

THE QUEBEC TRANSCRIPT.

all in the trunk the night before. I then asked him if he would get Mr. Bolton to govern the calculations again, but he (prisoner) said it was of no use. I, however, for my own satisfaction, obtained Mr. Bolton's assistance; he counted the money over, and found an error of \$5. The blotter now produced is that which was kept by the prisoner. The items in it under the letter C, when summed up, make exactly the amount in his *borderaux* of the same year on which they were inserted in the blotter under the head "checks." In the *borderaux* there is an amount of £1537 set down as being in notes while in fact it was in specie; the Bank was not paying in specie at that time and the £537 was, I believe, a special deposit.

When I found the result of Mr. Bolton's examination of the money, I told the prisoner that unless he accounted for the deficiency I should be under the necessity of calling a meeting of the Directors immediately. Prisoner said he knew I must do so, as it was my duty. I then took steps to obtain the meeting. Mr. Strang and Mr. Burnet were the two directors who first arrived; they asked the prisoner what had become of the money and he again gave for answer that he could not account for the deficiency, he was sure it was all there the evening before, and he was sure that it had not been touched by any one but himself. He said that he knew no one in the Bank had touched it and could not accuse any one. Mr. Bell, one of the Directors, shortly after arriving, asked the prisoner several questions as to whether the money might not have fallen on the ground and such like, but the same answer was still returned by the prisoner. Mr. Bell remarked "you left it right last night and brought it up yourself this morning, what can have become of it?" or something to that effect. Prisoner still said he could not account for it. A *borderaux* of what was found in the morning was made out by the prisoner himself, at my request, I now produce it. It agrees exactly with that which I made out. Prisoner was told that if he could not account for the deficiency, proceedings would be taken against him for which he said, that of course he could expect nothing else. I then sent for Mr. Primrose, the Bank Solicitor, Mr. Wm. Phillips and Mr. Young, Superintendent of Police. Prisoner was searched in the presence of those gentlemen and myself but nothing of consequence was found upon him; he had only 25 or 30 dollars in his pockets. From the balance book now produced, it appears that the prisoner had in his possession on the 8th January, 1838, £14,479 in Montreal Bank notes payable at Quebec. With respect to the £10,000 received in the two parcels of Montreal notes, it was immaterial to me whether he returned the identical notes or others. When I received the £10,000 from Mr. Lowndes, it was with a request that being in somewhat bad order the notes might be counted immediately which I requested the prisoner to do and if the amount proved correct to hand it over to me the next day with some four or five thousand pounds more. On Feb. 28 1838, the house in St. Peter Street used as the Bank was occupied in part as a dwelling house by Mr. Jas Bolton the accountant of the Bank; he had occupied it for three or four years. The rent of the house is paid by the Bank. Mr. Bolton paid no rent being allowed by the directors to occupy the house without any deduction from his annual salary being made therefor; the Bank paid the assessment. Mr. Bolton had free access at all times to every part of the building with the exception of the vault.

Cross examined by Mr. Black.—The balance in the hands of Mr. Lowndes when the prisoner was appointed to fill his place, in 1829, was £12,047 10s 5d. The average amount of money passing through the hands of the prisoner, daily might be from £15,000 to £20,000 in the summer months; some days it might be £5,000 or £6,000 only, on others upwards of £30,000; during the last winter months it has averaged from £10,000 to £15,000; the capital of the Montreal Branch Bank is now £100,000. The gross amount of monies that passed through the hands of the prisoner during the period he was in the service of the Bank, must thus have been many millions of pounds. I recollect one occasion only on which the balance in the hands of the prisoner was regularly counted by me in detail: this was two or three years ago. The balance in the hands of the prisoner was not counted by me at the forming, on the 1st June, 1837, of the joint stock association when the charter expired. The shares in the association were transferable. Deficiencies do occasionally occur with the tellers, and I have known them in other tellers besides the prisoner. The situation requires great accuracy and care on the

part of the officer. There was a running account between me and the prisoner: the business of the bank as far as we were concerned was wholly in account during the year, the prisoner debiting himself with all sums received from me or the receiving teller, and crediting himself with the payments made by him. Whenever the balance in the hands of the prisoner exceeded the amount required for the daily business a portion of it was paid to me, and he credited himself with it. The floating balance daily in the hands of the prisoner was from £28,000 to £30,000. In 1829 the capital of the Quebec Montreal Branch Bank was only £30,000.

Mr. Black here asked the witness what were the yearly profits of the Bank. Some discussion ensued which resulted in the question being overruled, Mr. Justice Daval having interrupted Mr. Black, declaring that he had no right to put such a question.

The next question put by Mr. Black was—"Have the Bank not made larger profits than have been declared?" This was also not suffered to go to the witness.

Mr. Aylwin insisted upon the right to put such questions. If they could prove gross mismanagement in the conduct of the affairs of the Bank, the error in the accounts of the prisoner by which the other party would make it appear that he owes them £3000 odd pounds might be accounted for.

Mr. Justice Daval said that the prisoner was accused of a criminal charge. It was not as yet shown to be a mere matter of account between the parties for from the moment that could be made apparent the learned counsel for the prosecution himself would admit that the case must drop.

Cross examination continued.—Some new notes of the Bank at Quebec after the expiration of the Charter, were prepared in June 1837 and issued towards the latter end of the year. The business of the Branch at Quebec is under the management of a President and two directors residing in Quebec. The amount paid over to me by the prisoner on the 1st March, 1838, was £15918 10s, in Montreal Bank notes payable at Quebec. In this sum may or may not have been included the £10,000 received on the 28th Feby. from Montreal; I presume it was included. A portion of the deficiency was subsequently accounted for; it amounted to £4323 11s. This was done by payments from various persons, to whom the prisoner had advanced money, some of them in small sums paid for protesting notes left for collection &c., which were not entered to the debit of the parties in the books of the bank. There was £187 8s. 8d. from Mr. Bolton; £25 3s. 9d. by myself being for small sums paid at different times for me without my knowledge; £234 17s. 3d. from Mr. S. Macaulay; 10s. for a protested note; £1 4s. 1d. from Mr. Colin Bruce; £192 7s. 6d. from Mr. Maxwell; 18s. 7d. from St. George's Society; 10s. for another protested note; £1 3s. from Gobb & Shaw; 7s. 6d. Forsyth, Walker & Co; 10s. Mr. Noad; 7s. 6d. Mr. Dyde; £360 Capt. Walter Douglas; 2s. 6d. found over in a bag of money left by the prisoner; £253 17s. 8d. Mr. Maxham, a payment on account of £1300 previously advanced to Maxham & Bourne, the remainder secured to the Bank; £1424 19s. 7d. and £31 10s. advanced to Mr. Robert Simpson; £84 15s. which the prisoner had erroneously charged himself with; £440 17s. 5d. from Mr. Gully; a small amount advanced to the messenger on account of his salary and not charged by the prisoner; and two Scotch notes amounting to £15 13s. 4d. I was not aware of any of these sums having been advanced. There was £400 or £500 advanced, on my order, from the money in the prisoner's hands for the Scotch Manse; this was secured on my *bon* as treasurer, and was done with the knowledge and consent of the Directors. This *bon* was enumerated in the prisoner's *borderaux* as a cash draft; it remained unpaid for some days.

Mr. Black—Did you not on another occasion obtain £500 from the prisoner for a private purpose of your own without the knowledge and consent of the Directors?

The court would not allow this question to be put to the witness.

Cross examination resumed.—I was not authorised as Cashier to take money from the funds of the bank without giving a voucher and obtaining the consent of the Directors.

It was now six o'clock, P. M. and there being no probability of the cross examination coming speedily to an end, the Court adjourned until 9 in the morning, and the Jury went under charge of constables, to pass the night at the City Hotel.

Wednesday, 28th Sept.

The Court met at half-past nine o'clock, and the Jury having been called over, Mr. H. Black resumed the case.

Cross examination of A. Simpson, Esq.—I derived my information respecting the sums due by persons mentioned yesterday in this case—Mr. Maxwell, on the afternoon of the 1st March or following morning, handed me a purse which, as said to have been given him by the prisoner, trusting to his (Mr. M.'s) honor to have it returned to him, but he (Mr. M.) said he conceived it to be his duty to give it to me. The purse contained checks, bonds, and some private notes addressed to the prisoner; the checks were drawn by Maxham & Bourne; they had been received by the prisoner and paid by him, I presume, but the payment was not authorized by the Bank. After this I called upon the prisoner at the jail, and asked him whether he had been able to collect his ideas, and if he knew any thing about the money. He said he knew nothing beyond what he had stated the day before. I then produced the purse, and showing him one of the checks, asked him if he had not lent money to Maxham & Bourne. He asked me where did you get that purse? to which I answered that Mr. Maxwell had given it to me. He then admitted that he had lent the money to Maxham & Bourne. They have paid part and secured the rest to the Bank. On the 2nd of March the officers of the Bank gave information of the amounts which they had received; Mr. Macaulay, who had been an officer in the Bank, did the same. With respect to Robert Simpson & Co., I obtained information from papers at Mr. Ritchie's, to obtain which I had the prisoner's authority. The papers were examined in the presence of the prisoner, and among them were found the checks of R. Simpson & Co., Mr. Gully, and others, for the amounts mentioned yesterday as received by them. All the officers in the bank give security. (The witness is here shown a number of Montreal Bank notes of the different amounts.) The only difference in the terms of the new and old notes is, that the former are payable to order and endorsed; the latter are payable to bearer; there is a difference in the plates. Some of the new notes are made payable to the order of William Coates. The old notes and the new ones were made payable for the same sums. At the time the deficit was discovered, the prisoner said he could not account for the missing notes, that he had not taken them, and that he was sure no one else had touched them. The examination of the witnesses at the first investigation was conducted by Mr. Primrose, Mr. Young or Mr. Phillips, I cannot now say which. I authorized the publication of the advertisement in the Quebec Gazette, now produced, it was continued for a much longer time than was intended, as I neglected to notify the editor to discontinue it. (The advertisement in question was that offering a reward of £1,000 for the recovery of the notes. It was not read in Court, and considerable laughter was occasioned during the argument between the counsel, which resulted in both protesting against the paper being read, after one had moved it.) I have known the prisoner for the last twelve or fifteen years, and always, until this matter occurred, considered him a highly respectable man, and such was his general character in society. The officers of the bank were paid monthly if they wished it, on giving a receipt to the prisoner, by whom they were paid. I have not since yesterday been enabled to bring to my recollection the precise period on which the counting of the prisoner's balance was effected by me. I know of a few instances, during the suspension of specie payments, in which the prisoner was allowed to enter specie as notes in his *borderaux*. At the period the deficit was discovered the amount in my hands was counted by the Directors and several times during the nine years the prisoner was in the Bank. There is no register in Quebec of notes issued by the Branch Bank, there is one in Montreal but I have no knowledge of any specific notes being missing.

Mr. H. Black being called out of Court for a short time, Mr. Aylwin undertook the cross examination.

By Mr. Aylwin.—I remember one instance in which the prisoner stated in his *borderaux* a certain amount of notes when, in reality, the amount so acknowledged consisted of a written security; this was done without my consent and knowledge and I found fault with the prisoner for doing so. The prisoner was never allowed to enter bonds or checks as so much money in his hands, in the *borderaux*. A new lease of the building in St. Peter Street

used as the Bank was entered into on the 1st May, 1838.

Re-examined by Mr. Primrose.—None of the advances made by the prisoner were authorized by me. The paper now produced is in the hand writing of the prisoner; it is a list of the amounts advanced to Maxham & Bourne certified by the prisoner that the amount of £1300 was due by that firm to the Montreal Bank.

By the Court.—I had no reason to doubt the truth of the statement of the funds in the hands of the prisoner, on the 21st Feby. 1838, as it appears by the *borderaux*. I have no other reason to believe that the prisoner took the money, except from the statements made by himself in the *borderaux*.

David Burnet, Esq. sworn.—I am one of the Directors of the Branch of the Montreal Bank at Quebec. On the 1st of March 1838, Mr. Simpson called upon me, and stated that a large sum of money was missing. I went over to the bank and asked the prisoner if it was wrong? He said that his balance was perfectly correct the previous evening, and, as I understood, it was in the same state that morning. I asked him how the money could have gone; he said he could not account for it; he also said in answer to another question, that no one could have got to his box.

Cross examined by Mr. Black.—I was present at the examination of the prisoner. I think Mr. Young reduced the deposition to writing. It is the duty of the Directors to examine the balances in the hands of the Cashier, but I do not know how often. It was so examined to my knowledge in 1837; the parcels of money are all counted in such cases. I have known the prisoner for ten or twelve years, and always considered, up to the period of this accusation, that his character was irreproachable.

John Strang, Esq. sworn.—I was called to attend a meeting at the Branch of Montreal, on the 1st March, 1838, with the other Directors. The prisoner acknowledged to have had the money all right the evening before, and he said that he found it in the same state that he had left it. No one had touched his box, he said, but he could not tell what had become of the deficiency. He was perfectly satisfied no one could have touched it.

No cross examination of any importance.

Hon. Matthew Bell sworn.—The deposition of Mr. Bell corroborated those of the two preceding witnesses, with some additional particulars. I asked the prisoner if some might not by false keys have got to his trunk. He answered in a very extraordinary manner, Oh! no; Oh! no, impossible. I then remarked to him that as he had commenced counting his money he might have let fall one or two of the bundles of larger notes, to which he made the same answer Oh! no. I then, I believe, said what had become of the money? to which he replied that he did not know. I requested him to take the *borderaux* drawn out by Mr. Simpson in pencil, and copy it. He went into the other room, and in a short time returned with the copy, with, to my great astonishment, a note at the bottom setting forth the deficiency, signed by himself. The prisoner was very cool and collected—more so than any one else that was present.

Cross examined by Mr. Black.—I know Mr. Coates, as teller of the Bank, and was one of his securities on his first being appointed. I had a very high opinion of his integrity.

Mr. William Walden Martin, sworn.—I am a messenger of the Montreal Branch Bank and have been so since July 1825. I attend the Bank every Banking day. On the 21st Feby. 1838 I left the Bank at about 4 p. m.; the prisoner remained after me. Previous to leaving I took down to the vault two trays with some silver and the prisoner's trunk containing the notes, &c.; I was constantly in the habit of doing so. The prisoner did not go down to the vault with me but I think he came to the head of the stairs. The trunk was locked. I placed it in the portion of the vault allotted for the first teller, which is within the two outer iron doors, and also a wooden door; I locked the latter and gave the key to the prisoner. The other (iron) doors were locked to the best of my recollection by Mr. Simpson, he keeping the keys. Immediately after this I left the bank, and did not return to it until the following morning, at about twenty minutes before 10. When I arrived the prisoner was in the act of unlocking the inner iron door of the vault, and he said, "Martin, you are rather late, Mr. Simpson has been here a quarter of an hour; here you finish unlocking the doors for you understand it better than I do." I did so, he having given me the key of the wooden

door. The money was carried to the proper place; I I silver, but I cannot say precisely where the prisoner carried the trunk vault appeared in the same the previous evening.

Cross-examined by Mr. Ad. a green tin box belonging in which notes were some have no recollection whether been put in it on the 28th Feby.

Mr. James Bolton, sworn. ant of the Branch Bank of situation I have held for m one years. At the time of question I resided in the b the Bank; the other intran and two servants. I had ac most parts of the building e of the vault. On the 1st o the prisoner how his cash to he said Mr. Simpson had not and "what does he say you?" he answered "he Shortly after Mr. Simpson my room and said he had Coates' cash, and that the a deficiency of nearly £1 cannot believe it possible, y some mistake in your border thought not and requested Directors' room I examine i son that I owed the prisone did not know the precise a ness here described his pro ing the money, &c., corrob son's evidence in this partit with the prisoner w similar to those reported nesses.) I spoke to him of ter that would result from e made public, he said h c that he was a lost man. I re that unless he could acco might fall upon me as I liv said he could not help it, b To an observation from m might have arisen in his ca have been tempted to enc that he had not done so, observed a slight alterat particularly when he sai man. I advised him to str son, if he had appropriat Mr. S. would no doubt for him; to this, however hortations of the same kind variable answer—"I kno The prisoner had a great pocket of which on being Phillips, Esquire, was small pistol; this on the Lieut. Russell of the Pol loaded with ball. I we 9 on the 28th February) the house until the next near the vault that night not ring during the night into the house. On the March, a green box w drafts for collection wa room by Martin, I belie was discovered the prison seen any notes in the gre I had seen none, if there have seen them as he first self.

Cross examined by Mr. Banks are liable to losses after the prisoner entered Bank there was a trifling count which the Bank about £60. I received prisoner, I have receive quently. As far as salary knew that I got my regu receipt to the prisoner, at openly, not in a clandestine know if Mr. Simpson o aware of my drawing m I never informed them, it. I was responsible Douglas' for £260 whom soner's cash from some 1837, until the 1st Ma present to the amount ad in a running account be soner; and I had frequ me know how much h I ness was cross exam but nothing material v beyond the foregoing.)

Mr. Robert Maxwell, first teller of the Montu the 28th February 1838, —The only part of the

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