

THE QUEBEC TRANSCRIPT.

d into on the 1st  
 None of the  
 r were authori-  
 produced is in  
 soner; it is a list  
 lakham & Bourne  
 the amount of  
 to the Montreal  
 son to doubt the  
 he funds in the  
 21st Feby. 1838,  
 row. I have no  
 the prisoner took  
 statements made  
 I am one of  
 of the Montreal  
 on me, and stated  
 was rising. I  
 asked the prisoner  
 d that his balance  
 previous evening,  
 in the same state  
 how the money  
 could not account  
 er to another ques-  
 got to his box.  
 I was pref-  
 of the deposition  
 if the Directors  
 of the hands of  
 the now often. It  
 was edge in 1837;  
 the noted in such  
 cases. For ten or  
 twelve  
 ed, up to the period  
 character was in-  
 I was called to  
 each Bank of Mon-  
 with the other Di-  
 rectors to have  
 he evening before,  
 it in the same state  
 he had touched it  
 I did not tell what  
 had  
 He was perfectly  
 touched it.  
 I any importance.  
 The depositions  
 those of the two pri-  
 me additional par-  
 r if some one might  
 at to his trunk. He  
 roardinary manner,  
 ssible. I then re-  
 he had commenced  
 ight have let fall one  
 rger notes, to which  
 r Oh! no. I then, I  
 come of the money?  
 he did not know. I  
 bordereau drawn out  
 it, and copy it. He  
 ad in a short time  
 with, to my great as-  
 e bottom setting forth  
 y himself. The pri-  
 d collected—more so  
 was present.  
 Black.—I know Mr.  
 Bank, and was one of  
 d being appointed. I  
 of his integrity.  
 Martin, sworn.—I am  
 real Branch Bank and  
 y 1825. I attend the  
 y. On the 21st Feby.  
 about 4 p. m.; the pri-  
 s. Previous to leaving  
 t two trays with some  
 s trunk containing the  
 stantly in the habit of  
 ck he came to the head  
 ck was locked. I pla-  
 the vault allotted for  
 within the two outer  
 wooden door; I locked  
 he key to the prisoner.  
 were locked to the best  
 r. Simpson, he keeping  
 ly after this I left the  
 rn to it until the follow-  
 g; twenty minutes before  
 the prisoner was in the  
 inner iron door of the  
 Martin, you are rather  
 been here a quarter of  
 ish unlocking the door  
 etter than I do." I did  
 the key of the wooden

door. The money was carried up immedi-  
 ately to the proper place; I had the trays of  
 silver, but I cannot say positively whether  
 the prisoner carried the trunk or if I did. The  
 vault appeared in the same state as it was on  
 the previous evening.  
 Cross-examined by Mr. Aylwin.—There was  
 a green tin box belonging to Mr. Simpson,  
 in which notes were sometimes kept; but I  
 have no recollection whatever of notes having  
 been put in it on the 28th February.  
 Mr. James Bolton, sworn.—I am an account-  
 ant of the Branch Bank of Montreal, which  
 situation I have held for more than twenty-  
 one years. At the time of the defalcation in  
 question I resided in the building leased for  
 the Bank; the other inmates were my wife  
 and two servants. I had access at all times to  
 most parts of the building with the exception  
 of the vault. On the 1st of March I asked  
 the prisoner how his cash turned out to which  
 he said Mr. Simpson had not done counting it,  
 and "what does he say of what I owe you?"  
 he answered "he don't know yet." Shortly  
 after Mr. Simpson came to me into my room  
 and said he had finished counting Coates'  
 cash, and that there appeared to be "a defi-  
 ciency of nearly \$14,000. I said "I cannot  
 believe it possibly, you must have made some  
 mistake in your bordereau." He said he  
 thought not and requested me to go into the  
 Directors' room & examine it. I told Mr. Simp-  
 son that I owed the prisoner something, but I  
 did not know the precise amount. (The wit-  
 ness here described his proceeding in count-  
 ing the money, &c., corroborating Mr. Simp-  
 son's evidence in this particular. His conver-  
 sation with the prisoner was also stated to be  
 similar to those reported by the other wit-  
 nesses.) I spoke to him of the loss of character  
 that would result from the deficiency being  
 made public, he said his character was gone,  
 that he was a lost man. I remarked to him  
 also that unless he could account for it suspi-  
 cion might fall upon me as I lived in the house,  
 he said he could not help it, he suspected no one.  
 To an observation from me that a deficiency  
 might have arisen in his cash, & that he might  
 have been tempted to increase it, he replied  
 that he had not done so. Once or twice, I  
 observed a slight alteration in his manner,  
 particularly when he said he was a ruined  
 man. I advised him to state all to Mr. Simp-  
 son, if he had appropriated the money, and  
 Mr. S. would no doubt do all in his power  
 for him; to this, however, and repeated ex-  
 hortations of the same kind, he returned the in-  
 variable answer—"I know nothing about it."  
 The prisoner had a great coat in the office  
 pocket of which on being searched by Wm.  
 Phillips, Esquire, was found to contain a  
 small pistol; this on being unsecured by  
 Lieut. Russell of the Police was found to be  
 loaded with ball. I went to bed at 1/2 past  
 9 on the 28th February 1838,—did not leave  
 the house until the next night—did not go  
 near the vault that night—the alarm bell did  
 not ring during the night—and no body came  
 into the house. On the morning of the 1st  
 March, a green box which contained the  
 drafts for collection was brought into my  
 room by Martin, I believe. After the deficit  
 was discovered the prisoner asked me if I had  
 seen any notes in the green box. I told him  
 I had seen none, if there had been any he must  
 have seen them as he first opened the box him-  
 self.  
 Cross examined by Mr. Aylwin.—Tellers in  
 Banks are liable to losses, I think. Some time  
 after the prisoner entered the service of the  
 Bank there was a trifling deficiency in his ac-  
 counts which the Bank made good; it was  
 about \$60. I received my salary from the  
 prisoner, I have received it in advance fre-  
 quently. As far as regarded myself I did not  
 know that I got my salary in advance. I gave  
 a receipt to the prisoner, and the thing was done  
 openly, not in a clandestine manner. I do not  
 know if Mr. Simpson or the Directors were  
 aware of my drawing my salary in advance,  
 I never informed them, but made no secret of  
 it. I was responsible for a note of Capt.  
 Douglas' for \$260 which remained in the pri-  
 soner's cash from some time in September  
 1837, until the 1st March following. With  
 respect to the amount advanced it was entered  
 in a running account between me and the pri-  
 soner; and I had frequently urged him to let  
 me know how much I owed him. (This wit-  
 ness was cross examined at great length but  
 nothing material was elicited from him  
 beyond the foregoing.)  
 Mr. Robert Maxwell, sworn.—I am now  
 first teller of the Montreal Branch Bank; on  
 the 28th February 1838, I was receiving teller.  
 —The only part of the deposition of this wit-

ness that presented any novel feature was that  
 his account with the prisoner on the 28th Feb-  
 ruary 1838, had been examined and "ticked  
 off" as usual by the prisoner; and that he  
 (witness) had counted one of the three parcels  
 from Montreal. The remainder was cor-  
 roboratory of portions of the preceding evi-  
 dence including the giving of the purse from  
 the prisoner and without examining its con-  
 tents, informing M. Simpson of the circum-  
 stances. The purse was deposited in the vault  
 that night and only opened next day.  
 Cross-examined by Mr. Black.—Explains the  
 duties of the paying teller. The amount paid  
 over to me by the first teller on 28th Feby.  
 1838, was \$729, in Montreal Bank notes,  
 among which there was one of \$100 and six  
 of \$50. The sum of L.142 was paid to me  
 by the prisoner, which payment I mentioned  
 to Mr. Simpson the day after the defalcation  
 was found out. This sum was subsequently  
 credited to the prisoner. In receiving this  
 money from the prisoner I did not conceive  
 that I was acting in a clandestine manner;  
 and it was never understood that the advances  
 were to be kept secret. I settled with the  
 prisoner very frequently. The general char-  
 acter of the prisoner was always thought very  
 highly of.  
 H. LeMewier, Esq. sworn.—On Sunday  
 the 25th Feb. 1838, at Montreal I was en-  
 trusted with a large parcel of bank notes to  
 convey to Quebec, where I handed it over to  
 Mr. Lowndes to be paid to Mr. Simpson.  
 The only question in the cross examination  
 was as to the character of the prisoner, which,  
 by the witness, was very highly spoken of.  
 W. B. Lindsay, Esq. sworn.—I was re-  
 ceiving and paying teller of the Montreal  
 Branch Bank from 1818 to 1829, when I was  
 succeeded by the prisoner. I handed over the  
 balance in my hands, amounting to L.12,047  
 0s. 8d., with the correctness of which the  
 prisoner expressed himself perfectly satisfied.  
 Cross-examined by Mr. Aylwin.—The busi-  
 ness of the Branch Bank was very considera-  
 bly increased since I left it. When I was  
 there, in the summer months, and when busi-  
 ness was brisk the average amount of trans-  
 actions daily might amount to L.15,000 or  
 L.20,000; the average for the year might be  
 L.12,000 or L.15,000 per diem. I always  
 gave in a daily bordereau; there were no  
 weekly bordereaux. No description of drafts  
 were treated as securities, except government  
 bonds, which were available at any moment.  
 I should never have stated any other than  
 warrants on the Receiver General and Com-  
 missariat drafts as cash in my bordereau.  
 Heavy losses are sometimes incurred by tel-  
 lers. I have received spurious coins myself,  
 but not to any great extent. The total amount  
 of my losses, by overpayments and short re-  
 ceipts, during the eleven years I was in the  
 Bank, was about \$300. I once overpaid \$300  
 upon one very trifling check, but I afterwards  
 recovered the amount overpaid. I have  
 known the prisoner many years, and as far  
 as regards myself I would at the period of the  
 defalcation have placed the utmost confidence  
 in him.  
 Jean Baptiste Bolduc having been called,  
 Mr. Aylwin rose and enquired of the counsel  
 for the prosecution if the examination of this  
 witness was likely to be of any length. Mr.  
 Primrose said that the examination would not  
 be very short, upon which Mr. Aylwin ob-  
 served that, at that hour (1/2 before 6) he was  
 of opinion that the Court should adjourn. He  
 was unwilling that the examination in chief  
 should be entered into without an opportunity  
 of cross examination being afforded immedi-  
 ately the counsel for the prosecution had  
 done with the witness. He was the more un-  
 willing that such an event should occur in  
 consequence of part of the evidence of Mr.  
 Simpson having found its way into one of the  
 newspapers yesterday evening, without it be-  
 ing stated that the counsel for the defence  
 had risen for cross-examination. Such an  
 occurrence was calculated to put the counsel  
 for the defence to great inconvenience, &c.  
 Mr. Primrose said he had remarked the  
 publication alluded to, and regretted that it  
 had taken place.  
 Mr. Justice Duval reproached the publica-  
 tion of part of the evidence before the trial  
 was concluded. There was no objection what-  
 ever to persons taking notes, but he hoped  
 that those connected with newspapers would  
 bear in mind that, in England—and the  
 power in the Court was the same here—pro-  
 prietors of newspapers had on several occa-  
 sions been mulcted in heavy penalties for pub-  
 lishing parts of the evidence on unfinished

trials. One newspaper, for instance, had  
 been fined £1000 for so publishing the evi-  
 dence in the case of Thistlewood.  
 Mr. Primrose—There are several other sim-  
 ilar cases.  
 Here the matter stopped.  
 It was then agreed that the Court should  
 adjourn, previous to which being carried into  
 effect, one of the jurors arose, and on behalf  
 of himself and the other eleven, made a com-  
 plaint of the accommodation which had been  
 afforded them last night at the City Hotel.  
 The refreshments were not sufficient, there  
 having been but one glass of beer allowed at  
 supper.  
 The Sheriff stated that he had been obliged  
 to restrict the landlord of the hotel to certain  
 terms, in consequence of the large amount  
 which a bill attained for the accommodation  
 of a jury some time ago.  
 Mr. Justice Duval assured the Jury that  
 directions would be given for their provision  
 with every thing that was reasonable.  
 The Jury were then conducted back to the  
 City Hotel for the night.  
 Thursday, 26th Sept.  
 The Court opened at 1/2 past nine, and Mr.  
 Primrose continued the case for the prosecu-  
 tion.  
 J. Ste. Bolduc, sworn.—In the month of  
 February 1838, I was in the service of Miss  
 Ritchie at which time she was living in St.  
 John Street; the prisoner boarded there. Pre-  
 vious to this, Miss Ritchie lived in St. George  
 street, St. John suburbs, and I remained at the  
 latter place. Miss Ritchie kept a horse and  
 a cariole; I remember conveying the prisoner  
 from the Montreal Bank to prison on the day  
 after Ash Wednesday in 1838. I was six  
 months and a half in Miss Ritchie's service,  
 during which period I took the prisoner daily  
 to and from the Bank. Usually I went for him  
 in the afternoon at 1/2 past 3 or four o'clock.  
 On the 1st March I had gone to the Bank as  
 usual, but instead of conveying the prisoner  
 home I had to take him to jail. I cannot say  
 the exact hour at which I drove the prisoner  
 from the Bank on the 28th February 1838; it  
 was not dark, I believe. It appears to me that  
 I had to wait a little longer for the prisoner on  
 this occasion than on others. I do not recollect  
 any thing particular that occurred except that  
 the prisoner came down once, and was not  
 dressed as he usually was when he came down  
 to proceed to the Upper Town. He had a  
 bundle with him similar to that which he gen-  
 erally brought with him. He told me to put it  
 in the box of the cariole and take care of it. He  
 then returned into the Bank, and shortly after  
 came down with another parcel, I believe. I  
 cannot say that I saw this second parcel in his  
 hand when he came out of the Bank, but after  
 we had taken a short tour in the suburbs, he  
 took a parcel from under his feet; this makes  
 me say that he brought two parcels from the  
 Bank, as that which I had put in the box re-  
 mained there. I do not remember any occa-  
 sion on which the prisoner brought two parcels  
 from the Bank with him. (The witness here  
 asked to describe the size of the parcel; he  
 does so, and from the manner in which he de-  
 scribed it would appear to have been two to  
 three fingers thick, a foot or a foot and a half  
 long, and about three quarters of a foot broad.)  
 There was not much difference in the size of  
 the two parcels. I think the parcels were  
 wrapped up in a brown paper, but I do not re-  
 member if they were tied.  
 By a Juror.—I took the first parcel in my  
 hand, but I do not remember if it was hard or  
 soft, I know not what it contained.  
 Resumed by Mr. Primrose.—We drove to  
 the house formerly occupied by Miss Ritchie,  
 in St. George's street, where the prisoner got  
 out and entered the house. The parcel first  
 given to me was still in the box. The pri-  
 soner remained in the latter place about ten  
 minutes or a quarter of an hour, and then came  
 out and got into the cariole again. On our re-  
 turn to town prisoner remained at Dr. Leslie's  
 for about five minutes, and then returned to  
 town on foot, having taken with him the par-  
 cel which was at his feet in the cariole. The  
 other parcel remained in the seat of the  
 cariole. I waited at Dr. Leslie's until  
 Miss Ritchie, Mrs. Leslie and her little boy  
 got into the cariole, and I drove them to Miss  
 Ritchie's in town, where the prisoner resided.  
 Arrived here I gave the parcel that had been  
 in the seat, to Miss Ritchie or Miss Dick say-  
 ing that it belonged to the prisoner. I had for-  
 gotten that it was in the cariole until I was  
 about to go away.

Cross examined by Mr. Aylwin.—The differ-  
 ence in the dress of the prisoner alluded to  
 was nothing extraordinary. It did not strike  
 me as peculiar that the prisoner should have  
 taken two parcels with him on the 28th Feb-  
 ruary or that he should enjoin me to take care  
 of what he had given me. I did not suppose  
 for a moment that the parcel contained bank  
 notes to the amount of £13,000. On the con-  
 trary it appeared to be the same as the one I  
 usually had given to me. Prisoner always  
 told me to take care of the parcels which he  
 gave me; c'était sa façon. The usual parcel  
 from the Bank he generally took care of him-  
 self. When we left Dr. Leslie's the cariole  
 had a good load without the addition of the  
 prisoner. It appeared to me that the prison-  
 er went to town on foot in order not to incom-  
 mode the ladies who got into the cariole at  
 Dr. Leslie's. It was the custom of the pri-  
 soner, occasionally, to cause me to take a  
 short tour previous to going home. The par-  
 cel which was at his feet might have been  
 lost if left in the cariole; it was much safer  
 for the prisoner to take it with him.  
 Mr. Christian Julius Broten was again called,  
 to prove the assignment, under the corpora-  
 tion seal of the bank, of all the property to  
 the new joint stock association on the expira-  
 tion of the charter; which Mr. Brown did.  
 The various documents produced and proved  
 by the witnesses having been read,  
 Mr. Primrose declared the case for the pro-  
 secution to be closed. (1/2 past 12, noon.)  
 Mr. Aylwin then rose and said that it now  
 became his duty to urge a variety of points  
 of law, either of which would be sufficient to  
 put an end to the prosecution, and which taken  
 together made it matter of surprise that it  
 should have been instituted at all. The in-  
 dictment rested upon two statutes, the first of  
 which—that of Anne—made it a capital felony  
 to steal above the value of £15 in a dwell-  
 ing house. With respect to this he contended  
 that neither the ownership nor the occupancy  
 of the building was sufficiently proved to bear  
 out the allegations of the indictment.  
 The Court intimated that it did not require  
 any argument on this point from Mr. Aylwin  
 unless the Counsel on the other side brought  
 forward arguments on the point.  
 Mr. Aylwin.—The next point was that  
 these notes as required by the second statute  
 on which the indictment rested, namely, 2d  
 Geo. II. c. 25, were not bank notes.  
 The Court.—It was unnecessary to argue  
 this point there being counts in the indict-  
 ment, describing the notes as promissory notes.  
 Mr. Aylwin.—Well then I shall proceed to  
 the other points. In the first place these notes  
 are not securities of such a kind as that the  
 stealing of them can constitute larceny under  
 the statute of Geo. II. 2ndly.—The facts ad-  
 duced do not prove a larceny against the pri-  
 soner; assuming that every thing that has  
 been sworn to is perfectly true, it does not  
 amount to a charge of larceny; it would be a  
 breach of trust only. 3rdly.—The ownership  
 of the notes is not proved as laid in the in-  
 dictment. 4thly.—There has been no proof as  
 required by law of the larceny of any specific  
 note or notes so as to satisfy the indictment.  
 On these points Mr. Aylwin spoke at great  
 length and with much ability but we have  
 not room for even an outline of his remarks.  
 The learned gentleman spoke for nearly three  
 hours.  
 Mr. Primrose replied, also at great length,  
 and was followed on the same side by Mr. G.  
 O. Stuart, who spoke principally with respect  
 to and in support of the allegation that the  
 was committed in a dwelling house.  
 Mr. H. Black rejoined.  
 The Judges took the matter en délibéré and  
 the Court adjourned. (1/2 past 7 p. m.)  
 Friday, 27th Sept.  
 The Court being met the jury were called  
 over, and found correct.  
 Mr. Justice Cochran proceeded to deliver  
 judgment on the objections taken yesterday by  
 the prisoner's counsel. With regard to the  
 notes being of no value when in possession of  
 the Bank the Court were of opinion that they  
 were of value and the stealing of them would  
 amount to larceny. The other points urged,  
 that the facts as proved would not be sufficient  
 to constitute the charge, that the proprietorship  
 of the notes was not proved—and that the lar-  
 ceny of any specific note or notes had not been  
 proved—were not in the opinion of the Court  
 sufficiently made out, to warrant it from  
 preventing the case to go to the Jury.  
 Mr. Justice Duval was proceeding to deliver  
 his opinion, when,