

he did not know enough of *Des Loges*, to speak to his general character, but he knew nothing bad of him—that he could not say he ever heard his character, from the *North West Company*, but he knew no reason for not believing him upon his oath.

The CHIEF JUSTICE then charged the JURY—he commenced by an assurance that in endeavouring to *eclaircise* such parts of the subject as appeared to require it, the *Court* had no intention to suggest any opinion on the *facts* of the case, but its sole object would be to place both with reference to the *Crown* and to the *Prisoner*, those particular points which militate against the one and the other before the *Jury*, and thus assist them to form, but not to *guide*, their judgment. He then explained, that as the *facts* were exclusively with the *Jury*, the *law* was equally so with the *Court*, adding, “and, gentlemen, it is this happy union of the respective duties assigned to each, that renders the system of jurisprudence, which we are this moment administering, the first in the world.” The precise charge against the *Prisoner*, as contained in the eighth count of the indictment, was then stated, the *Chief Justice* remarking: “It is of no consequence to enquire whether it was by *Mainville's* hand, or not, that the man was killed, because the record of (*De Reinhard's*) conviction has been produced, and made a piece of evidence against *M'Lellan*.” The principles upon which distinctions of degree in the same crime proceeded, were illustrated and applied to this case in the following manner:—“Having thus exhibited the principle, for a moment apply it hypothetically to this case. *Mainville* actually killed the man, and *De Reinhard* was present at the time. Previously, in company with *Mainville* and *De Reinhard*, the *Prisoner*, *M'Lellan* had advised, commanded, or even consented to the murder. The application is obvious, *Mainville* is the principal in the first degree, *De Reinhard* in the second, and *M'Lellan* would be the accessory before the fact;” and the *Jury* cautioned against mistaking that by this hypothetical elucidation, he intended in the slightest degree to involve the *Prisoner* in the justice of its application, its only object being to explain the principle, so that the law upon which the *Jury* were to apply to the case, might be satisfactorily comprehended. Proceeding to the consideration of what constituted an accessory after the fact, he declared: “It is not a mere omission to perform a duty, it is not a negligence to give information to a magistrate, so that the hue and cry can be raised after the murderer; for such conduct, though reprehensible in the highest degree, amounts only to *misprision of felony*, an offence most undoubtedly, but not the aggravated one charged in this indictment. He who is guilty of merely concealing a felony, is guilty of a *misdemeanor*, which is punishable by fine and imprisonment, but if this is carried any farther than a culpable remissness of duty, then