

Winnipeg, 9th September, 1885.

WALLBRIDGE, C. J.—The prisoner was tried before Hugh Richardson, Esquire, a stipendiary magistrate in and for the North-West Territories, in Canada, upon a charge of high treason. The trial took place on the twentieth day of July, A. D. 1885, at Regina, in that territory, under the Dominion Act 43 Vic. c. 25, known as "The North-West Territories Act, 1880."

Section 1 of that Act declares, that the territories known as Rupert's Land and the North-West Territory (excepting the Provinces of Manitoba and Keewatin), shall continue to be styled and known as "The North-West Territories."

Manitoba was erected into a separate province by the Dominion Act 33 Vic. c. 3, (12th May, 1870), intituled "An Act to amend and continue the Act 32 and 33 Vict. c. 3, and to establish and provide for the government of the Province of Manitoba." Since which time Manitoba has formed a distinct province, with regularly organized government, separate legislature and courts. By an Imperial Act passed in 34 and 35 Vict. c. 28, cited as "The British North America Act, 1871," the Act 33 Vic. c. 3, providing for the government of the Province of Manitoba, was declared valid and effectual, from the day of its having received the Royal assent.

The North-West Territories Act, 1880, before referred to, under the head "Administration of Justice," section 74, empowers the Governor to appoint, under the Great Seal, one or more fit and proper person or persons, barristers-at-law or advocates of five years standing, in any of the provinces, to be and act as stipendiary magistrates within the North-West Territories. And by sec. 76, each stipendiary magistrate shall have magisterial and other functions appertaining to any justice of the peace, or any two justices of the peace; and one stipendiary magistrate is by that section, and the four following sub-sections, given power to try certain crimes therein mentioned, in a summary way, without the intervention of a jury. For crimes thus enumerated, the prisoner can be punished only by fine or fine and imprisonment, or by being sentenced to a term in the penitentiary. Sub-section 5 of section 76, however, under which this prisoner was tried, is in the following words:—

"In all other criminal cases, the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try any charge against any person or persons, for any crime."

Sub-section 10 of said section is in these words:—

"Any person arraigned for treason or felony may challenge peremptorily, and without cause, not more than six persons." And by sub-section 11, "The Crown may peremptorily challenge not more than four jurors."

If any doubt were entertained whether this Act was intended to extend to the crime of treason, this section would explain it; as by it an alteration is made in the number of peremptory challenges allowed to the Crown, reducing them to four.

By section 77 of that Act, it is enacted, that: "Any person convicted of any offence punishable by death, may appeal to the Court of Queen's Bench of Manitoba, which shall have jurisdiction to confirm the conviction or to order a new trial, and the mode of such appeal, and all particulars relating thereto, shall be determined from time to time by ordinance of the Lieutenant-Governor in Council."

This prisoner was arraigned, and pleaded not guilty, and was tried before the said Hugh Richardson, esquire, a stipendiary magistrate, and Henry LeJeune, esquire, a justice of the peace, with the intervention of a jury of six jurymen.

The case was tried upon the plea of not guilty to the charge. The prisoner was defended by able counsel, and all evidence called which he desired. No complaint is now made as to unfairness, haste, or want of opportunity of having all the evidence heard which he desired to have heard. The jury returned a verdict of guilty, and recommended the prisoner to mercy. Upon this state of circumstances, the case came before the Court of Queen's Bench for Manitoba, by way of appeal, under section 77 of the North-West Territories Act, hereinbefore mentioned. It will be observed that the power of this court upon appeal is limited to the disposition of the case in two ways,