

Attorney-General.—Pardon me, my Lord; surely your Lordship will not refuse to give a decision on a question so simple as that of your own jurisdiction as a judge of the Court. Four months have now elapsed since the question was argued before you, and there has been absolutely no other business before you during all that time. I do not think I am asking too much at your Lordship's hands in praying for judgment, so that the Crown may proceed with the case.

His Lordship.—I don't think it would be right in me to take upon myself to decide the question. I will wait for the appointment of a Chief Justice before deciding the case or giving my opinion. I do not think it would be right to do otherwise. One judge is not enough to decide a matter of such grave importance to the prisoner.

Attorney-General.—My Lord, I must, in the interest of the administration of justice in this Province, call your attention to the statute by virtue of which your Lordship now sits on that Bench, and remind you that the law declares that any one judge of this Court has full power and jurisdiction to hear and determine all questions arising before the Court, and it is only in cases of appeal from the decision of one judge that the full Bench is appealed to. Now, surely your Lordship is not going to allow it to be understood that you will appeal from your own fears to the full Bench, and in reality shirk your duty and cast doubts on your own competency and the jurisdiction of the Court of Queen's Bench of the Province.

His Lordship.—Mr. Attorney-General, can't I do as I please in the matter?

Attorney-General.—No, my Lord, most certainly not. You cannot do just as you please. Judges can but hear questions arising before them and decide according to law and justice. Judges cannot shirk their duty, no matter how unpleasant and repugnant to their feelings the performance of such duties may be. If it were otherwise, I fear, from what experience I have had in this Court, that unpleasant duties would only too often be passed over and the ends of justice defeated. I respectfully pray your Lordship not to allow it to go to the world that you are not competent to decide your own jurisdiction. It will strike a fatal blow at the foundation of our administration of justice. It will be a fearful thing if the people of Canada are allowed to think that the judges of our Courts in this young Province are incompetent or afraid to administer justice—that life and property must depend on the decision of a Court that cannot or will not decide, after four months' deliberation, a question, a very simple question raised as to its jurisdiction.

His Lordship.—I will do as I please. I won't hear any more argument on the subject. I want my brother judge at least to hear the question argued before there is any decision given.

Attorney-General.—His Lordship Mr. Justice Betournay has already heard the question argued. There was nothing new in the argument before your Lordship last term. It was the very same argument (read from Mr. Grey's pamphlet) that was urged before your brother judge on the application for the commitment of the prisoner Lepine.

His Lordship.—Well, I will not give any decision now. I will wait till next term.

Attorney-General.—My Lord, once more I beg of you, do not drag our administration of justice in the dust. Do not, I pray you, make this Court the jeer and the scoff of every man of sense in the Dominion. If your Lordship wishes to play into the hands of any political party, let us understand it at once, and we will then know that your object is to gain time, so that efforts may be made in another quarter for a pardon—but do not let it go to the world that you do not know your own power or jurisdiction.

His Lordship (much excited).—I will not allow you, Mr. Attorney-General, to proceed any further. What do you mean to insinuate, I should like to know.

Attorney-General.—I do not insinuate anything, my Lord. I think I speak plainly and try to be fully understood. I am determined, if the Court will not, or cannot perform its duty, that I will not shrink from reminding the Court of the fact, and at the same time endeavor to perform my duty fully and fearlessly.

Mr. Dubuc.—Will you consent, Mr. Attorney-General, to the prisoner's bail being enlarged?

Attorney-General.—I will not consent to anything, as the Court cannot decide on its own jurisdiction. I will leave this man suspended like Mahomet's coffin, till there is a decision given. The Court must take the whole responsibility.

His Lordship.—I think the bail may be enlarged. I see no objection.

The counsel for Lepine then moved that his recognizances be enlarged, which was granted.

JUNE TERM, 1874.

This term of the Court of Queen's Bench for the Province of Manitoba, which was opened on Tuesday, June 16th, was presided over by Chief Justice Wood, who had recently arrived in the Province in the capacity of Chief Justice of the Province. Justices McKeagney and Betchurnay were also in attendance on Monday, the 15th, when the Chief Justice announced that he was ready to hear the arguments of the learned counsel with reference to the jurisdiction of the Court in the Lepine case.

After the prisoner was placed at the bar,

Hons. J. Royal and J. Dubuc for the defence. Attorney-General Clarke for the Crown.

Hon. Mr. Royal addressed the Court, arguing that the Courts of the Province of Manitoba, as now constituted, were not competent to try any offences alleged to have been committed during the interval between the time of the transfer of the Province in 1869 and 70.

Attorney-General Clarke followed, taking the similar ground on his argument for jurisdiction as these in his address at the November term of 1873.

On the conclusion of the arguments by counsel, His Lordship the Chief Justice proceeded to render the following decision:

THE QUEEN vs. LEPINE.—The prisoner, in the November term, 1873, of this Court, was indicted for the murder of Thos. Scott on the 4th of March, 1870, at Upper Fort Garry, a place then being in the District of Assiniboia, in the Red River Settlement, in Rupert's Land, within the territories heretofore granted to the "Governor and Company of Adventurers of England trading into Hudson's Bay," and now within the territory forming the Province of Manitoba, one of the Provinces composing the Dominion of Canada.

On this indictment the prisoner was, on the 15th of November last, arraigned, and entered a plea to the jurisdiction of the Court, alleging that the territory now forming the Province of Manitoba, at the time the offence is alleged to have been committed, formed no part of the Dominion of Canada, and at that time the Dominion of Canada had no jurisdiction in this Province, or in the territory now forming the Province, and that the offence could only be heard and determined by the Imperial authorities, and the Imperial authorities never transmitted to or conferred upon the Dominion of Canada power to take cognizance of the offence; and that therefore neither the Dominion of Canada nor the Court of Queen's Bench in Manitoba had or has jurisdiction over the offence charged in the indictment.

To this plea the Crown demurred.

The case was argued in November term, 1873, before my brother McKeagney (my brother Betchurnay having sat on the preliminary examination in the Police

Court, and on the question of jurisdiction being raised, having over-ruled the plea), who reserved judgment until the next term (March, 1874), and who then further reserved judgment until the present June term, stating he would like to have the assistance of the Chief Justice, and to have the case argued *de novo*.

The case has now been ably argued both on behalf of the prisoner and the Crown, and as I have no doubt as to the judgment that should be given, I do not think any good end can be gained by delay, and I have, therefore, decided to follow the argument by immediate judgment:

The Province of Manitoba is a portion of Rupert's Land, and is embraced in the Royal grant and charter made by King Charles the Second, in 1670, to Prince Rupert and his associates, incorporated under the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay."

By the terms of the charter, the Company was granted all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds, in whatsoever latitude they should be, that might lie within the entrance of the straits commonly called Hudson's Straits; and all this territory was to be called Rupert's Land, and reckoned one of His Majesty's plantations or colonies in America; and the Company was to be the lord proprietor, under the Crown, of the same forever; and the Company was clothed with absolute legislative and judicial power over all these lands; provided the laws were to be reasonable and not contrary to the laws of England; and it was empowered to employ an armed force to protect its territory and to enforce its laws.

It is scarcely necessary to observe that under its full and ample powers, the Company could establish Courts, both civil and criminal, of unlimited jurisdiction, in which justice might be administered according to the laws of England.

The limits of Rupert's Land seem to be such territories as were drained by or formed the watershed of all the rivers, lakes and waters which flowed into Hudson's Straits, or into the Hudson's Bay, which were not then possessed by any subjects of His Majesty, or by the subjects of any other christian Prince or State. There was, at the time the charter was granted, and is yet, a vast extent of country in the North-West not within the limits of Rupert's Land, nor within the limits of what now comprises Quebec and Ontario, called "Indian Territories." It would seem, after the cession by the French crown to the British crown of territorial rights in North America by the Treaty of Paris in 1763, and the establishment first of the Province of Quebec and subsequently of the Provinces of Lower Canada and Upper Canada, that there were extensive regions not comprehended in Rupert's Land and beyond the boundaries of the two Canadas, in which crimes and offences were committed, and which were not within the limits of the jurisdiction of any courts, or any civil government, and beyond the cognizance of any jurisdiction whatever; and by reason thereof great crimes and offences had gone, and would continue to go, unpunished, and would greatly increase (Preamble to 43 Geo. 3, c. 138, 1803); whereupon the Parliament of Great Britain passed the Act 43 Geo. 3, c. 138, intituled:

"An Act for extending the jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces."

The first section of this Act provides:

"That from and after the passing of this Act, all offences committed within any of the Indian territories or parts of America not within the limits of either of the said Provinces 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 punish-

ment as if the same had been committed within the Province of Lower or Upper Canada."

The second section provides:

"That it shall be lawful for the Governor or Lieutenant-Governor, or person administering the government, for the time being, of the Province of Lower Canada, by commission under his hand and seal, to authorize and empower any person or persons wheresoever resident or being at the time, to act as civil magistrates and justices of the peace for any of the Indian territories or parts of America not within the limits of either of the said Provinces, or of any civil government of the United States of America, either upon information taken or given within the said Provinces of Lower or Upper Canada, or out of the said Provinces in any part of the Indian territories or parts of America aforesaid, for the purpose only of hearing crimes and offences and committing any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to the said Province of Lower Canada to be dealt with according to law; and it shall be lawful for any person or persons whatever to apprehend and take before any person so commissioned as aforesaid, or to apprehend and convey, or cause to be safely conveyed with all convenient speed, to the Province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody for the purpose of being dealt with according to law."

The third section in substance provides for the trial of offenders in Upper Canada, if the Governor of Lower Canada, from any circumstances of the crime or offence, or the local situation of witnesses for the Crown or the defence, should think the trial could more conveniently take place and justice be more conveniently administered in relation to such crime or offence in Upper Canada than in Lower Canada—clothing the courts with power of punishment and with authority to enforce the attendance of witnesses.

Section four directs that if the offender be not a British subject, or the offence be committed in any colony, settlement, or territory belonging to any European State, he shall be acquitted.

The remaining section, however, declares that if the offender be a subject of His Majesty, although the offence may have been committed in some colony, settlement, or territory belonging to some European State, he shall, nevertheless, be tried as in other cases.

I am thus particular in referring to all the provisions of this Act, inasmuch as subsequently, by direct enactment, it is made applicable to Rupert's Land, or what is commonly called the Hudson's Bay Territory. Although this Act is very general and comprehensive in the description of the territory to which it was intended to apply, it is supposed its language would not necessarily include Rupert's Land. On the trial of De Reinhard and Archibald McLellan for the murder of Owen Keveny at a place called Dalles, on the River Winnipic, near the north-west angle of the Lake of the Woods, and within Rupert's Land, before Chief Justice Sewell at Quebec, in 1818, the question of the geographical boundary of Upper Canada was much discussed; and although De Reinhard was convicted of murder, the verdict was never carried into execution; not, as it is apprehended, on the ground urged at the trial, that the courts in Upper Canada had sole jurisdiction over the offence because of its having been committed within the geographical limits of Upper Canada, as defined by the Act of 1791 and the King's proclamation issued in pursuance thereof, but on the ground that the offence was committed, not within the "Indian Territories" referred to in 43 Geo. 3rd, chap. 138, but within Rupert's Land, to which it was doubtful if on a strict construction the Act had any application.

Accordingly we find that shortly thereafter, in 1821, was passed the Imperial Act 1 and 2 Geo. 4th, chap. 66, intitled:

"An Act for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America."

As giving an historical glimpse of the unsettled state of affairs in the Indian territories and other parts of British America adjoining the Provinces of Lower and Upper Canada, and of the feuds and animosities existing between the North-West Company and the Hudson's Bay Company, and as throwing light upon the proper interpretation of 43 Geo. 3rd, chap. 138, I cite the preamble of this Act in full. It reads:—

"Whereas the competition in the fur trade between the Governor and Company of Adventurers of England trading into Hudson's Bay, and certain associations of persons trading under the name of the North-West Company of Montreal, has been found for some years past to be productive of great inconvenience and loss, not only to the said Company and associations, but to the said trade in general, and also of great injury to the native Indians and other persons subjects of His Majesty: And whereas the animosities and feuds arising from such competition have also, for some years past, kept the interior of America, to the northward and westward of the Provinces of Upper and Lower Canada, and of the territories of the United States of America, in a state of continued disturbance: And whereas many breaches of the peace, and violence extending to the loss of lives and considerable destruction of property, have continually occurred therein: And whereas, for remedy of such evils, it is expedient and necessary that some more effectual regulations should be established for the apprehending, securing and bringing to justice all persons committing such offences, and that His Majesty be empowered to regulate the said trade: And whereas doubts have been entertained whether the provisions of an Act passed in the forty-third year of the reign of His late Majesty King George the Third, intituled: 'An Act for extending the jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces,' extended to the territories granted by charter to the said Governor and Company, and it is expedient that such doubts should be removed, and that the said Act should be extended."

The first section of the Act provided for giving a royal license to any corporation, company, or person or persons, for the sole and exclusive privilege of trading with the Indians in all such parts of North America as should be specified in such license, not being parts of the lands or territories granted to the Hudson's Bay Company, or of any of the Provinces of North America, or of the United States of America.

The second section limits the term of the licenses to twenty-one years.

By the third section the Hudson's Bay Company, and every corporation or company, or person or persons, to which or to whom any license should be granted, were required to keep accurate registers of all persons in his or their employ, and once a year make a return of a duplicate thereof to His Majesty's Secretary of State, and were further required to enter into such security as should be demanded by His Majesty for the due execution of all processes both criminal and civil, as well in the territories included in any such license, as within those granted by charter to the Hudson's Bay Company, and for the producing and delivering into safe custody, for purpose of trial, all persons in their employ, or acting under their authority, charged with or guilty of any criminal offence, and also for the due observance of all such rules, regulations and stipulations as should be contained in any license, either for the diminishing or preventing the sale of spirituous liquors to the Indians, or for promoting their moral and religious improvement, or for any other object which His Majesty might deem necessary for the remedy or prevention of other evils which had theretofore been found to exist.

Section four provides that such licenses should not interfere with the trade of the United States west of the Stony (Rocky) Mountains.

Section five reads as follows :—

"And be it declared and enacted that the said Act passed in the forty-third year of the reign of His late Majesty intituled, 'An Act for extending the jurisdiction of the courts of justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes or offences in certain parts of North America adjoining to the said Provinces,' and all the clauses and provisos therein contained, shall be deemed and construed, and it is and are hereby respectively declared to extend to and over, and to be in full force in and through all the territories heretofore granted to the Company of Adventurers of England trading into Hudson's Bay; anything in any Act or Acts of Parliament, or this Act, or in any grant or charter to the Company to the contrary notwithstanding."

Section six provides that the courts of judicature established in Upper Canada should have cognizance of causes arising in the Indian territories and other parts of North America, and of actions relating to lands, to be decided according to the laws of England; and by section seven the authority of the courts, and all processes and proceedings issuing from them, were to have the same force and effect in those territories and other parts as in Upper Canada they would have in actions arising therein; and the eighth section makes provision for the Governor of Lower Canada, by commission under his hand and seal, authorizing all persons who should under the Act be appointed justices of the peace within the said Indian territories, or other parts of North America as aforesaid, or any one who should be specially named in such commission, to act as a commissioner within the same for the purpose of serving, executing, and enforcing subpoenas and all processes, decrees, judgments, orders, injunctions, and other processes or proceedings of the said courts, and on disobedience of any person, to apprehend and deliver offenders over to the said courts to be dealt with according to law.

The ninth section provides for the assignment of recognizances and the bringing of actions thereon; and the latter part of the clause, in these words: "Notwithstanding anything contained in any charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay," shows that sections six, seven, eight, as well as section nine, apply to the Hudson's Bay Company.

Section ten provides for the appointment of justices of the peace by His Majesty, as well in Rupert's Land as in the Indian territories and other parts of America, and also for the taking of evidence under commissioners by the courts of Upper Canada, and if expedient so to do, to have the issue tried by the commissioners, who were to be justices of the peace appointed by the Crown under the Imperial Act now in recital.

The eleventh and twelfth sections have an important bearing on the case under consideration.

Section II.—And be it further enacted, that it shall be lawful for His Majesty, notwithstanding anything contained in this Act, or in any charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay, from time to time, by any commission under the great seal, to authorize and empower any such persons so appointed Justices of the Peace as aforesaid, to sit and to hold Courts of Record for the trial of criminal offences and misdemeanors, and also of civil cases; and it shall be lawful for His Majesty to order, direct, and authorize the appointment of proper officers to act in aid of such courts and justices within the jurisdiction assigned to such courts and justices in any such commission; anything in this Act, or in any charter of the Governor and Company of Merchant Adventurers of England trading to Hudson's Bay, to the contrary notwithstanding.

Section XII.—Provided always, and be it further enacted that such courts shall be constituted as to the number of justices to preside therein, and also such

places within the said territories of the said Company, or any Indian territories or other parts of North America as aforesaid, and the times and manner of holding the same, as His Majesty shall from time to time order and direct; but shall not try any offender upon any charge or indictment for any felony made the subject of capital punishment, or of any offence, or passing sentence affecting the life of any offender, or adjudge or cause any offender to suffer capital punishment or transportation, or take cognizance of or try any civil action or suit in which the cause of such suit or action shall exceed in value the amount or sum of two hundred pounds (£200); and in every case of any offence subjecting the person committing the same to capital punishment or transportation, the court or any judge of any such court, or any justice or justices of the peace before whom any such offence shall be brought, shall commit such offender to safe custody, and cause such offender to be sent in such custody for trial in the Court of the Province of Upper Canada.

Section thirteen gives the right of appeal to His Majesty in civil suits in like manner as in Upper Canada, and in any case to which the right or title to any land should be in question.

The fourteenth and last section preserves to the Hudson's Bay Company the right, privileges, authority, and jurisdiction which it might lawfully have claimed and enjoyed under its charter.

Another Imperial Act was passed in 1859, 22 and 23 Vic., C. 26.

The preamble recites 43 Geo. 3, c. 138, and 1 and 2 Geo. 4, c. 66, and declares that "no Courts of Record had been established or authorized as provided in the Act 1 and 2 Geo. 4th, chap. 66, and that it was expedient to make further provision for the administration of justice in criminal cases in the said Indian territories and such other parts as aforesaid of America." And then in the first section it gives Her Majesty authority by commission to clothe the justices of the peace to be appointed under 1 and 2 Geo. 4th, chap. 66, within the limitations contained in such commission as to territorial jurisdiction and other matters, to take cognizance of, hear, try, and determine, in a summary manner, all crimes, misdemeanors, and offences whatsoever, and, on conviction, to award punishment; but in case the offence was punishable with death, or for other reasons the justice or justices should think it advisable to do so, he and they was and were directed to commit the offender to safe custody and have him delivered for trial to Upper Canada, as provided by the Act of King George the Fourth, or, if thought expedient, to British Columbia, there to be tried by any court having cognizance of like offences committed there, and like powers were given such court as were by the Acts recited given to any court in Canada in the like cases.

By the last section it is especially declared that nothing in that Act contained should extend to the territories heretofore granted to the Hudson's Bay Company; so that Rupert's Land, and consequently the Red River Settlement, and Winnipeg, which formed a portion of Rupert's Land, are entirely excluded from the operation of any of the provisions of the Act 22 and 23 Vic., chap. 26, and neither British Columbia nor any of its courts ever had anything to do with or any jurisdiction over or cognizance of the crime charged in this indictment, or any crimes or offences committed within any part of Rupert's Land, as has been popularly supposed, and as was apparently assumed on the argument of this demurrer.

It would appear from the declarations in the Acts to which I have referred, that though authority was given the Crown to set up Courts of Record in the Indian territories and other parts of America, and in Rupert's Land, none such were established by the Crown as late as 1859, and I think it quite safe to say none were constituted by the Crown down to the time of the transfer of all these territories to Canada in 1870, by the Order in Council of the 23rd of June, which took effect on the 15th of July of that year, in pursuance of the Imperial Act called "Rupert's Land Act, 1868," 31 and 32 Vic., chap. 105.

Although the Crown did not establish any courts, yet it appears the Hudson's Bay Company, by virtue of the powers conferred on it by its charter, as far back as 1839 constituted its factors and others in its employ justices of the peace in Rupert's Land and in other parts of the North-West Territories where it had trading posts, who exercised both civil and criminal jurisdiction in small claims and in minor offences, in a summary manner, in the respective districts in which they were stationed; and also about the same time established a Court of Record called the "General Court of Assiniboia," the seat of which was at Winnipeg, with a geographical jurisdiction which does not seem to have been strictly defined, and having cognizance and jurisdiction of all civil claims and demands, of whatever nature or amount the same might be, and of all crimes, misdemeanors, and offences whatsoever, with all the powers necessary to enforce its judgments, orders, decrees, and sentences in both civil and criminal matters, even to the extent of inflicting capital punishment. The Company appointed Mr. Adam Thom the first judge of this court, with other officers, in or about the year 1839. The sole authority and basis of this court and its officers rested upon the powers conferred on the Company by the charter granted it in the reign of King Charles the Second, but on no legislative enactment whatever. Mr. Thom presided over this court till about the year 1851. After his retirement, Mr. Johnson of Montreal, now a judge in the Province of Quebec, was appointed judge, who, having for some years discharged the duties of his office, retired, and was succeeded by Mr. Black, who was the judge in 1869-70 when the difficulties occurred at Winnipeg out of which arises the offence charged in this indictment. It would therefore appear that this court, with its judges and officers, in 1870 had been in existence for thirty years, trying civil cases to any amount whatever and exercising criminal jurisdiction even to the extent of inflicting capital punishment (for in one instance at least a person was tried for murder, convicted, and executed), without its basis or jurisdiction ever having been formally and authoritatively questioned by the Imperial Government. On the contrary, by the last clause of "Rupert's Land Act, 1868," the validity of this Court and the legality of its jurisdiction over capital offences, which were then well known to the Government and Parliament of England (see proceedings of Committee on Hudson's Bay Company, House of Commons, 1857), and of its officers, and of the magistrates and justices then being in Rupert's Land, seem to be fully recognized and admitted. It says:

"It shall be competent to Her Majesty, by any such order as aforesaid (Orders in Council for admission of Rupert's Land), on address from the Houses of the 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 territory so admitted as aforesaid, all 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 Parliament of Canada, all the powers, authorities, and jurisdiction of the several courts of justice now established in Rupert's Land, and the several officers thereof, and of all magistrates and justices now acting within the said limits, shall continue in full force and effect therein."

Attention is called to the words of the proviso in this section. To what "courts and officers thereof" do they refer? The Crown had established no "courts" or "officers thereof" in Rupert's Land. It may have appointed some justices of the peace, but even that is doubtful. The only court then existing in Rupert's Land was "the General Court," established by the Hudson's Bay Company under its royal charter, and the only "officers thereof" were those appointed by that Company, and I think I may safely say, if not all, nearly all "the magistrates and justices then acting or being within the said limits," in like

manner derived their authority from and were appointed by the Hudson's Bay Company, which by its charter had power and authority—

"From time to time to assemble itself for or about any of the causes, affairs or businesses of the said trade, in any place or places for the same convenient within the dominions or elsewhere, and there to hold court for the said Company and the affairs thereof, and to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances, as should seem necessary and convenient for the good government of the said Company; and of all governors of colonies, forts, and plantations, factors, masters, marines, or other officers employed, or to be employed, in any of the territories and lands aforesaid; and for the better continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly; and at its pleasure to revoke and alter the same, or any of them, as the occasion should require; and should and might impose, ordain, limit, and provide such pains, penalties and punishments upon all offenders contrary to such laws, constitutions, orders, and ordinances, or any of them, as to the said governor and Company for the time being, or the greater part of them, then and there being present, the said governor or his deputy being always one, should seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances; and the same fines and amerciaments should by its officers and servants in that behalf levy, take and have to the use of the said Company, without the impeding of the Crown, and without any account thereof to be made to the Crown; and all and singular the laws, constitutions, orders and ordinances so as aforesaid to be made His Majesty did will should be duly observed and kept, under the pains and penalties therein to be contained; so always as the said laws, constitutions, orders and ordinances, fines and amerciaments were reasonable, and not contrary or repugnant, but as near as might be agreeable to the laws, statutes or customs of the realm.

"And all the lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories or trade might or should be, within any of the forts or places afore limited, should be immediately and from thenceforth under the power and command of the said Company (saving the faith and allegiance due to be performed to His Majesty, his heirs and successors); and the said Company were given liberty, full power and authority to appoint and establish governors and all other officers to govern them, and the governor and his council of the several and respective places where the said Company should have plantations, forts, factories, colonies, or places of trade within any of the countries, lands or territories thereby granted, might and should have power to judge all persons belonging to the said Company, or that should live under it, in all causes, whether civil or criminal, according to the laws of the kingdom of England, and to execute justice accordingly; and in case any crime or misdemeanor should be committed in any of the Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature cannot be executed for want of a governor and council there, then in such case it should and might be lawful for the chief factor of that place and his council to transmit the party together with the offence to such other plantation, factory or fort where there should be a governor and council, or into the Kingdom of England, as should be thought most convenient, there to receive such punishment as the nature of his offence should deserve."

And these rights, powers, authorities and jurisdictions were in no way revoked, abridged, superseded, or limited by any Act of the Parliament of England; on the contrary, in the Act I and II Geo. 4, cap. 66, and in the concluding and last section thereof, it is enacted and declared:—

"That nothing in this Act contained shall be taken or construed to affect any right, privilege, authority or jurisdiction which the Governor and Company of Adventurers

trading to Hudson's Bay are by law entitled to claim and exercise under their charter; but all such rights, privileges, authorities and jurisdictions shall remain in as full force, virtue and effect as if this Act had never been made; anything in this Act to the contrary notwithstanding." And in the concluding and last section of 22 and 23 Vic., c. 26 (1859), it is enacted and declared that "Nothing herein contained shall extend to the territories heretofore granted to the Company of Adventurers trading to Hudson's Bay."

Therefore, notwithstanding that by the Imperial Act of 1803, which gave criminal jurisdiction to the Courts of Lower and Upper Canada within the Indian territories and other parts of North America, and made provision for the apprehension and transmission of offenders to those Provinces for trial and punishment, and notwithstanding that by the Imperial Act of 1821, the Act of 1803 was extended and made applicable to Rupert's Land, and further provision was made for the administration of justice, both criminal and civil—the Crown taking power to appoint justices of the peace to act as such, as well in the Hudson's Bay Territory as in the Indian territories and other parts of North America, and to constitute such justices a Court of Record to try civil cases where the recovery should not exceed two hundred pounds, and to hear and determine criminal offences where the punishment inflicted was not death or transportation; nevertheless the Courts of Lower and Upper Canada had only a concurrent, not an exclusive jurisdiction; for the Act 1 and 2 Geo. IV., c. 66, conferring jurisdiction in Rupert's Land (the Hudson's Bay Territory) on the Canadian Courts, and giving power to the Crown to appoint justices and establish a Court of Record therein, explicitly enacts and declares, "That the rights, privileges, authorities and jurisdictions of judicature granted to the Hudson's Bay Company by its royal charter, should not be in any way affected by anything in that Act contained, but should remain in as full force, virtue and effect as they would if that Act had not been passed."

Again, I do not think it can be successfully contended that "The Supreme Court" established by the Manitoba Act (34 Vic., chapter 2) was not clothed with jurisdiction over all criminal as well as civil matters arising or existing in the Province of Manitoba, or in the territory which had then become that Province at the time it was passed, independent of 34 Vic., chap. 14, sec. 2, altogether; for by section 92, sub-section 14, of the British North America Act, 1867, "the administration of justice in the Provinces, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, including procedure in civil matters in those Courts," belongs exclusively to the Legislature of the several Provinces. In this Act the legal existence and extensive jurisdiction of the General Court established, as I have mentioned, by the Hudson's Bay Company, are fully recognized. Section 39 says:

"Till a judge of the Supreme Court of the Province shall be appointed by the Government of the Dominion of Canada, the General Court sitting in this Province shall exercise throughout the Province all the functions and possess all the authority hereby conferred on the Supreme Court; and all the provisions of this Act respecting the Supreme Court shall apply in like manner and to the same extent, for all purposes whatever, to the said General Court, and to the judge and officers thereof, and to all suitors therein, and to the attendance of jurors, grand and petit, thereat, and to all proceedings in the said Court, in as full and ample a manner as if such provisions had been made in express reference to the said General Court."

Section 40 says:

"From and after the appointment, as aforesaid, of a Chief Justice of the Supreme Court, all cases pending in the General Court in the last section men-

tioned shall be transferred to the said Supreme Court in the same state and condition as they may there be, and shall be treated in all respects as if they had been commenced and carried on in the Supreme Court."

Section 41 says :

"Judgments of the General Court in the last two preceding sections mentioned shall be enforced, set aside, or otherwise dealt with in all respects as if they were judgments of the Supreme Court."

This Act, as I have said, fully recognizes and admits the legal existence of the General Court, with a jurisdiction, both civil and criminal, as extended as that of the Supreme Court which it established, and it substituted or continued the General Court with its extended jurisdiction over all matters, civil and criminal, arising or existing within the Province, and within the territory which had become the Province, until by the appointment of a Chief Justice of the Supreme Court by the Government of Canada, the latter Court should be organized and brought into operation.

This Act of the Manitoba Legislature was passed on the 12th of May, 1871. Prior to the passing of this Act, on the 14th of April, 1871, the Parliament of Canada, under the authority of "The British North America Act, 1867," and "Rupert's Land Act, 1868," had passed the Act 34 Vic., chap 14, to extend to the Province of Manitoba certain of the criminal laws then and now in force in the other Provinces of the Dominion; and by the second section thereof it is declared and enacted that—

"The Court known as the General Court (the Court established by the Hudson's Bay Company) heretofore existing in the Province of Manitoba, and any courts 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 determine in due course of law all treasons, felonies, and indictable offences committed in any part of the said Province, or in the territory which has now become the said Province."

Simply re-iterating what was already declared to be the fundamental law of the Province by sec. 92, sub-section 14 of the British North America Act, 1867.

It would therefore appear to follow that when the offence charged in the indictment was committed (the 4th of March, 1870), the General Court established by the Hudson's Bay Company had jurisdiction over the crime; and that by the last clause of "Rupert's Land Act, 1868," such jurisdiction was continued down to the 15th of July, 1870, the time of the transfer of the territories to Canada and the formation of the Province of Manitoba (33 Vic, chap. 3, Statutes of Canada), and thence on (34 Vic., chap. 2, sections 39, 40, and 41, Statutes of Manitoba) until the Supreme Court of Manitoba, now called the Court of Queen's Bench, was organized and brought into operation by the appointment of a chief justice thereof—an event which took place in the autumn of 1872, by the appointment to that office of the Hon. Alexander Morris—and from that time and by that Act, and by the direct and express declarations of the several Acts to which I have referred, as well Imperial as Canadian and Provincial, unquestionable jurisdiction over and power and authority to hear, try, and determine in due course of law, as well the offence charged in the indictment, as also "all treasons, felonies, and indictable offences committed in any part of the said Province or in the territory which has now become the said Province," were given to, conferred upon, and vested in the Court of Queen's Bench, in which this indictment was found, and in which I am now sitting.

It has been argued that the General Court of Assiniboia had not, at the time of the committing of the offence charged in the indictment, power and authority to hear, try, and determine capital felonies. For the reasons I have given I think it had. However that may be, it can in nowise affect the conclusion at

which I have arrived, based as it is on the express power given to the Court by the Canadian Act (34 Vic., chap. 14, sec. 2), which Act is authorized by the Imperial Statute called Rupert's Land Act (31 and 32 Vic., chap. 105, sec. 5), and although passed on the 14th of April, 1871, and now on the statute book for upwards of three years, has not been disallowed or questioned by the Imperial authorities as being *ultra vires* or otherwise objectionable.

On the argument it was suggested that the second section of this Act was *ultra vires*, *ex-post facto* and *retroactive*, and therefore unconstitutional. It is expressly authorized by the Imperial Rupert's Land Act, 1868, and cannot be said to be *ultra vires*. I am unable to see in what respect it is either *ex-post facto* or *retroactive*. It does not make nor create any new offence. It does not make that an offence which, when it was done, was no offence. Every British colony wherever it may be planted, and all the members of it, unless the contrary is manifested by express Act of Parliament, carry along with them, and are protected by and subject to the common law of England. By the common law, whoever, being of sound mind, with malice aforethought, taketh the life of a human being in the Queen's peace, is guilty of murder, and death is the penalty. That is the offence charged in the indictment. The statute does not make that a crime which, before it was passed, was no crime. It does not introduce any new rules or new principles of evidence or procedure by which that which, according to the common law, is murder, shall be heard, tried and determined. It simply points out the Court which, in accordance with due course of law, shall hear, try and determine the offence charged—the guilt or innocence of the prisoner. Seemingly from an apprehension that some objection of this sort might be raised, the Statute itself settles the question forever. Sect. 6, 34 Vic., cap. 14, says:

"All provisions of law heretofore in force in the country now constituting the Province of Manitoba, inconsistent with or repugnant to any of the Statutes enumerated in the first section of this Act, are hereby repealed; *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 punishment shall be the same as if this Act had not been passed.*"

I, therefore, fail to see any ground whatever for questioning that this Court has jurisdiction of the offence charged in the indictment.

There is another aspect of the case which leads to the same conclusion, and which it may not be inappropriate to glance at, to settle the public mind on a much vexed question.

The Imperial Act 43 Geo. 3, c. 138, provides that the Governor of Lower Canada might, under his hand and seal, issue commissions appointing any person or persons, wheresoever resident or being at the time, to act as civil magistrates or justices of the peace for any of the Indian territories or parts of America not within the limits of either Lower or Upper Canada, or of any civil government of the United States of America, either upon informations taken or given in either of the Provinces of Lower or Upper Canada, or out of those Provinces, in any part of the Indian territories or other parts of America, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to Lower Canada to be dealt with according to law; and it was made lawful for any persons whatever to apprehend and take before any persons so commissioned by the Governor of Lower Canada, or to apprehend and convey,

or cause to be conveyed with all convenient despatch, to Lower Canada any person or persons guilty of any crime or offence, there to be delivered into safe custody for the purpose of being dealt with according to law.

It was declared by the Act that all offences committed within the territories and places referred to, should be deemed to be offences of the same nature, and should be tried in the same manner and subject to the same punishment as if the same had been committed in the Provinces of Upper or Lower Canada respectively.

Every offender was to be prosecuted and tried in the Courts of the Province of Lower Canada, or, if the Governor of Lower Canada should, from any of the circumstances of the crime or offence or the local situation of any of the witnesses for the prosecution or defence, think that justice can be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada, and should, by any instrument under the great seal of the Province of Lower Canada, declare the same, then every such offender might and should be prosecuted in the Court of the Province of Upper Canada.

Here, in the year 1803, we have the Governor of Lower Canada empowered, as an Imperial officer, by commission under his hand and seal, to appoint magistrates and justices of peace wherever they might be or reside, for the purpose of handing over offenders in the Indian territories and other parts of North America for trial by the Courts of Lower Canada, or if the Governor should think it more convenient, and should so declare under the great seal of the Province of Lower Canada, by the Court of Upper Canada. Indeed, any person, whether so appointed or not, was authorized to apprehend and to transmit all persons charged with any crime or offence to the authorities of Lower Canada, to be dealt with in the manner indicated according to law.

Now, it will be observed that the appointment of magistrates and justices for the purposes mentioned was an executive act and rested solely with the Governor of Lower Canada, as an Imperial officer, in his relations as such to the Government of Lower and Upper Canada (there then being only a Lieutenant-Governor of Upper Canada), and in direct communication with, and receiving his instructions directly from the Imperial authorities, and was to be performed by an instrument under his hand and seal, not under the great seal of the Province; but when he came to deal with the question of directing any offender to be tried by the Court in Upper Canada, it being an act of administration within the Province, that was to be performed under the great seal of the Province. Considering that the government of a country embraces the Executive and his duties, the Legislature and its duties, the Courts of justice and their duties, with such ministers and officers and their duties as may be necessary, it is manifest that in the present case both duties, the one Imperial and executive, the other Provincial and administrative, equally related to the government of the Canadas.

It will be further observed, from what has already been said, that this Act did not apply to Rupert's Land (the Hudson's Bay Territory), a portion of which, on the 15th of July, 1870, became and now is the Province of Manitoba.

By the Imperial Acts 1 and 2 Geo. 4, c. 66 (1821), among other things, 43 Geo. 3, c. 138, with all its clauses and provisions, was in express terms made applicable to Rupert's Land, or the lands and territories by the charter of Charles the Second granted to the Hudson's Bay Company—still leaving with the Governor of Lower Canada the power of appointing magistrates, etc., as before.

From that time the Governor of Lower Canada had the Imperial executive authority in Rupert's Land, and the Provincial administrative authority in the Province of Lower Canada, in relation to the government of Upper Canada as I have mentioned; and the courts in Lower Canada and the court of Upper Canada had jurisdiction, concurrent not exclusive, as has already been shown, of all "offences committed" in Rupert's Land; and the Governor continued to possess such authority, and the courts such jurisdiction, unaffected by any legisla-

tive enactment, till the tenth day of February, 1841, when the Imperial Act for uniting the Provinces of Upper and Lower Canada, and for the Government of Canada, passed in 1840 (3 and 4 V., c. 35) came into operation, and the Provinces of Upper and Lower Canada became the Province of Canada.

But this Act declared and enacted that—

“All powers, authorities, and functions, which by the said Act, passed in the thirty-first year of the reign of His Majesty King George the Third, or by any other Act of Parliament, or by Act of the Legislature of the Provinces of Upper and Lower Canada, respectively, are vested in, or are authorized, or required to be exercised by the respective Governors or Lieutenant-Governors of the said Provinces, with the advice, or with the advice and consent of the Executive Council of such Provinces, respectively, or in conjunction with such Executive Council, or with any number of members thereof, or by the said Governors or Lieutenant-Governors individually and alone, shall, in so far as the same are not repugnant to or inconsistent with the provisions of this Act, be vested in and may be exercised by the Governor of the Province of Canada, with the advice, or with the advice and consent of, or in conjunction, as the case may require, with such Executive Council, or any members thereof as may be appointed by Her Majesty for the affairs of the Province of Canada, or by the said Governor of the Province of Canada individually and alone, in cases where the advice, consent, or concurrence of the Executive Council is not required. (Sec. 45.)

“All the courts of civil and criminal jurisdiction within the Provinces of Upper and Lower Canada at the time of the union of the said Provinces, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, or ministerial, within the said Provinces respectively, except in so far as the same may be abolished, altered, or varied by, or may be inconsistent with the provisions of this Act, or shall be abolished, altered, or varied by any Act or Acts of the Legislature of the Province of Canada, shall continue to subsist within those parts of the Province of Canada which now constitute the said two Provinces respectively, in the same form and with the same effect as if this Act had not been made, and if the said two Provinces had not been reunited as aforesaid.” (Sec. 46.)

From the Union of the Provinces to Confederation (1st July, 1867), the Governor-General of the Province of Canada was vested with and possessed, and it became and was his duty to exercise, all the Imperial executive authority in Rupert's Land and the Province of Canada, in relation to the government of the Province of Canada, and the courts in Lower and Upper Canada continued to possess and enjoy, and were capable of exercising all the jurisdiction over all offences committed in Rupert's Land, that were respectively vested in and possessed by the Governor of Lower Canada, and that were possessed, enjoyed, and capable of being exercised by the courts of Lower and Upper Canada before the Union, unaffected in any manner whatever by the Imperial Act 22 and 23 V., c. 26 (1859), or by any other Act, Imperial or Provincial.

The question now is, what became of this Imperial executive and administrative power and authority, and of this jurisdiction of the courts of the Province of Canada on Confederation? It has been argued that it ceased altogether or reverted back to the crown in England, and therefore could be exercised only by the Imperial authorities and the criminal courts of England; and this argument is based entirely on the phrase, “In relation to the Government of Canada,” in the 12th sec., and the phrase, “in relation to the Government of Ontario and Quebec respectively,” in the 65th section of the British North America Act, 1867. These sections are substantially the same in phraseology, and are substantial copies of section 46 of the Union Act of 1840, which has been quoted in full—the only difference being in the words, “in relation to the Government of Canada,” in the former, and “in relation to the Government of Ontario and Quebec respectively” in the latter. It is admitted that had these phrases been omitted, or in other words, had these sections been

precisely in the words of section forty-six of the Union Act of 1840, the power and authority of the Governor-General of Canada, and of the courts of Quebec and Ontario in respect of offences committed in Rupert's Land, would have remained and continued just the same after as before Confederation: but it is argued that the Imperial Parliament, having in view the further acquisition by Canada of Rupert's Land and the North West Territories, introduced these phrases with the intention of taking from the Executive of Canada these powers and authorities, and from the courts of Ontario and Quebec this jurisdiction. If this were the intention of Parliament, it seems to me it might easily have found words, phrases and language more fittingly expressive of its meaning. Is not this giving a strained construction to the Statute, unsupported by any substantial reason, and contrary to the express declarations of other parts of the Act? Is it not manifest, on a moment's reflection, why the phrases in question were used? These two sections (12 and 65) were dealing with the Imperial executive and Canadian administrative and ministerial powers and authorities of the Governor-General of Canada in respect of all matters and duties delegated to, and imposed upon him, in "relation to the Government of Canada," that is, all matters and duties which were general, not local, and which related to all the provinces alike, but to none in particular, *on the one hand*, and to the Provincial executive, administrative and ministerial powers and authorities, which, from their limited and circumscribed nature, and their local application, were to be exercised only in reference to such matters and duties as were required to be done in relation to the government of the provinces respectively, *on the other hand*; and, to draw a line between the executive duties of the Governor-General, an Imperial officer and in direct correspondence with the Crown through its Imperial ministers, and those of the Lieutenant-Governors of the Provinces, holding their appointments from, and being responsible to, and in correspondence only with the Governor-General, the phrases referred to were properly used; and it was necessary that these or similar words should be employed to mark the respective executive, administrative and ministerial powers and authorities of each. Neither of these sections has any relation to the courts of Upper and Lower Canada, Ontario and Quebec. I therefore fail to see how any argument can be derived from them that the Act of Confederation swept away the jurisdiction of those courts over offences committed in Rupert's Land and in the North-West territories. The only question that can be raised is, "Had the Governor-General, after Confederation the executive power of appointing magistrates, &c., in Rupert's Land and other parts, to take informations, &c., and transmit offenders for trial and punishment to the courts of Ontario and Quebec?" It is quite clear that neither the Lieutenant-Governor of Ontario nor of Quebec had any such power; and I think it equally clear, for the reasons given and for many others which might be mentioned, the Governor-General had such power until the transfer of Rupert's Land and the North-West territories, and the establishment of the Province of Manitoba—events which took place on the 15th day of July, 1870—and therefore, during, at the time, and after the crime charged in the indictment was committed. And from the 129th and 130th sections of the Confederation Act, apparently overlooked by counsel on the argument, the 129th being almost if not quite an exact copy of section 47 of the Union Act of 1840, which says:—

"129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and

Ireland) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislatures of the respective Provinces, according to the authority of the Parliament or of that Legislature under this Act.

"130. Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes or subjects by this Act assigned exclusively to the Legislatures of the Provinces, shall be officers of Canada and shall continue to discharge the duties of their respective offices, under the same liabilities, responsibilities, and penalties as if the Union had not been made."

And section 5 of "Rupert's Land Act, 1868," which says:

"It shall be competent to Her Majesty, by any such Order 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 territory so admitted as aforesaid, all such laws, institution, 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, 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."

I think it unquestionable that the jurisdiction of the courts of Ontario and Quebec continued over offences committed in Rupert's Land and the Nord-West territories, and therefore over the crime charged in the indictment; and that all the magistrates, etc., acting or being within those limits, had power and authority, and it was their duty, to apprehend and bring to trial, either in the court of Assiniboia or in the courts of Ontario or Quebec, all persons who had committed crimes or offences within their respective jurisdictions, and therefore those persons who were charged with the murder of Thomas Scott—certainly until the transfer of Rupert's Land and a portion of it was formed into the Province of Manitoba, and it may be, until the passing of the Canadian Act of 1871 (34 V., c. 14), whereby it is declared that—

"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 determine in due course of law all treasons, felonies, and indictable offences committed in any part of the said Province, or in the territory which has now become the said Province."

At the Confederation of the Provinces—certainly at the passing of this Act—the concurrent jurisdiction of the Canadian courts over crimes and offences committed in the territory which afterwards became the Province of Manitoba, ceased and was at an end, and the Courts then existing or subsequently established in Manitoba, had and have exclusive cognizance of, and jurisdiction over, all crimes and offences in Manitoba, originating in the territory now forming that Province, whether committed before or after the establishment of the Province. There has, then, been no interruption of jurisdiction, or want of authority in Courts existing in North America, to hear, try and determine all crimes and offences committed within the territory now forming the Province of Manitoba, but all such crimes and offences might have been *before* the Province was established, in Courts *then* existing, and by officers *then* clothed with full authority in that behalf, and *may now*, in the Court of Queen's Bench duly organized in Manitoba, be heard, tried and determined in due course of law, and punishment awarded accordingly.

The demurrer to the plea of jurisdiction is allowed. The prisoner is permitted to enter a plea of "Not guilty."

Judges McKesney and Betournay both signified their hearty concurrence in His Lordship's decision.

The Attorney-General then asked the counsel when the prisoner would be ready to stand his trial.

Mr. Royal said not for six or seven days.

The Attorney-General objected to so long a time, and finally the time was fixed for Thursday next, at ten o'clock.

The prisoner's bail was enlarged on the responsibility of the Court until that time.

The business of this term of Court prevented Lepine's case being tried; it was accordingly fixed for the next term of the Court of Queen's Bench which would sit in October following.

During the Session of the Provincial House of Assembly, in July, 1874, a Bill was passed providing that in the case the business of a term of Court should not have been finished inside the time named in the former Statute, the Court should be empowered to sit until the business had been finished. This fully prevented any chance of the trial of Lepine's being delayed for the future.

COURT OF QUEEN'S BENCH.

OCTOBER TERM,

1874.

Chief Justice WOOD presiding.

THE QUEEN *vs.* AMBROISE LEPINE—MURDER.

TUESDAY.

Mr. Cornish appeared for the Crown; and Messrs. Chapleau and Royal for the defence.

The Court then proceeded to empanel the jury, and after a good deal of standing aside and challenging, the following were selected:

John Omand, Norbert Marior, John Forbes, Jas. Parks, Peter Harkness, Baptiste Dubois, Samuel West, Joseph Poitras, Cornelius Pruden, André Robillard, Maurice Bird, Norbert Nolin.

The following were challenged for the Crown:

Duncan McDougall, Moise Goulet, Amable Marion, Paschal Piette; and about sixteen were challenged by the prisoner's counsel.

During the address of the Crown counsel, the Grand Jury entered the Court room and presented the following True Bills:

The Queen *vs.* J. Sanders and Chas. Bond, larceny.

The Queen *vs.* Rocan and Morneau, receiving stolen goods.

The Queen *vs.* Chas. Baird, assault.

The Clerk read the indictment against Ambroise Lepine, as follows:

PROVINCE OF MANITOBA.

{ COURT OF QUEEN'S BENCH,
{ Crown Side.

NOVEMBER TERM, 1873.

The jurors for the Court of Queen's Bench on oath present, that Ambroise Lépine, on the 4th day of March, in the year of Our Lord one thousand eight hundred and seventy, at Upper Fort Garry, then known as being, lying and situated in the District of Assinibois, in the Red River Settlement, in Rupert's Land, and now better known as being, lying and situated 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.

MR. CORNISH'S SPEECH.

Gentlemen of the Jury:—You are now called upon to try one of the most important cases that have been under consideration in this Dominion for some time. You are aware that some few years since, this country was attached to the Dominion of Canada, and that, for some reason or other, certain individuals bound themselves together, and took upon themselves the right to imprison some of the people and murder one of them, and that one of those implicated in these high-handed proceedings is the prisoner at the bar. It is known to you that one of these prisoners, by the name of Thomas Scott, was the one who was killed and murdered by those who professed to have authority at that time, and of whom the prisoner was one of the principals. It appears that the prisoner at the bar resided in this country. I shall show you that early in the year 1870, the prisoner ordered the arrest, and foully and illegally caused the death of one of Her Majesty's subjects. This, gentlemen, will be the first fact upon which you are called upon to decide, and it will be for you to determine whether the life taken by these men, of whom the prisoner was one, was a foul murder or a justifiable act. It is for you to say whether the crime of killing Thomas Scott was a murder or not. It is for you to decide whether the prisoner at the bar is guilty of the crime for which he has been called upon to answer by this Court and by the people of this country. It is for you, gentlemen, to say whether the constitution of the country, on which we all depend, can be subverted and destroyed by acts of lawless men; whether the bulwarks of our constitutional liberty are to be rudely leveled in the dust, and whether the prisoner at the bar, who is accused of the crime, is to be punished or not. It appears that previous to the 4th of March, 1870, a number of persons took upon themselves the right to imprison and abuse a great number of Her Majesty's loyal and peaceful subjects. This was an illegal act. There was no authority or law to justify the imprisonment of those peaceful subjects for the length of time during which they were imprisoned. But, gentlemen, these lawless people who were guilty of this outrage were not satisfied with what they had done; they had to commit further wrong by putting to death one of the prisoners named Thomas Scott. This, gentlemen, was a foul murder. The men who did it had no authority for doing it. They had no right to commit that deed. The prisoner at the bar is accused of being one of those who ordered the execution of the unfortunate man Scott, and who took an active part in that murder. I need not tell you, gentlemen, that first you must come to the conclusion that the murder had been committed, and secondly, whether the prisoner at the bar is implicated in that murder. I will endeavor to show, by the evidence I will lay before you, that this unfortunate man Scott, after submitting to many hardships from these lawless men, on the morning of the 4th of March, 1870, was taken out of his prison and killed by a number of those men, among whom was Mr. Lepine, the prisoner at the bar. If that be so, and I am sure I have no desire to press conviction unless the evidence demands it, you will, gentlemen, see that the case is clear. Who, let me ask, was this Thomas Scott? A young man who, because of his loyalty to his Queen and country, was taken and killed, murdered foully so, because he dared to be loyal to his crown and country, by men of whom the prisoner was one. Gentlemen, we shall show you that upon that melancholy occasion, every effort was made by one whose name will be in the hearts of all, and memories of the good for all time, to save the life of poor Scott; but the unfortunate man was ordained to die by the hands of assassins and murderers. I speak, gentlemen, of the noble efforts made by the Rev. G. Young. It is true that for a long

time justice was postponed, and that many of those equally guilty with the prisoner were at large and defied and laughed at justice; but the unerring dart has reached nearly all of them, and perhaps even before long, those too will find themselves in the hands of those whose duty it is to punish the transgressor and the murderer. It will be shown to you, gentlemen, that Scott was murdered, and that Mr. Lepine, the prisoner, was fully implicated in that deed. It is for you, gentlemen, to decide the question upon the evidence which will be laid before you. It will be your duty to render a verdict of acquittal if the evidence, in your estimation, is insufficient to prove guilt; and a verdict of guilty, if the evidence is sufficient. There is one feature in the closing part of this tragedy, gentlemen, that is not only suspicious-looking, but cowardly in the extreme. I allude to the spiriting away of the body of Thomas Scott, after the unfortunate man had been executed. Why was this done? If the execution was justifiable and according to law, why was this dark mysterious act committed? Surely, this act cannot be defended. Is it not a strong evidence of guilt of wrong, of a crime being committed that would not bear the light of day? No one to this day knows where the murdered clay of poor Scott lies buried, or if it was buried at all. I need not also tell you, gentlemen, that it is your duty, if you have any doubts, after weighing the evidence carefully and calmly, to give the prisoner the benefit of such doubts; but, gentlemen, let them be doubts, and do not allow prejudice or feeling to sway you from your duty in this matter. After the evidence has been laid before you, I will again be permitted, in accordance with the practice of the Court, to address you and sum up the evidence as it occurs to me. I trust that my learned friends who are conducting the defence will have no cause to complain. I shall now leave the matter in your hands, and lay before you the evidence upon which you are to adjudicate.

Joseph Nolin was the first witness called, but he did not appear, he not being present.

Wm. Farmer sworn.—I reside at Headingly; I am the party at whose evidence the prisoner was arrested; on the 17th of February, 1870, I was made a prisoner about half a mile north of the Prairie Saloon; there was some forty-three of us; the late Thomas Scott was one of those arrested with me by a party of half-breeds headed by the prisoner Lepine and O'Donohue; they came from Fort Garry, *i.e.* the Hudson's Bay Fort; I was going home to the Portage; some of us were going to High Bluff, some to Headingly and some to the Portage; the half-breeds were armed with repeating rifles, revolvers and knives; we had been armed, but our arms were packed away in a sleigh at Kildonan; we dispersed on a note from the Fort, information being given to our party that we might proceed home without being molested; the cause of our coming down was to release some prisoners, of whom forty-five were in Fort Garry at the time; they were taken at Schultz's place; when we went down from Kildonan we met some five hundred, chiefly from St. Andrews North and South, St. Paul and St. Peters; our force amounted to about six hundred armed men; I was in command of the Portage force; we arrived at Kildonan about 10 o'clock in the morning, 15th February; the prisoners were released that night; next morning a communication was sent to Fort Garry by Northway and McKelny to Riel; I was not in the Council and know not what was in the note; there was a reply to the communication, stating that the prisoners had been released, and that our object having been accomplished, we could go home unmolested; it said nothing about the reward for apprehension of Dr. Schultz, or the restoration of Schultz's property; when we received this note, we were on our road home; some four or five, mistrusting that something might happen to them, went ahead of the others and reached their homes in safety; before we left Kildonan, an occurrence took place that induced several to go to their homes; a person by the name of Sutherland was shot; while in camp in Kildonan, a person came there, named Parisien, who was considered a spy; we arrested him and put him under guard; he escaped and went towards the river, but was pursued; John

Sutherland was coming across the river to Kildonan on horseback; Parisien as he escaped had seized a double-barreled gun loaded; he fired at Sutherland twice, one shot taking effect in his wrist and the other in the back; Sutherland fell from his horse and died about an hour afterwards. The persons pursuing Parisien fired at him and wounded him, but he was not killed; he escaped to the woods on the other side of the river; he was taken prisoner and brought back to the church; when he was retaken he was frozen in the hands; I saw him when I got out of prison, in the month of March following; he had not recovered from the effects of the freezing, but I think he had from the gun shot; the unfortunate occurrence of the death of Sutherland had the effect of inducing a great many to disperse and go home.

His Lordship.—Why did you go half a mile from town?

Witness.—We were advised to do so; we passed through about 10 in the morning.

His Lordship.—Did you know at that time whether the French force had any military designation?

Witness.—Lepine was styled Adjutant-General.

His Lordship.—Had he charge of the force when you were a prisoner?

Witness.—Riel and Lepine both came into our guard-room.

His Lordship.—Was the prisoner dressed differently to the rest?

Witness.—I could not swear what conversation; was between Riel and Lepine, and a half-breed named Poche; Lepine and O'Donohue commanded us to surrender; our arms were stacked in a sleigh; some had arms, but Major Boulton cautioned all of the party not to fire, and no one did fire; I did not see any resistance offered; the party from the Fort consisted of about forty mounted and a number on foot straggling along from the Fort; among the party that was taken was the deceased Scott; did not see him offer any resistance; the prisoner and O'Donohue rode in advance and spoke to Poche; he was known as an English half-breed and spoke the two languages; I do not know whether he conversed with the prisoner or O'Donohue in French or not; I did not hear them; when we saw them coming we stopped our sleighs; the prisoner did not cry out "Stop;" Poche, after speaking, came back and said that they came out to see that it was the Portage party going home; they surrounded us, and I was told there was a discussion in the French language between the parties as to whether we should be permitted to go home or be taken into the Fort, and O'Donohue decided that we should be taken into the Fort, and we were taken in without any resistance, as far as I could see, from any one of our party; I did not hear, in language that I understood, the prisoner give any command or direction respecting taking us prisoners, or taking us into the Fort; O'Donohue seemed to be in command; I heard O'Donohue say "Take them into the Fort."

Mr. Cornish.—When you heard O'Donohue say "Take them into the Fort," was he at that time in conversation with Lepine?

Witness.—I cannot remember.

Mr. Cornish.—I suppose you remember going to the Fort?

Witness.—I do; O'Donohue and Lepine went in company to the Fort; all rode together; we were marched into the court-yard, and some of us searched under the directions of Riel, Lepine and O'Donohue; Riel made his appearance at that time; they took some revolvers and knives, but nothing from me at that time; we were marched up to the Hudson's Bay Office and placed in the upper part of it; Scott was locked up at the same time; we were again searched there and placed in different rooms; I was placed in the same room as Scott; this was all done against my will; remained there a month; saw Scott daily during that time; frequently saw the prisoner Lepine; last saw Scott on the morning of the 4th of March, 1870; he came to the door of the room I was in, which was open; he said "Good-bye, boys"; I reckoned he was going away; this is the last time I saw him; I could not say whether he was with any person when I saw him; during my imprisonment I frequently saw the prisoner; he appeared to be in

charge of the guard over us, and was spoken of as the Adjutant-General; he always spoke in French, and I do not understand French.

Cross-examined by Mr. Chapleau.—The prisoner was arrested on my information.

Q. Did you not take any part in finding a Bill against him? A. I was summoned as a Grand Jurymen; I asked to be excused from the Attorney-General—the late one—and he said that if enough jurymen could be found, he would excuse me; when I first asked to be excused there were only eight; I did not make application before the Court; I was not called or examined as a witness; this morning, when the witnesses were ordered to leave the room, I remained in Court.

Q. Why did you not obey the order?

His Lordship said that he did not give any order; he merely told them to leave the Court until their evidence was given.

After some discussion it was decided that a witness could remain in Court after having given his evidence.

Witness.—In the month of February, 1870, in Major Webb's party, Colonel Dennis was immediately in charge, but not the whole time.

Q. You have spoken of a certain Provisional Government, as you call it, as being in possession of the Fort; what time was that Provisional Government in existence?

A. I suppose from the 1st of December; it was two and a half months in existence then.

Q. Was it a Republic according to your information?

A. I cannot say; Riel signed proclamations and issued them through the country; I suppose he was the leader of the Government; I was aware that deceased had already been a prisoner before that day, from his own information; I think it was about Christmas time that he escaped.

Q. You have spoken of some property of Schultz and its capture; was it taken from him, and what was it?

A. I know nothing of it, only that I heard it had been seized; I understood it to mean personal property, goods in store; the party of which I was one, after we had decided to come to the Fort, determined only to release prisoners; never applied to any authority in the city here for the release of these parties; no one in the city had any power, except the Provisional Government, to liberate the prisoners; as I take it, no one appeared to have physical power enough at command to do it.

Q. By whom were you asked to come to Fort Garry to release those prisoners?

A. We were not asked; I was not the party that raised the force at the Portage; it was themselves; Scott, the deceased, was not with me when I went to the Portage; to the best of my knowledge, he came after the question was first spoken of; he escaped from the prison and enrolled himself with the party immediately after his escape.

Q. You said when you left Kildonan that the reinforcements that you had received from North and South St. Andrews raised the force to about five hundred armed men; in whose command were you then?

A. The Portage party under Major Bolton; the rest I could not say whose command they were under; the other parties each had their leader; Dr. Schultz seemed to be the most prominent man from down the river; Scott had no position at all in that force; he was a full private; about an hour after the meeting of Northway and McKenny, the shooting of Sutherland took place; the prisoners were liberated on the morning of the 15th; on the morning of the 16th, the message was sent; when the reply arrived the five hundred had dispersed; Dr. Schultz was represented by a General Council, and he himself agreed to the message; we met Northway and McKenny on our road home, and read it to them and some others; I took a copy of it in a memorandum book, but have lost it; that reply was signed, I think, by Louis Riel, to the best of my knowledge as President.



DR. J. C. SCHULTZ.

THOMAS SCOTT.
SCOTT'S BROTHER.

HON. A. G. B. BANNATYNE.

after we came into the Fort and saw Riel, I did not ask him to make good that promise, nor did I hear anyone ask it; I did not see Governor McTavish or ask his permission to act as I did; I was not aware that Parisien had opposed the Government of Riel; I understood he was a soldier of Riel's; it is not commonly known that he had escaped from Riel as a prisoner; he came with a horse that was known not to be his property; he was put in the school-house at Kildonan; the guard were provided with arms, but did not carry them; if he had a gun I think they would not have left it with him; his horse was taken away and brought to me; when Parisien escaped, he was pursued by some of the Portage men armed; he appeared to me to be very much frightened; he was recaptured about four hundred yards from the school-house and brought back to the camp with his hands tied behind him, I think; when he came to the river he struggled with the guards, but when he found it was of no avail, he came quietly; I could not say whether they were dragging him by his feet or his hands; when he arrived he was taken to the school-house and two doctors attended him, Beddome and Schultz.

His Lordship.—Was he still tied when you went back to the school-house?—A. No, my Lord; about half an hour after his escape he was brought to the school-house; during that time his hands were frozen.

To Mr. Chapleau.—This was on the morning of the 16th, about 10 o'clock; we left Kildonan school-house at 4 o'clock in the afternoon; at Redwood, coming back, we met Mr. Northway and another party with him; Redwood is about one mile and a half from here; the information we received was that as far as the French half-breeds were concerned, we were in perfect safety, but not as to the Americans in town; James McLean told us this; there were about thirty or forty Americans in town; I did not think of sending for any more information, but chose to pass round; when we met Poche we stopped to speak to him, and as soon as Poche had spoken to us, we put our arms in the sleighs and we supposed all was over; I heard O'Donohue say, "Take them to the Fort;" I heard considerable discussion in French going on, as far as I could see, between O'Donohue and Lepine, and it was stated to me that Lepine wished us to go on, but O'Donohue wanted us to go to the Fort, and after this I walked with them to the Fort; I had no conversation with the prisoner, and suffered no hardships from his hands, neither did Scott to my knowledge; by what I saw, Riel appeared to be the dictator in the Fort.

Geo. Newcombe sworn.—I reside at Emerson; in the fall of 1869, I resided at Poplar Point; about 15th or 16th of February, 1869, I was at Redwood; one night, Mr. Farmer was there as well, from Kildonan; I had come from Poplar Point to Kildonan; quite a number of people accompanied me; I was considered one of the Portage party; I went from Redwood home with the party; we started on the road towards St. James; a party came out from the Fort on horseback; the only one I recognized was O'Donohue; I did not recognize the prisoner; we were surrounded and told to march into the Fort; we did so and went between a row of armed men; there seemed to be some three or four in command of these armed men; one was a man named Louis Riel, another O'Donohue; cannot say I saw the prisoner giving orders, but recognize him as being there; we were searched after we were confined; the man Scott was with us; I was confined thirty-two days; the only time I saw prisoner in command was when I got out; before I was released, I was taken into a room where prisoner was sitting at a table or desk, and he had a book before him with an oath written in the book, and an oath was administered to me not to take up arms against the Provisional Government; I took this oath and signed my name in a book, and went back then, and got my overcoat and blanket and started; this was at least a fortnight after Scott's death; nearly the whole time Scott was in the same place as myself; saw him on the morning of the 4th of March; met him on the stairway; as I was going down he was coming up; he was shackled; he had rings on each ankle and carried a chain in his hands about as high as his middle; I think this was

the last time I saw him ; he went into his cell where he was left by himself at that time ; he had been put in the night before about 8 or 9 o'clock ; he told me the reason was he was going to be shot ; on that same evening prior to his telling me this, O'Donohue, as I knew by his voice, came to the door of the room in which Scott and others were confined, and called out for Scott to come out ; as Scott got up he made the remark to me that he was afraid he was going to get into trouble, and went out ; I should say he was away about half an hour, when he returned with the guard ; the door was left open by the guard, and he came in and took his blanket, the guard standing at the door waiting for him ; I asked him what was the matter ; he said, " I am going to be shot ; " I asked him what for, he said he did not know, it was in French ; I think he used the word trial, and then he went out ; I saw no more of him that night ; next morning I met him on the stairs ; I think he had no shackles on when he came for his blanket ; on the 4th of March, as we were standing in one room, I heard a voice from one of us saying : " There goes Scott to be shot ; " I heard a report ; this report was about a quarter of an hour afterwards ; a man named Delorme was in charge of the guard ; I used to hear Riel and O'Donohue, sometimes one and sometimes the other, occasionally scolding the men of the guard ; I never heard the prisoner at any time ; I have given all the reasons I know that have led me to suppose that he had any power there at all.

Cross-examined by Mr. Chapleau.—I saw Rev. Mr. Young going into Scott's cell after he had told me " I am going to be shot ; " I think it was after 7 when I heard the voice ; not to my personal knowledge did I ever hear the prisoner at the bar giving orders or scolding as the others did.

Court adjourned.

WEDNESDAY, Oct. 14.

Court resumed its sittings this morning, the Chief Justice presiding. Routine business having been disposed of, the Lepine trial proceeded :—

Alexander Macpherson sworn.—I reside at Stone Fort ; in 1870 resided in Winnipeg ; was one of the party arrested in the month of February, at the back of the Prairie Saloon, by the French half-breeds ; Thos. Scott was arrested with me ; we were taken to the Fort, some forty or fifty in number ; we were going to the Portage when captured ; we were not armed to resist force, but had arms in our sleighs ; when we got to the Fort, there were some four or five hundred men in the Fort—some armed ; I cannot say all were ; before we went we were told that they wanted us there but ten minutes ; we expected to go home after Riel had spoken to us ; when we were all surrounded inside, the only man that spoke to me was Thos. Scott ; he said, " It is very cold, let us go down town and have a glass ; " we started to go, but when we came near the gate we were pressed back again by the crowd in the Fort ; Riel called John Taylor, of Headingly, to come into a room ; Taylor was one of our party ; all the rest were called in too ; we went in, and nineteen of us were shut in a room ; Thos. Scott was one of the nineteen ; a short time after, O'Donohue came in and two or three men with him ; they searched our pockets and took all we had from us ; I did not know the parties that were with O'Donohue, then or now ; remained there five weeks ; Scott remained about two weeks ; I only saw him once between that and the 4th of March ; the first I saw I was looking out of the window, and Riel was ordering two French half-breeds to go into where we were ; I saw this by his gestures ; they seemed to hesitate, and after taking a few steps towards the house or room, stopped, when Riel turned over upon seeing them hesitate, and ordered them to proceed ; do not know where these two men went ; Scott's place of confinement was at the other end of the house ; we had heard that Scott had been sentenced, and I thought that these were men ordered to go to Scott

and take him out to be executed; I heard he was to be shot; did not hear Riel speak; do not speak the French language; Riel spoke to his associates in French usually; these men and Riel went away; then saw the Rev. Mr. Young and Thomas Scott coming out of the building where he was confined; there was another person going behind them; it was the prisoner Lepine; there were two or three men walking behind Lepine; Scott had a white cap on, and a handkerchief on his head; he was also tied, or handcuffed; cannot say whether it was his feet or hands, but know he had irons on; saw this from the window as they were going down stairs, outside the building into the court-yard; when they passed the corner of the house they went out of my view; they went in the direction of the gate, then opening on the main highway or Garry street, running east of the fort; I saw about six others following after; they had guns; they were also lost to my view by the building; these six followed right after the prisoner; the next thing I heard was a report of fire-arms; there was more than one gun fired; the sound seemed like a quick succession of shots; this occurred within less than ten minutes after they left my sight; the firing appeared to be in the direction they had gone outside the walls; the next thing I saw was about six or eight men coming in the walls with a box or coffin; they came from the direction the other men had gone out; they went from my view, hidden by the house that is within the fort; I do not remember seeing any party coming in with guns again.

Cross-examined by Mr. Royal.—I was in Schultz's building, but was not caught with that party; I was engaged with Colonel Dennis in the fall of 1869; I can't tell the month; it was in the fall; when the prisoners were taken at Schultz's house I got clear; Schultz had a store on Garry street, in town; it contained all kinds of goods; I went to the post-office to get some letters, and I did not go back again (laughter).

Chief Justice.—Why did you not go back?

Witness.—Because I was informed it was a farce on both sides; Schultz's store had a guard of armed men over it; there was forty or fifty of us armed men; we had ammunition; I was a constable, and also the other men guarding the stores; it was at the Stone Fort, before this affair, that we were sent for as constables to protect the peace; this was in the fall of the year; I was not sworn in by any magistrate; there were some thirty or forty collected at the instigation of Colonel Dennis; this was done in consequence of Riel taking Fort Garry; I never enquired under whose orders I was acting; we left guards over these stores about two days and two nights; on the third day I went to the post-office to get letters; our party was irregularly armed, but every one could get arms; to the best of my recollection, our only object was to protect the Government stores; I heard of no other object; after I went to the post-office, I stopped outside, and in an hour or so the party was all taken prisoners by Riel's party; I saw them being taken to the Fort; there had been, for a day or two, armed men from the Fort down about Schultz's premises; they were some two or three hundred day and night; I do not know whether they demanded the surrender of the place; this was after Riel had taken the Fort; I was told not to go in and expose myself, as there would not be a shot fired inside or outside; there were men all round the town surrounding it, and I could get out of it; if they had seen me I should have been captured; I went to the Stone Fort and stopped there a few days, and after that Colonel Dennis went away, and when he left, we left too; I went up to the Portage, was there some time, and a number of young men made up their mind to get the prisoners out of Fort Garry; Scott was taken prisoner with the party from Schultz's; I only know this from hearsay; he told me he had been confined in the Fort, but had escaped; I could not tell whether Farmer took any active part in the formation of the Portage party; I voluntarily joined; the party consisted of about eighty, and it seemed to act spontaneously, its only object being the liberation of the prisoners in Fort Garry; Thomas Scott was with us; he was not a principal actor; there were none;

some of us had guns, some pistols, and some guns without locks; none of us had any Bowie knives; we halted at Headingly for a day or two; we did not drill, but had officers; our horses having given out, some turned back at Headingly; I had no gun, only a good-sized stick; there were sixty or seventy of us on our way to Kildonan; it was on account of our small number that we did not try to rescue the prisoners from the Fort, but went to Kildonan; we passed through the town without being molested; it was during the night, most of us on foot; it was about the middle of the night; about one half of us in sleighs; as far as I recollect, none on horseback; we stopped at Boyd's first for a short time, and then went to the school-house at Kildonan; they began to gather from all parts of the country; while we were there, I saw a man coming on horseback, in the forenoon; I was inside of the school-house and ran out with others, and saw a man running towards another one on horseback; he raised his gun and shot him; the horse reared round, and he again shot him in the back and ran away, Sutherland falling from the horse; I saw Parisien run into the woods, a good many pursuing him; he was caught and taken back to the school-house again; I saw Parisien in the school-house; there appeared to be blood on his face; this was three-quarters of an hour afterwards; I did not see whether he was frozen; he was sitting in the school-house; as the prisoners were released, we decided upon going back; I could not tell you how many of us were at Kildonan, or who was in command; our commanding officer, Major Bolton, was most of the time about the Manse; I think I saw Dr. Schultz; I don't remember seeing Colonel Dennis there, or Dr. Lynch; I knew O'Donohue, and he was one of the parties that took us prisoners at Fort Garry; we were greatly excited, as we were told to go behind the town and promised that we should not be molested on our road home; it was said Riel made that promise; the majority of us were on foot; we sent a man to them to see what they wanted; a French half-breed named Poche, and they said "Peace, peace;" he talked with those that were in advance who appeared to be the leaders, as I thought with one who was the leader; the party from the Fort then came around us with Poche and surrounded us, and O'Donohue demanded which of us was the leader; no one in particular answered; then O'Donohue said, "Where is Major Bolton?" I do not recollect that any one answered; I do not recollect seeing the prisoner there; there were others who seemed to be in authority, but every one appeared to obey O'Donohue; there was so much talk and excitement that I could hardly tell what was going on; all I knew was that we were surrounded; we were then taken into the Fort; I cannot remember the prisoner at the bar as one of the two men who led; these two men were not armed; I think the two men who followed Scott down stairs were the same as Riel scolded; I occasionally saw Riel and O'Donohue scolding the guard, some three or four times; Riel appeared to be in command; I have often seen the prisoner at the bar going about the Fort, but could not say I heard him give commands or orders; I was in the upper storey looking down when I always saw him; I knew him by his stoutness; I could not tell how many times I saw him; it is now a long time since; I know another Lepine beside this; never heard of another brother, but only two of them; I think the distance of the house I was confined in and the house south is about the length of this Court-house hall; I do not remember any fence between; from this window I saw Scott and Rev. Mr. Young and two other parties going out; to the best of my knowledge, he was walking arm in arm with Mr. Young; I did not see him until he got out in the yard; the only thing that I heard was "Good-bye, boys;" I did not know who said it; the parties going out, I could not see their faces from my position; I could not see Scott's face, or any of their faces; that is the reason I could not say whether Scott was shackled, as I could not see in front; it is possible he might have gone out of the gate; I never saw them go out; I lost sight of them; I could see neither gate from my window; they may not, for ought I know, have gone out at all; I saw the box I mentioned coming by McTavish's house; I should think seven or eight men were carry-

ing it; it is more like a dream the whole of it, so long ago; I think they carried it on their shoulders; from my position I suppose the party I saw going out were an armed party; this was after Scott went out; all I heard was the volley; my ears caught it, and I knew not what they were doing outside.

To Mr. Cornish.—It was between 10 and 12 I saw this party walking towards the gate; I think the third person following was the prisoner; I had frequently seen the prisoner walking to and from the yard; I was told it was Lepine; he was always called the Adjutant-General, and I took him to be him; to the best of my knowledge, he was the third person that followed Mr. Young; I did not see Scott's face or Mr. Young's face, but I knew it was them; by the same knowledge, I knew the prisoner.

Rev. Mr. Young sworn.—I reside in Winnipeg and am a Minister of the Methodist Church; in 1869 and 1870 I resided in the same place; I was in the habit of visiting Fort Garry, generally once a week in the months of January, February and March, to see the prisoners; there were two parties of prisoners; the first were taken from Dr. Schultz's building and the other party from off the prairie—the first party in December and the other party in February; I knew Thomas Scott; he was taken in both cases; these prisoners were in charge of Riel and certain officers under him, as I understood; I obtained permission from Riel first; for the first few weeks I invariably obtained permission whenever I went; subsequently I was not required to do this; I saw a number of others who were said to be in authority, acting as such; it was said that under Riel there was an Adjutant-General and several Captains; the prisoner Lepine held the office of Adjutant-General; I very often saw Lepine during my visits; he seemed to be in possession of power; Riel was first styled Secretary and subsequently President; Mr. Bruce was first styled President; I do not remember having any conversation with Lepine prior to this date; I remember the 3rd of March; nothing occurred till the evening to my knowledge; on that evening I returned home from the country, arriving home about 9 o'clock; soon after a messenger came from the Fort, named Turner, informing me I was required at the Fort; I asked him by whom, he told me by Riel; he had sent for me, as one of the prisoners had been sentenced to be shot, and the prisoner had asked me to be sent for; I went with him, and on entering the Fort I went at once to find Riel; I went to his room, and was told he was in St. Boniface and would not be back till next morning; then I went to see Scott; I found him in the corner of a room in the building that had been used as a prison; he was alone and not in irons; the door was guarded by a number of armed men; when I visited him the Saturday before, he was in irons; this was on Thursday evening; I asked him if it was in accordance with his wish I had been sent for; he told me it was; that he had been called before a council of war that afternoon, and condemned to die; he objected to the trial, as it was conducted in a language he did not understand, but was told it made no difference; he was a bad man and had to die, and was sentenced to be shot the next day at 12 o'clock. He told me he thought they were quite bad enough to do it, but he doubted if they dare do it; I instructed him the proper course for the both of us to do was to act upon the presumption that it would be done; the first matters attended to was to give me the address of his mother and brothers, and place in my hands his effects, all of which were forwarded to them after his death; having done that there was no further talk on the matter, all further discourse was relating to his spiritual welfare; I remained with him a considerable portion of the night, and I left him for a time, as he wished to write a letter to his mother; he had been furnished with pen and ink and paper for that purpose; early in the morning I thought to bring some things to bear in his behalf; first of all I thought to see Mr. Ross, who was then called the Chief Justice under that Administration; he was not at home; I then proceeded to see Mr. Bannatyne and others for the same purpose; they all seemed to be exceedingly surprised, and gave me an assurance that it would not take place; that it was

only done to frighten the people ; I deemed it best to converse with Mr. Smith and told him of it ; he had not heard of it before, and did not believe it possible to be done, and engaged to use all his influence to prevent it ; a Roman Catholic priest named L'Estanc came in a while talking to him ; I asked him if he had heard of the sentence ; he said he had ; I asked him if he would intercede with Mr. Riel for him ; Mr. Smith suggested that I should go and see Mr. Riel myself, thinking I should succeed without further trouble ; in case of failure to send him word and he would proceed at once ; I went and met Mr. Riel in his own room, and asked him if it was true that Scott had been sentenced to be shot, and if it was their intention to carry it into effect ; he said he was sentenced by a council of war, all the members had concurred with one exception, and it would be carried out ; I asked if Scott had been guilty of any great crime to deserve such a sentence, and expostulated with him, but to no effect ; failing in that I urged that the execution be postponed at least twenty-four hours ; I wished more time ; he had had but a few hours' notice, and could scarcely realize he was so near death as that ; upon the question of postponement, he spoke of calling the Adjutant-General and discussing with him ; in a few moments the Adjutant-General, the prisoner here, entered the room ; Riel stated my request, and I also spoke of it in their presence ; Lepine, the Adjutant-General, very energetically shook his head and rose up and left the room ; Riel told me it was utterly useless to press the matter any further, so I returned to the prison and sent a message to Mr. Smith to notify him of my failure ; Mr. Campbell was my messenger ; I remained with Scott then until he was shot, engaged in religious exercises until we were interrupted by the parties entering the room to lead him out to be shot ; Goulet and a man named Nault and others, four or possibly five in all, were the parties who led him out ; when they entered the room, Scott was very much excited, exclaiming, "This is horrible." "This is cold-blooded murder ;" I advised him not to make such remarks, hoping still that the sentence might not be carried out ; one proceeded at once to tie his hands behind his back, the other put a cloth about his head, that was used to blindfold him, a piece of white cotton ; they put it over his forehead ; until he went out he was not shackled ; I requested them to retire a few minutes, and they yielded to my request ; I then engaged in prayer with him ; when they came in, he requested permission to say "Good-bye" to the boys as he called them, and they granted that request also ; in passing out he went to each door where the prisoners were, and bade them "good-bye ;" Riel excitedly complained as regarded the delay (vociferating wildly) in the matter ; I explained to him that I had been the cause of the delay ; he spoke in French ; we passed down the stairs, down which I assisted him, as I was afraid he would fall, his arms being tied, and we were directed to the place ; I did not pay any attention to who directed us, my mind was too much occupied ; he passed through the gate ; the sleigh track at the time was near the walk ; we were halted at some little distance from the gate on the sleigh track ; as I supposed that this would be the place of execution, I had prayers with him there ; after prayers he asked me to draw the blindfold over his eyes, and if he should remain on his knees or stand up ; I told him it would be better to remain on his knees, and I withdrew away from him after drawing the blindfold as he had asked me ; just then I met face to face two persons whom I urged to interfere ; one was Goulet and the other O'Donohue ; I knew they both spoke English ; Goulet said his time had come and must die ; O'Donohue said it had gone very far, but did nothing to prevent it ; during the time of this conversation they removed Mr. Scott from that point a short distance east, and in this place he was shot ; the firing party consisted of six persons ; when they were about to fire upon him I turned away, not witnessing the act ; immediately after firing, heard his voice and returned ; he had fallen forward, the body lying partly on its side ; there was some indication of life, a slight twitching of the shoulder ; some one said, "Put him out of his misery," when one of the party took a revolver out of