoner, from a pamphlet written by Mr. Gray, better known as Colonel Gray, during his political career, and very erroneously cited by the learned counsel as the opinion of Chief Justice Gray. I must remind your Lordship that there is no such person as Chief Justice Gray; that the gentleman formerly known as Col. Gray, is now a puisné-justice in British Columbia, but at the time he wrote that pamphlet he was simply a member of Parliament, and that his opinion has no legal weight or significance before a Court of Justice. I have no doubt that the opinion of Col. Gray, now read by the prisoner's counsel, would scarcely be admitted as law by Mr. Justice Gray himself. Few, indeed, are the judges on the Bench who would like to accept or admit as sound law, all or even a small portion of what was written or spoken by them as politicians, or to advance the interests of their own party, or to throw obstacles in the way of their political opponents whilst they were in active political life. Surely the defence must be hard pressed for authority to sustain their pretensions, when they come into Court with printed arguments composed of extracts from political pamphlets. Not being at a loss for the authority of both Imperial and Canadian Statute law to support my arguments, I do not intend to even take the trouble to reply to the opinion of *Col. Gray*, as read by the learned counsel to the Court, and which has already done duty in the hands of himself and his law-partner before the committing magistrate. The counsel for the prisoner seems to have a most perverse disposition to miscon-

strue acts or sections of acts of Parliament, and in his reference to the Imperial Act 31st and 32nd Victoria, cap. 105, 1868, he certainly was mistaken, to say the least. Section 5 of that Act enacts :—" It shall be competent to Her Majesty by " any such Or ler or Orders in Council as aforesaid, on Address from the Houses " of Parliament of *Canada*, to declare that *Rupert's Land* shall, from a date to " be therein mentioned, be admitted into and become part of the Dominion of " *Canada* ; and thereupon it shall be lawful for the Parliament of *Canada*, from " the date aforesaid, to make, ordain and establish within the Land and Terri- " tory so admitted as aforesaid, such laws, institutions, and ordinances, and to " constitute such Courts and officers, as may be necessary for the peace, order " and good government of Her Majesty's subjects and others therein ; Provided " that, until otherwise enacted by the said Parliament of *Canada*, all the powers, " authorities, and jurisdiction of the several Courts of Justice now established " in *Rupert's Land*, and of the several officers thereof, and of all magistrates and " Justices now acting within the said limits, shall continue in full force and " effect therein." How can the learned counsel make the very grave mistake to suppose that this section of the Act is not a most convincing proof of the fallacy of his pretension? Surely he must see that " all the powers, authorities, and jurisdiction " of the Quarterly Court " are continued in full force and effect " until otherwise enacted by the Parliament of Canada. Of this there is no room for doubt. Now, my Lord, what provision has the Parliament of Canada made under the authority given by the Imperial Act of 1867, 30 and 31 Vic., cap. III., called the " *British North America Act*," and in accordance with the provisions of the Imperial Act 31 and 32 Vic., cap. CV., also cited, whereby it is declared that the Courts then established in Rupert's Land and the North-West Territories shall continue in full power and authority until otherwise provided for by the Parliament of Canada? Let us see. By the Act 32 and 33 Vic., cap. III., passed in 1869—" *An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada* "—it is enacted, almost in the words of the Imperial Act, by the 5th section, " That all the laws in force in Rupert's Land and the North-West Territory at the time of their admission into the Union, shall, so far as they are consistent with ' THE BRITISH NORTH AMERICA ACT, 1867,' with the terms and conditions of such admission approved of by the Queen under the 146th section thereof, *remain in force until altered by the Parliament of Canada, or by the Lieutenant-Governor under the authority of this Act.*" By the 6th section of the same Act, all public officers or functionaries holding offices in Rupert's Land and the North-Western Territories, at the time of their admission into the union, are continued in office until otherwise ordered by the Lieutenant-Governor. By the Act 33rd Vic., cap. III., passed in 1870—" *The Manitoba Act* "—the provisions of the Act 32 and 33 Vic., cap. III., are re-enacted and continued. Again by the Act 34 Vic., cap. XVI., 1871, the same provision is made for continuing the laws in force in Rupert's Land and the North-Western Territories. Now, my Lord, I direct your attention to the Act 34 Victoria, cap XVI, 1871, " *An Act to extend to the Province of Manitoba certain of the Criminal Laws now in force in the other Provinces of the Dominion.*" And therein we find the jurisdiction of this Court fully and completely established beyond the possibility of any doubt. The 2nd section of the Act enacts as follows :—" *The Court known as the* GENERAL COURT " *now and heretofore existing in the Province of Manitoba, and any Court to be* " *hereafter constituted by the Legislature of the said Province, and having the powers* " *now exercised by the said General Court, shall have power to hear, try, and deter-* " *mine in the course of law,* ALL TREASONS, FELONIES AND INDICTABLE OFFENCES COM- " MITTED IN ANY PART OF THE SAID PROVINCE, OR IN THE TERRITORY WHICH HAS NOW " BECOME THE SAID PROVINCE." Is this not most positive and clear? Can there be any doubt as to the jurisdiction given this Court by this Act? For after all I will show your Lordship that this Court of Queen's Bench is only the GENERAL COURT under a new name. The 6th section of the Act provides for the repeal of

all laws inconsistent with its provisions, and then makes this proviso ; Provided "always, that no person shall, by reason of the passing of this Act, be liable to "any punishment or penalty for any act done before the passing thereof, for "which he would not have been liable to any punishment or penalty under the "laws in force in the said Province or Territory now constituting it, at the time "such act was done; nor shall any person, by reason of the passing of this Act, be "liable to any greater or other punishment *for any offence committed before the "passing thereof*, than he would have been liable to under the laws then in force "as aforesaid ; and this Act and the Acts hereby extended to the said Province "shall apply only to the procedure in any such case, *and the penalty or punish-"ment shall be the same as if this Act had not been passed.*" My Lord, a good deal of stress has been laid on this section of the Act by the prisoner's counsel. Why so, I can only account for by the fact that they have, up to the present time, been treating the Court to reading from Col. Gray's pamphlet, and have not, or cannot, read the statutes and take in them meaning for themselves. And still the provision of the statute is so simple and clear that there is no mistaking its object. Certainly no man should or could be condemned by the Court to any greater punishment than he was liable to under the laws as they stood at the time the offence was committed. What then? Was not murder always a capital felony in Rupert's Land? If not, the prisoner cannot be condemned to death for the murder of Thomas Scott, in March, 1870. If it was, and of that there can be no doubt, then the prisoner, if proved to be one of the murderers, must be convicted under the law as it stood then, and as it stands now, for I am proceeding under the laws of England as they were in force in Rupert's Land at the time the murder of Thomas Scott was committed at Fort Garry.

My Lord, I have now to direct your attention to the remaining series of statutes that complete the chain of authority which gives jurisdiction to this Court to try the prisoner. I have already shown you that the General Court of Rupert's Land had full power and jurisdiction in all cases, criminal or civil, up to the time of Confederation, from the time the charter was granted "*The Governor and Company of Adventurers of England trading into Hudson's Bay*" by Charles the Second. Under that charter the Company's powers, prerogative, and jurisdiction to administer justice were never doubted. The Imperial Acts of 1803, 1821 and 1859 did not take away any of the powers of the Courts of law that were established by the Company by virtue of its charter. All they did do, or attempted to do, was to give a certain amount of limited concurrent jurisdiction within the Company's territory to certain Imperial officers in Canada, and to establish some kind of a limited system of criminal and civil jurisdiction within the Indian Territories of America belonging to the Crown of England. After three-quarters of a century's experience, it was found that the Imperial legislation still remained a dead letter, so far as the enforcement of criminal law was concerned in the Indian Territories. It is true that the murderers of Mr. Reveny, De Reinhard and McLelland and others were tried under the Act 43 George the Third, cap CXXXVIII., at Quebec, in 1818, and that a trial took place at Three Rivers, in 1838, under the same Act and the Act of 1821, 1st and 2nd George Third, cap. LXVI , for a murder committed at the Rocky Mountains, and certain trials in Upper Canada for the murder of Governor Semple, in 1818, with which exceptions the Imperial Statutes were so much waste paper, so far as their utility was concerned, for seventy years. Not so the Courts established by virtue of the Company's charter. They acted regularly—in fact with wonderful regularity, considering the circumstances of the country—their judgments were carried into execution in all civil cases to any amount, and even in capital felonies. Well, my Lord, that Court—*the General Court*—was, we have seen, continued by Imperial and Canadian Statutes, and its jurisdiction extended to the whole of the Province of Manitoba, outside of the limits of the "*District of Assiniboia*," which bounded its jurisdiction under the Company. I now tell your Lordship, without fear of contradiction, *that this Court is the*

"*General Court*" *under the name of the Court of Queen's Bench*, having all its former powers given to it by Imperial, Canadian and Manitoba Statutes. By virtue of the powers vested by law in the Legislature of this Province, the "*General Court*" was defined by our statute, 34 Victoria, cap. II., 1871, "*An Act to Establish a Supreme Court in the Province of Manitoba*," section 39, wherein it was enacted: "Till a judge of the Supreme Court shall be appointed by the Government of the Dominion of Canada, *the General Court existing in this Province shall exercise throughout the Province all the functions, and possess all the authority hereby conferred on the Supreme Court.*" Well, my Lord, no Judge was ever appointed by the Canadian Government under that Act. Canadian ministers had so little care for Manitoba and her interests, that we were left without a judge, and so, in self-defence, the Legislature in 1872, by Act 35 Victoria, cap. III., changed the name of this Court from "*Supreme Court*" to "*Court of Queen's Bench*," and provided for the appointment of *three Judges*. We have got two of them after waiting a year, and are left during that time without any Courts for want of Judges. Well, my Lord, now you, as one of the Judges of the Court of Queen's Bench of Manitoba, are told that you have no jurisdiction to try the prisoner, and you are to decide the question. Are you prepared to render your decision? I should think so. Your Lordship would certainly not preside in this Court, and at the same time not have your mind made up as to what jurisdiction you have by virtue of your position as a Judge of the Court. The objections of Col. Gray have not been sprung upon you to-day for the first time. They have been hawked around the Province by the counsel for the prisoner during the past two months, and a great many people, not knowing Colonel Gray under the new designation erroneously given him, thought they were reading the solemn and well-considered opinion, if not decision, of a Chief Justice. Your Lordship could not be thus mistaken. You know Col. Gray and were in Parliament when he wrote that pamphlet to assist his party, which is now given, nominally by the prisoner's counsel, but in reality by the "*Revue Légale*" of the Province of Quebec, a semi-legal-political newspaper, which has been trying for a long time to convince its readers, not that Louis Riel and others are not murderers, but only that there is no law in Manitoba to punish them. One more authority, my Lord, and I will have done. What were the criminal laws in force in Rupert's Land on that portion of it known as the "*District of Assiniboia*" over which the *General Court* had jurisdiction up to the time of the extension of the criminal laws of Canada to this Province by the Act 34 Victoria, cap. XIV., 1871? If your Lordship be satisfied on that head, then I can ask for your decision on this trumped-up question of jurisdiction at once. Here it is, my Lord; we have no difficulty in finding it. On page 17, section 64, of the "*Laws of Assiniboia*," under the caption of "ADMINISTRATION OF JUSTICE," "*amended 7th January*, 1864," we find the following—"To REMOVE ALL DOUBTS as to the true construction of "the 53rd article of the code of 11th April, 1862, the proceedings of the Court "shall be regulated by the Laws of England, *not only of this date of Her present "Majesty's accession*, so far as they may apply to the condition of the colony, but "also by all such laws of England of subsequent date as may be applicable to the same." *In other words, the proceedings of the General Court shall be regulated by the existing laws of England for the time being, in so far as the same are known to the Court and are applicable to the condition of the colony.* Now, my Lord, I have done, and have only to pray that you will render your decision at once, so that the prisoner's trial may be proceeded with, and that the world may know that murder in any British territory cannot be done and the guilty parties escape.

Hon. Mr. Royal, by permission of the Court, replied to the arguments of the Attorney-General. (The reply took similar grounds to those used by the hon. gentleman at the preliminary investigation. This speech not having been reported, it is impossible to produce it here.)

Upon the conclusion of the argument, His Lordship said he would defer his decision.

APPLICATION FOR BAIL.

On Saturday, Dec. 6th, an application for bail on behalf of Lepine was heard in Chambers before His Lordship Judge Betournay. The counsel for prisoner, Hon. J. Royal, put in a petition from Lepine (which was read in French), and argued the question. The Hon. Attorney-General, on behalf of the Crown, opposed the question of bail. Application ordered to lie over until Tuesday.

On Tuesday, December 9th, the application was again heard before His Lordship and lengthy arguments heard from the counsel for the defence (in French). The Attorney-General opposed the application; one of the grounds taken by him was that the petition asked for bail for one Ambroise Lepine, now a prisoner in Winnipeg, in the County of Selkirk, Province of Manitoba, when there was no such person confined there, consequently His Lordship could not be cognizant of the case. The petition had also been sworn to on the 19th of November, when the prisoner had been waiting the decision as to jurisdiction. The petition, as sworn to, was alone considered by the Attorney-General as containing important matter affecting the prisoner's trial, and he asked His Lordship that the document be impounded, as it was his intention to make use of it at the time of applicant's trial. Hon. Mr. Royal stated to His Lordship that the reason that the application for bail had not been presented within the delay asked from the date of petition until December 3rd, was that he, Mr. Royal, had other matters occupying his attention; and that the reason that the petition had been sworn to on November 19th was to save the expense of journey down to the Lower Fort.

Decision was reserved until following Saturday.

APPLICATION IN CHAMBERS.

DECISION OF MR. JUSTICE M'KEAGNEY.

His Lordship decision was as follows :—

The Queen *vs.* Ambrose Lepine.—Application at Chambers.

This is an application for the admission to bail of Ambroise Lepine, against whom, at the last term of the Court of Queen's Bench, an indictment for murder was found by the Grand Jury.

Mr. MacKenzie has appeared in support of the application, and Mr. Carey for the Crown.

The principle upon which a party committed to take his trial for an offence may be bailed, is founded chiefly upon the legal probability of his appearing to take his trial.

It appears that the deceased Thomas Scott, with complicity in whose murder the prisoner has been charged, came to his death in March, 1870, in a public manner, by the act of parties claiming to exercise supreme authority in this country; that whatever part the prisoner may have taken in that unhappy transaction, was publicly known at the time, and promulgated not only here, but throughout the Dominion of Canada.

It does not appear that he "fled for it," concealed himself, or in any way sought to evade justice.

Now, after a lapse of nearly four years, have proceedings been instituted against him, and it would appear the officers of justice have had no difficulty in finding the prisoner, who quietly submits himself to the law, and comes in with every appearance of being desirous of obtaining an adjudication of his case.

As the prisoner, then, has been living with his family in this place for nearly the last four years, made no effort to escape, and seemed ready when required to

submit himself to justice, I think I may fairly presume that if let out on bail, he will, when called for, appear and take his trial for the offence charged against him, and this is all that the law—that public justice requires.

I regard it, however, as a most important fact in this application, and by which it is distinguished from the generality of cases of this kind, that the Crown has not only not opposed the application, but has assented to it.

In the Queen *vs.* Jeffers, and the Queen *vs.* Hoy and others, bail was refused, but I look upon these cases as being in many respects dissimilar to the present one.

In the first of the former cases, the accused confessed his guilt in open Court, which put it out of the judge's power to bail him.

In the second case, the application for bail was most strenuously opposed by the Crown (in this case the Crown assents to it), and from the surrounding circumstances, it was rendered more than doubtful that the parties, if bailed, would have surrendered themselves to justice.

In the present case no such doubt would seem to exist. On the contrary, the conduct of the prisoner, ever since the commission of the crime charged against him, goes to strengthen the probability that he has no desire to evade justice.

In conclusion, I desire to say that I chiefly ground my decision on the fact that, although the prisoner has sought no means of concealment, done nothing to evade justice, the prosecution has allowed nearly four years to elapse without moving in the matter; and also on the no less important fact that the Crown has not only not opposed this application, but has assented to the prisoner's being enlarged on bail.

I therefore think he ought to be bailed, himself to be bound in $4000, and two sureties each in the sum of $2000.

Bail to justify.

J. C. McKEAGNEY, J. C. Q. B.

December 22nd, 1873.

Bail was accordingly taken for the prisoner's appearance at the next term of Court—himself in the sum of $4,000, Andrew G. B. Bannatyne, Esq., in the sum of $2,000, and André Beauchemin, Esq., M.P.P., in the sum of $2,000.

NOTE.—Mr. D. Carey, Prothonotary and Clerk of the Crown and Pleas for Manitoba, appeared for the Crown in place of Attorney-General Clark, who was absent in Canada.

A provincial statute provides that this officer shall act on behalf of the Crown in case of the absence of the Attorney-General or other Crown Prosecutor.

FEBRUARY TERM, 1874.

This term of Court opened on Tuesday, Feb. 10th, 1873, Mr. Justice McKeagney on the Bench.

Ambroise D. Lepine was in attendance awaiting the decision of the Court as to its jurisdiction for the hearing of the charge against him, and which had been reserved from the November term until the sitting of this Court.

Attorney-General Clarke asked for His Lordship's judgment on the pleas to the jurisdiction of the Court, as he was not in a position to decide what further steps to take in the case, until His Lordship's decision had been given.

His Lordship.—In that case I do not intend to give judgment till next term. I do not think myself competent or justified in deciding a question of such great importance without a full Bench; I will therefore await the appointment of a Chief Justice till next term, and if at that time there is no Chief Justice appointed, I will have the question re-argued before myself and my learned brother Betournay, and then decide the question.