

THE QUEBEC TRANSCRIPT.

a wound as this. On the left shoulder blade there was a gun shot wound; also several stabs. I removed the bullet. The wound on the skull of which I have spoken appeared to have been inflicted by a person higher than the head of the deceased when standing. There was also a gun shot wound on the left groin. Two shots must have been fired for I extracted one ball from the body lodged between the two orifices. The fingers of the left hand were completely backed. There was another wound from the ear to the forehead.

Cross-examined.—I saw two or three sabre wounds on his head. There were other wounds in the body which might have caused death. The profuse bleeding arising from all these wounds would have produced death.

Dr. Arnold, Jun. 16th witness.—(Heard and corroborates the evidence of the last witness.) The blow as described by Cadieux to have been struck by Jalbert, if it produced the wound on the forehead of the deceased, was sufficient to cause death. The wound seemed to have been inflicted by a person above the deceased.

[The Attorney General here declares the prosecution closed, and the prisoner's Counsel enter on the defence by addressing the Jury.]

THE DEFENCE.

Thursday, Sept. 5th.

The following witnesses are called on the part of the prisoner:—

Jean Baptiste Godbeur, 1st witness.—I was fireman in Dr. Nelson's distillery in November, 1837; I had been 10 months in Dr. Nelson's employ. The battle took place on the 23rd November. Mason, a former witness was engineer; the machinery during all the night preceding the battle was in motion; about seven or half past seven o'clock, a. m. I was ordered by Mason to desist putting on more fire; I could see the machinery from where I was stationed as fireman, and I saw Mason up above, when he was about the engine; the reason he gave me for putting out the fire was because the troops were coming. Mason took his gun in his hand, left the distillery, and went into a ditch; he went down; and did not see him join any one; he returned in about a quarter of an hour. Nelson's house is an arpent or one and a half from the distillery, and on the opposite side of the road. I heard firing during the quarter of the hour that Mason was absent, in the direction he went; when he returned he said he had learned a piece of news—he said that they had just returned from killing a dog of a spy. This was between 8 and 9 o'clock, and the firing had commenced below the village; Mason went up stairs to where the engine was, and like the others began firing on the troops.

[The Attorney General objects to the proving specific facts against Mason and is sustained by the majority of the Court.]

I cannot say how long Mason remained up stairs; I did not see him come down; he did not say where he was during the quarter of the hour that he was absent; he made no boast of having been elsewhere than at Dr. Nelson's; he told me he had been below firing in the direction of St. Ours. I have known Jalbert 40 years to be a good, respectable, mild man.

Cross-examined.—I cannot say precisely the day of the month or week, or the hour, but I recollect the facts—Mason's place at the mill was where the machinery was, and mine was at the fire.—There was a partition. I was below and Mason above. From the upper part a person could go out without coming through the part where I was—I do not think that Mason could have gone to Dr. Nelson's without my knowledge. I left for some moments but the time was so short that I do not know if Mason could have gone to Dr. Nelson's—I had not my eye all the time over the distillery for my place was down stairs—Mason had charge of the machinery and pumps, and when any thing such as oil or tallow was required, it used to be got at Dr. Nelson's. I have no knowledge that Mason left.—There were others in the mill—Mason said nothing to me as to where he had been during the quarter of the hour—I judged of the hour by the height of the sun.—The weather was very gloomy and bad, and the sun was not brilliant—we generally judge by the sun. It might have been about 8 or 9 o'clock—I did not stir out of the distillery till the afternoon—Mason went out by the side door. On his return he told me that the officer was killed; immediately after he told me to extinguish the fires; he went out; he first went up stairs; it was

about 7 1/2 o'clock when he went below, and 8 1/2 or 9 when I saw the troops; I cannot say if any tallow was required that morning.

David Guerin, 2nd witness.—I live at St. Denis and in the day of the battle there with the troops in Nov. 1837, I left to go towards St. Ours where the troops were coming; Mason, a former witness, was there with a gun between 7 and 8 o'clock a. m. I found Mason there when I arrived; we were distant about 4 or 5 acres from the distillery; Mason remained about half an hour; he was standing up. He afterwards went to Madame St. Germain's, and they were saying that the officer had been killed. It appeared that the report had transpired; I have known Mason since he came to St. Denis; his character is that of a thief; I would not believe him under oath.

Cross-examined.—Since I have known Mason, he has always passed for a thief; I know Dr. Nelson to be a brave, honest and good man, I cannot say if he would have kept a thief in his employ; I once called Mason a thief; he once took some cows which were his own; he came at night and took them away. Mason had taken a horse from Mr. Archambault; Mr. Archambault is connected some way with Dr. Nelson in business; I am cousin to the man who was sent to jail the other day; Mason stole two hogs and I ordered my brother to take them away; a man who takes his own cows in the dead of the night is a thief; Mason had promised to pay for keeping them but he came and took them away; I saw Mason steal the pigs, I did not like him too much.

Pierre Guerin, 3rd witness.—I knew Mason which I now recognise; he passes for a man who does injuries. Mason took another man's pigs. I would not believe him on his oath.

Cross-examined.—Mason did that after the officer was killed; before that period, I believe him to have been an honest man. He took a horse; two cows of Masons were at my father's and he (Mason) had promised to pay for their keeping, but he came and stole them.

Patrick Brennan, 4th witness.—Is withdrawn since he has been in court.

Francis Dudas, 5th witness.—Is also withdrawn for the same reason.

Timothy Kimber, 6th witness.—I am a doctor at Chambly; I was at St. Denis on the day of the battle; Jalbert was third in command. I have no knowledge that he had any charge of Lieut. Weir; the night preceding the battle, I was at Dr. Nelson's in St. Denis, who commanded. Mr. Weir came there about 11 or 12 at night, and he was very cold and wet; it was a boisterous night; they got supper expressly for Mr. Weir; he denied being a military man, but afterwards avowed it, telling his name and regiment. In the morning we were told the troops were coming. Dr. Nelson left to go down below, and ordered every attention to be paid to the officer; Nelson anticipated a battle, and said to Mr. Weir that if they were victorious he might rely on being well treated, and that if the troops were victorious he might join his friends; the action began at Madame St. Germain's at 9 o'clock, and I saw Jalbert arrive there when the firing began. He had a sword in his hand which was very rusty; the scabbard was of brass, and of the colour of the snuff-box now shewn to me. I saw Jalbert's sword, and drew it on the 25th Nov. I observed it was quite rusty, and he said "yes, it has been so since 1813." The rust was very old; the sabre appeared to be stained. Upon close examination, what before appeared to me to be blood seemed rust. I know Mason. When Capt. Markham was wounded, I heard reports proceeding from the distillery as from a rifle or musket. That evening Mason boasted of having fired several shots, and said he was in the distillery during the battle. I saw Jalbert at St. Denis on the 26th November.

Cross-examined.—I arrived at St. Denis on the evening of the 20th, and lodged at Dr. Nelson's. Mr. Papineau, Dr. O'Callaghan, and some other gentlemen were there. I was called to attend the wounded; I was not attached to any regiment; I passed the 23rd Nov. in Madame St. Germain's house—there was a great number of persons there. I smell burnt powder there; was there all day, sometimes below and sometimes above; I did not see what occurred outside; the troops arrived about nine o'clock. It was about that time that Jalbert arrived at the house. I left St. Denis on the 27th.

Leon Gendron, 7th witness.—I know old Mr. Cadieux, a former witness; he is very old; I have heard him say he could not see very clear; he has said so for two or three years; it was when playing draughts that he

said so, having frequently lost on that account.

Cross-examined.—I know Mr. Comeau, (witness recognizes him) and I told him that I had been informed that Jalbert had killed Mr. Weir; I did not say that he did kill him, but that I was told so.

Jean Baptiste L'Africain, 8th witness.—I know Mason, and worked with him about a year at St. Denis; he is an ill natured man, and does not bear the character of an honest man.

Ludger Plante, 9th witness.—I have not been in court during the trial. I am 16 years of age, and brother to Emilie Plante, a witness for the crown. I recollect of the fight with the troops and the killing of the officer. My sister was very much frightened, and she took some whiskey to give her courage. She was very much intoxicated. My sister came down stairs, and said there was a man who had just been killed outside. I went out, and in going I heard a report of a gun or pistol. My sister said that before this L'Hussier fired the pistol. The officer was on the ground. After this saw Jalbert come up on horseback. He was holding the bridle in his hands.

[The Attorney General here brings in a witness who swears that he saw the witness in court. Further proof deferred by the Court.]

The witness continues.—I am sure the officer was dead before Jalbert came up. I cannot say what he said. I was about as far from him as I am now (about 20 feet). Jalbert said that they should not have done that, for old as he was he himself might have taken the officer up in his arms. He appeared much displeased and only remained for a few moments. I swear that Jalbert never drew his sword. I saw Cadieux play at cards and draughts last fall. He lost the game because he could not see very well. There was on the day of the battle a great tumult in the village. It was said that the troops were advancing in every direction.

Cross-examined.—I am upwards of sixteen years of age. I have had no conversation with any one respecting my evidence since 1837. My father bought whiskey that morning, before the battle, and about a couple of hours before the officer was killed I did not taste it. They told me at least that it was whiskey. The jar was put under the bed. My father is in the States and has been so since the troubles, I do not live with my sister, we have been good and bad friends since then. I spoke to Mr. Lambert about the evidence I was to give. After the officer was dead, no one came to enquire for a pistol. The officer was killed about 9 or 9 1/2 o'clock.—We breakfasted about 7 o'clock and we knew at breakfast that the troops were coming—I went like many others to Dr. Nelson's to see the officer—Two hours might have elapsed before the officer came up after I left Dr. Nelson's. I was a little afraid—Had Jalbert come up during the time I was in the house, I would not have seen him. When I went out he was coming from below. There are about 10 acres between the place where I saw Jalbert and Nelson's house—I cannot say if Jalbert could have gone & returned that distance in the half hour. My sister was intoxicated. I believe what she then said—My sister might sometimes tell a falsehood on oath—She often asks me for money and I will not give her any. I receive one dollar per month. This is the only difference I have with my sister—It was the pistol shot that finished Weir—I can say on my oath that he hit him for he was close to him—I came out just as L'Hussier finished him.

Louis du Voire, 10th witness.—I recollect about the officer being killed and of the battle at St. Denis in November 1837. I was about 45 feet distant when I heard the report of a fire arm. Previous to this, I did not see Pratt strike the officer, but I saw swords descending on him—I heard two or three times the words "my God, my God, my God," as if proceeding from a person in great agony; I did not approach near the body; after the report of the pistol, I saw Jalbert come from the direction of Madame St. Germain's on horseback; had Jalbert been there on horseback before, I must have seen him; he was about 20 feet from the body; he said "stop, stop my friends, don't hurt that man." He might have spoken afterwards, but I did not hear; I did not see him strike the unfortunate person; I do not think that Jalbert went nearer than 20 feet. Some persons arrived and said that the troops were coming up. I knew Mr. Cadieux who was my uncle and I see him very often; he told me this summer that he could see but very little.

Cross-examined.—My uncle is a very active man and his memory is good. During a part of the day of the action I was in my own house,

and I went also to another concession. Though I heard the officer cry out "my God?" I did not stir to assist the unfortunate. It was not safe to go forward, and it was none of my business—I was afraid. Until 5 or 6 months ago, I told nothing of what had occurred to any one, but from motives of christian charity I then revealed it—it was not my business to go and save the officer. It was about 7 o'clock and I had not breakfasted. I had arrived 2 or 3 minutes before I heard the report of the firearms. I cannot say what took place before I arrived. When the officer passed I was in my son in law's house. It was 3 or 4 minutes from the time that the officer jumped out of the wagon till I heard the shot. I might have done the same as the others if I had not a young child to take care of.

Narcisse du Voire, 11th witness.—I recollect the day on which the officer was killed. I was in the street about 15 feet from the officer. The first thing I saw was Pratt striking him with a sword. The officer was on the ground when I came up and he appeared very weak. I was near the same place and saw L'Hussier fire on him. There was great excitement I heard. I have not been in Court during this trial.

[The Attorney General declares that he is ready to prove that the witness has been in Court, notwithstanding his denial on oath, having been so.]

Aaron P. Hart, Advocate, is sworn and declares that he saw the witness in Court both yesterday and to-day.

Mr. Worth of the Police, also swears to having seen him.

[The prisoner's Counsel bring the following testimony to prove that he could not have been.]

Marguerite O'Brien was in the witness chamber, and saw the boys there. I was three quarters of an hour at dinner but I returned before one o'clock. The boy could not have come up at the time stated by Worth.

[The Court prohibits the entering into this evidence, as being irregular. The witness is recalled.]

I saw Pratt strike two or three blows—also I saw the pistol fired. The officer was dead after the pistol shot. I then saw Jalbert at a little distance on horseback coming from the direction of Dr. Nelsons. The horse appeared to be galloping and Jalbert held the bridle with both his hands; I am perfectly certain he had no sword in his hand. I cannot say how far Jalbert was from the officer, perhaps 13 feet. There might have been a dozen persons around the body. Jalbert dismounted and appeared to reproach the crowd; I did not hear the words but he appeared very dissatisfied. I cannot say why Jalbert got off. He left almost immediately after remounting, and went galloping towards St. Germain's house. I know Captain Cadieux and have seen him play at draughts last year. I have heard him complain of shortness of sight.

Cross-examined.—I had not seen the officer when the shots were fired. About 12 persons were around; I was near to him, about 3 feet distant. I know that the officer was on the ground for I could see between the legs of the bystanders; I was on one side, to the right. I am 18 years of age; I cannot say if I have grown any for 2 years. The officer had on a black coat. I did not see Cadieux that day. I did not look behind me.—Jalbert could not have arrived before, without my seeing him. My attention was engrossed with the officer. Jalbert held his horse by the bridle and had nothing in the other hand. Though two years have elapsed, I can tell that Jalbert held the bridle with both his hands. I did not hear him say any thing; I was about 12 feet distant from him all the time. I did not go up to the body. The instant the gun was discharged I went away.

Marguerite O'Brien, 12th witness.—I lived at St. Denis on the 23rd November, 1837. On that day the officer was killed. I saw him pass by in the wagon with three others. The officer had not his hands tied; I left to go to the Presbytery, and when I went there, the officer was on the ground. A man raised his gun at him, but it missed fire. He primed again and fired, and the officer was dead. I was about half an acre distant. Jalbert was on horseback about 40 feet distant. He had his sabre by his side. He made no sign, nor did he give any command. I would have heard or seen him had he done so. About twenty minutes after this the battle began.

Cross-examined.—I was about half an acre from where the officer was. There might have been ten or twelve persons there, but they did not exactly surround him. The officer never moved and from that I know that he received