

We copy the following legal proceedings from the *Quebec Chronicle* of 9th May.

In the present state of the case it would be injudicious to make any remarks, the appellant only showing his own view of the question at issue.

There is, however, a glaring fallacy in the allegation that none of the officers comprising the Court Martial were qualified, and the plea that they were merely *students* and officers of other corps, won't be available as the soldiers of "B" Battery were regularly enlisted men and the aforesaid officers were duly detailed for service with the battery.

They were not "students" in any sense of that term, being merely assigned to duty while under a course of instruction *outside* and beyond the ordinary qualification for their respective ranks in the corps to which they severally belonged. The fact that the Quebec Garrison Artillery was disbanded, *after* two of the members of the Court Martial being assigned to the "B" battery argues nothing for the allegation, as that circumstance could not affect their standing.

It is likely that this case will awaken attention to the whole of the questions connected with the "Mutiny Act," as applicable to our militia soldiers—and we are of opinion that it should be framed with a view to the punishment being inflicted by a civil magistrate so as to bar proceedings of this kind—the individual in such a case having no real cause of complaint as he would presumably at least be tried by an impartial and uninterested tribunal.

In the present case it is the duty of the State to hold Colonel STRANGE harmless from consequences. The subsequent proceedings will be looked for with much interest as a precedent and guide for the future.

This was a petition for a writ of certiorari and the following judgment was rendered by His Honor Mr. Justice Stuart yesterday morning, in chambers:—He said this is an application for a writ of certiorari to bring up, in order that it may be quashed, the conviction of the prisoner, at a regimental court martial, held at St. Helens, by order of Lieut. Colonel Strange.

This application rests on three grounds.

1. That the petitioner was not subject to military law and that the court martial convened to try him had no jurisdiction over him.

2nd. That the court martial so convened was not composed of officers of the "B" Battery, but exclusively of cadets or students at that military school. That two, out of the three officers composing it, are not officers of any militia corps, and could not form part of any regimental court martial.

3rd. That there are irregularities in the proceedings which amount to a denial of justice to the petitioner, and is sustained by an affidavit of circumstances of the petitioner, not controverted, in which, in substance, he says that in October 1873, he was enrolled for three years as a member of the militia corps called the Quebec Garrison Artillery, one year of which was to be served in the Quebec School of Gunnery known as "B" Battery. That in October 1874, petitioner agreed to and did re-enter and re-engage in the said school of gunnery for another year and no more to wit, until 6th

of October 1875, being then at St. Helen's Island Barracks, in the district of Montreal, with a party of men of the said "B" Battery school of gunnery, whereof James A. Devine, of the city of Quebec, gentleman, a student or cadet in the said school of gunnery, was in command, deponent was asked by the said James A. Devine if he would re-engage for another or third term of one year in the said school of gunnery, and petitioner then and there expressed his willingness to do so.

That some days afterwards on or about the 11th of October last at St. Helen's Island the said J. A. Devine speaking for and in the name of the commandant of the said school of gunnery, informed petitioner he would not be accepted for another term, and told him to find other employment, whereupon petitioner asked for his discharge in writing, and to be set at liberty to which the said James A. Devine replied that petitioner's written discharge would arrive from Quebec shortly, but in the meantime he could have a pass or permit to go to Montreal or Quebec to enable him to look for a situation. That when, in the afternoon of the same day, petitioner applied for such pass, it was nevertheless refused him, and the said James A. Devine refused to sign the pass in writing prepared for his signature, and refused petitioner any pass or permission to leave the said Island. That he was forced to remain and do duty against his will and express desire, and was not allowed to leave said Island. That about the 16th October, petitioner was ordered to do certain domestic services for the said James A. Devine, and petitioner remonstrated with one Haynes, the servant of the said James A. Devine, and claimed that he should not be compelled to do the said work who reported such remonstrance to the said James A. Devine, who some days afterwards, to wit, on or about the 23rd October, caused petitioner to be arrested and brought before him, and on a pretended charge of insubordinate and disrespectful conduct towards himself, ordered petitioner to be punished by confinement to Barracks for fourteen days and to do pack drill during seven out of the said days, for four hours a day. That petitioner then and there claimed to be a civilian, and not subject to any military law or jurisdiction, his term of service in the "B" Battery school of gunnery having long expired. That the said James A. Devine caused petitioner to be incarcerated in the guard house, and procured from Lieut. Colonel Strange an order for a Regimental Court martial, to be held on petitioner, which Court martial was held on 28th October last, and the persons composing the same were the said James A. Devine, George Rolt White and Henry C. Sheppard, gentlemen, students or cadets in the said B. Battery school of gunnery, described as Captain and Lieutenant respectively, and the said James A. Devine, George Rolt White, and Henry C. Sheppard, assembled, at St. Helen's Island aforesaid, and formed themselves into a court, with the said George Rolt White as President, and proceeded to try the petitioner upon three charges, absence from defaulters drill, insubordination, and insolent conduct towards the said James A. Devine, found the petitioner guilty of all the said charges, and sentenced him to forty days' imprisonment at hard labor; that such sentence having been signed by the said George Rolt White, as president, was afterwards on 29th October at Quebec approved and confirmed by Lieut. Colonel Strange, and the same was by him ordered to be carried out in the Garrison cells, Quebec Citadel. That by the Militia and General Orders of the 20th Octo-

ber, 1871, under which petitioner became a member of B. Battery School of Gunnery, it is provided that for the purposes of discipline, to wit, for trial and punishment, officers, non-commissioned officers, and men of the said B. Battery School of Gunnery shall be sent to their respective militia corps, and the only punishment provided by the said General Orders to be applied to members of the said B. Battery School of Gunnery are, for officers to be reported to the Adjutant General of Militia, for non-commissioned officers, reduction, and for men, dismissal. That at the time of being so tried and sentenced, as aforesaid, petitioner was not amenable to any military law, nor subject to the jurisdiction of any court martial, his term of engagement as a member of the B. Battery school of gunnery having long expired, and he further not being a member of any militia corps or organization whatsoever, the corps known as the Quebec Garrison Artillery, in which petitioner had been enrolled for three years as a private, having been disbanded and struck from the roll of Militia corps long before the holding of the said Court martial to wit, on 10th April 1874, by a Militia General order, bearing date that day, and duly published and promulgated, by means whereof petitioner was from and after the said last mentioned date, relieved from all further service in the said Quebec Garrison Artillery, and freed from all liability in respect of his enrolment thereon. That no one of the said George Rolt White, Henry C. Sheppard or James A. Devine was then and there qualified to sit or act on a Regimental Court Martial of the said B. Battery School of Gunnery (if any such could legally be held), they not holding any commission or rank in the said B. Battery School of Gunnery, but holding commissions, if any they held in separate militia corps, to wit: the said James A. Devine in the Montreal Engineers, and the said George Rolt White, and Henry C. Sheppard, in the above mentioned Quebec Garrison Artillery; and the said James A. Devine was not at the time a captain in the said B. Battery, nor was the said George Rolt White and Henry C. Sheppard, a Captain and Lieutenant respectively of the said B. Battery; and the said George Rolt White and Henry C. Sheppard were not then and there qualified to sit on the said court martial or on any court martial whatever, and were not, in fact, militia officers at all, the corps in which they had held commissions, to wit, the said Quebec Garrison Artillery having been disbanded, and struck from the roll of militia corps as aforesaid.

To justify the proceedings of the court martial in question. It is necessary that the petitioner should have been amenable to its jurisdiction in regard to his status and alleged offence, and that the court was legally constituted in the authority convening it, and in the number and qualification of its members. In all these particulars the petitioner challenges the court; he denies that he was subject to military law or discipline in any way; that Lieut. Colonel Strange could not convene a regimental court martial of the Battery School of Gunnery to try him, and that if he could, such court could only be composed of the officers of the B. Battery; that as to two of the members of the court, Capt. White and Lieut. Sheppard, they do not belong to any active militia corps, and are not competent to sit on any court martial.

The case submitted by the petitioner, if true, calls for further investigation, but I have been urged to leave him to his remedy by action, and it has been said that no case has been cited wherein a certiorari has issued in England to bring up the proceed-