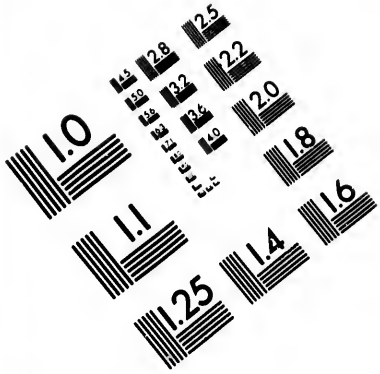


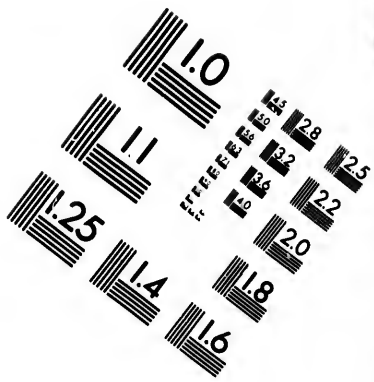
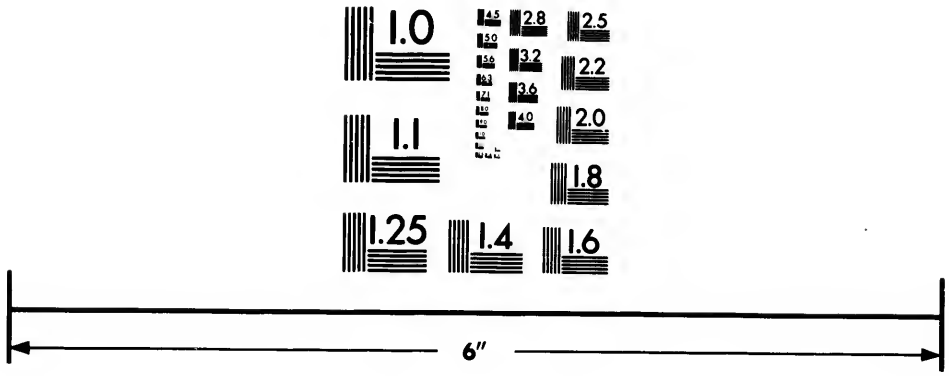
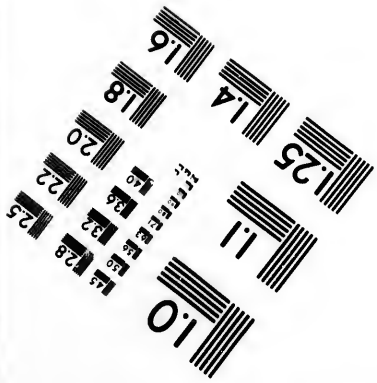
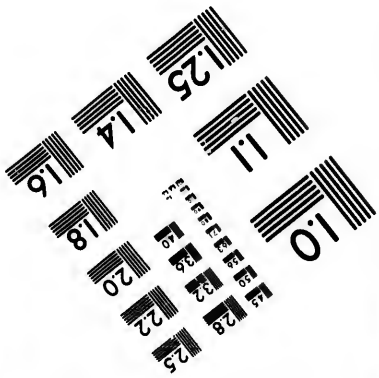


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- [x] Coloured covers/ Couverture de couleur
- [ ] Covers damaged/ Couverture endommagée
- [ ] Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- [ ] Cover title missing/ Le titre de couverture manque
- [ ] Coloured maps/ Cartes géographiques en couleur
- [ ] Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- [ ] Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- [ ] Bound with other material/ Relié avec d'autres documents
- [ ] Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- [ ] Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- [x] Additional comments:/ Commentaires supplémentaires: Various pagings.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- [ ] Coloured pages/ Pages de couleur
- [ ] Pages damaged/ Pages endommagées
- [ ] Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- [x] Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- [ ] Pages detached/ Pages détachées
- [x] Showthrough/ Transparence
- [ ] Quality of print varies/ Qualité inégale de l'impression
- [ ] Includes supplementary material/ Comprend du matériel supplémentaire
- [ ] Only edition available/ Seule édition disponible
- [ ] Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					

The copy filmed here has been reproduced thanks to the generosity of:

Library of the Public
Archives of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

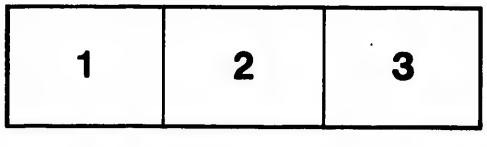
La bibliothèque des Archives
publiques du Canada

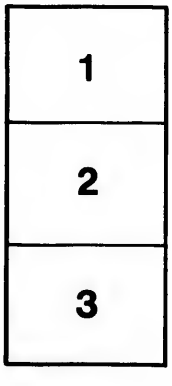
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

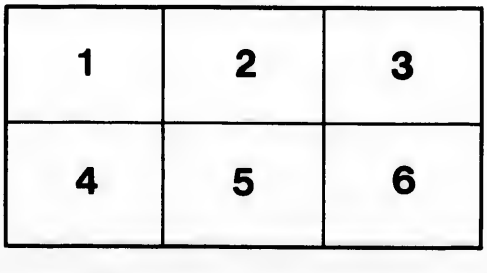
Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.







32X

PRESENTED

BY

DAVID RICARDO, ESQ.

REPORT

OF

THE PROCEEDINGS

CONNECTED WITH THE DISPUTES BETWEEN

THE EARL OF SELKIRK

AND

THE NORTH-WEST COMPANY,

AT THE

ASSIZES,

HELD AT YORK, IN UPPER CANADA,

OCTOBER 1818.

FROM MINUTES TAKEN IN COURT.

MONTREAL: PRINTED.

LONDON:

RE-PRINTED BY B. McMILLAN, BOW-STREET, COVENT-GARDEN,
Printer to His Royal Highness the Prince Regent.
SOLD BY EGERTON, WHITEHALL; SHERWOOD, NEELY, AND JONES, PATERNOSTER-ROW; AND J. RICHARDSON, ROYAL EXCHANGE.

1819.

ADVERTISEMENT.

In reprinting this Report of the recent Proceedings in Upper Canada, connected with the Disputes between the Earl of Selkirk and the North-West Company, the Agents of that Company have to state, that the Minutes of these Proceedings were taken by a sworn Short-hand Writer, employed under the sanction of the Court, and on condition of furnishing the Court with a Copy of his Minutes, in the event of any Conviction taking place.

The Report and the Appendix, therefore, are to be considered as Documents strictly Official; and the Preface, and Notes, reprinted from the Montreal Edition, are the only Comments offered by the North-West Company, in answer to the numerous Calumnies with which they have been assailed through the medium of the Press, as well as by *ex-parte* Statements in the House of Commons. When the Papers lately laid on the Table of that Honourable House, are printed for the use of the Members of the Legislature, it will be

seen how far these Calumnies are supported by the Documents bearing upon the Case; and when the Agents of the NORTH-WEST COMPANY shall be acquainted with the nature of these Documents, if it shall appear that the conduct of those with whom they are connected requires further explanation, they will take an early opportunity to offer the same. In the mean time, they entreat the attention of the Public to the Reports of the Trials which have taken place; and they request that the Cases made out in evidence before Juries, may be compared with the aggravated Statements and *ex-parte* Affidavits, previously published, and industriously circulated by the EARL of SELKIRK and his Agents. They also request those who may take any interest in the question, to compare the recently published Narratives of Mr. PRITCHARD, the late Petitioner to the House of Commons, and his Associates Mr. PAMBRUN and Mr. HEURTRE, with the Evidence of the same persons, subjected to Cross-Examination in an open Court, and contrasted with the testimony of the Witnesses for the Defence. It appears that the result of this comparison, on the Trials, induced the Juries to reject the Evidence of these persons as unworthy of be-

lief; and considering the circumstances under which their Narratives are now produced, and pending the Legal Investigations which are still at issue, as well as the Parliamentary Proceedings which have been instituted, it is submitted, that no impartial person can give credit to *ex-parte* Statements, resting on such suspicious authority, and manifestly published with a view to prejudge a question depending on Official Documents and Legal Decisions.

PREFACE.

THE arrest and imprisonment, by the Earl of Selkirk, of several Partners, and people in the service, of the North-West Company, at Fort William, in August, 1816, upon charges of "high treason, murder, robbery, and conspi-"racy," is well known to the public; and the proceedings by Indictment and otherwise, against them, and numerous others, their adherents, which have subsequently taken place, have equally been frequently detailed in the public prints of Canada.

The Trials at York, in Upper Canada, of which this volume contains a faithful report, now demonstratively exhibit the utter futility of those charges; and the long period that has elapsed between the time they were brought, and that when the trials upon them have taken place, is an additional proof, if any were wanting, of the oppressions, under colour of law, to which Lord Selkirk has subjected the North-West Company. The records of the Secretarys' Offices of both Provinces, will shew that it was ever the anxious wish of the parties accused to have speedy justice done to them, that they might

have an early opportunity of establishing their innocence; and it is perhaps one of the strongest instances of the perversion of legal remedies, that his Lordship has been enabled to keep prosecutions hanging over individuals for upwards of two years, without deigning to furnish the Crown with any evidence to substantiate his accusations, till compelled by Government.

As the principal part of the evidence necessary to the defence of these parties (and in fact, also, that which was to be brought against them), was either to be found in Upper Canada, or was to be procured from the Indian Territories, it appeared that "justice could be more conve-" niently administered" in that Province than in Lower Canada; and, as far back as March 1817, application was made to the Governor-in-Chief, then Sir John Coape Sherbrooke, to direct the removal of these cases thither. It seems, however, that His Excellency judged it expedient to consult the Government at home, so that it was not till the 24th October, that (the reply being favourable to the removal), Great Seal Instruments were issued on the first Petitions, and on the 20th November, and 7th February following, on others presented by persons subsequently accused.

All this while the documentary and other evidence, which Lord Selkirk affirmed that he possessed, as the ground of these proceedings, was kept back by him, leaving the Law Officers of the

Crown in both Provinces, to complain of being unable to discharge their duty to the public and to the accused.

Strong remonstrances were repeatedly made to the Governments of both Provinces, on the subject of the mischievous and oppressive delays complained of. The Attorney-General of Upper Canada, in his report in reply, dated the 10th March, 1818, says, "We were then," (referring to a previous statement made to the Governor of Upper Canada, on the subject), "compelled to "state what I can only repeat now, that we were "not only totally unprepared to enter upon the "prosecutions in question, but that we were also "without any means of knowing when we could "be prepared."—"We could not advise an inde-"finite number of prisoners charged with offences "of which we knew only by rumour the general "character, and none of the particular facts, to be "hastened hither for trial, while we were unfur-"nished with those means of drawing up the In-"dictments, and enabling us to conduct the pro-"secutions, which we take care to have, and "which decency in the administration of criminal "justice, requires we should have, in every com-"mon larceny."—"We had received information, "that copies of all the depositions were prepar-"ing for us, which, with the other information "we required, we expected to receive before this "time. But I am yet without these necessary in-"structions." And he adds, "I know no rea-

" son but that which it is scarcely fair at this " time to give to the prisoners, (namely, that we " are yet quite unprepared to try them, and " know not how long we may be suffered to re- " main so), why the 20th of April," (which was the day prayed to be appointed for the trials), " might not be named for the opening of the " Court."

Memorials in behalf particularly of those of the accused who were suffering under protracted imprisonment, accompanied by this report of the Attorney-General of Upper Canada, were presented soon after to the Governor-in-Chief. In reply, His Excellency caused it to be stated, that as it appeared from that report, that " no pro- " ceedings had been commenced in Upper Canada " against them, he should not feel justified in re- " leasing them from prison, and sending them to " Upper Canada, until at least the private pro- " secutor, *in whose hands was the information ne- " cessary for instituting such a proceeding*, should " be called upon to furnish the Crown Officers of " Upper Canada with such parts of it as they " might require. *This information being, as His " Excellency understood, to be given by Lord Sel- " kirk*, the Law Officers had been directed to call " on his Lordship peremptorily to transmit the " same to Upper Canada without delay, and to " intimate to his Lordship, that unless within a " further reasonable time, the Crown Officers of " Upper Canada were furnished with the evidence

" necessary for the commencement of proceedings " there, His Excellency would feel justified in " ordering the discharge of the Petitioners." His Excellency further intimated, that if proceedings were not commenced against them in Upper Canada before the end of June, he should consider them entitled to their discharge.

The Attorney-General of Lower Canada also, in reporting, under date 19th June, 1818, to the Governor-in-Chief, in reply to a further remonstrance, which was made in that month, states, that " the private prosecutor, the Earl of Sel- " kirk, *who alone possessed the evidence in support* " *of these prosecutions*, had been absent from " the Province, and since his return, his time " had been very much occupied with the sit- " tings of Criminal Courts, both at Quebec and " Montreal."

Here it is worthy of remark, that during upwards of a year subsequent to the arrest of these individuals, the private prosecutor was occupied, *not* in attending " the sittings of Criminal Courts " at Quebec and Montreal," but in acts of unprecedented violence and depredation, which were only checked by the Prince Regent's Proclamation, and by the measures prescribed by His Majesty's Government for enforcing it; and then, instead of returning to this Province with the Special Commissioner, to meet the accusations against him, and to establish his charges against others, " *the evidence in support of which he alone*

"*possessed*," he went on a tedious and circuitous journey, for his own private purposes, and did not get to Montreal till February 1818; whilst his Lordship's subsequent occupations in the Criminal Courts of Lower Canada, whether as a public informer, or private prosecutor, could afford no valid answer to persons complaining of a grievance in the delay of justice.

Dragged at length into the arena, by the determination before alluded to of the Governor-in-Chief, to consider the parties imprisoned as entitled to liberation, if proceedings were not instituted against them within a given time, his Lordship was compelled to take measures for commencing such; and the result of these proceedings constitute a triumphant vindication of the parties accused, and a conclusive demonstration, not only of the obvious motives in which these frivolous and vexatious charges originated, but also of the iniquity of the means employed in bolstering them up, by every insidious art to prejudice the public opinion.

Instead, however, of making his appearance as the private prosecutor in these causes at York, where he was anxiously expected, up to the very hour of the commencement of Brown and Boucher's trial, his Lordship disappointed the Crown Officers, his own Witnesses, and the Public; and, although he started from Montreal, in the direction of Upper Canada, he soon after turned off to the left, and proceeded by way of New-

York to England, anticipating, no doubt, this signal defeat, and unable to withstand the mortification of witnessing it in person.

It will be observed, that amongst these trials, is that of two of Lord Selkirk's Settlers, (Cooper and Bennerman), who craved a conveyance from the North-West Company, and left the Red River for Upper Canada. They were included in an Indictment with several others, for *stealing cannon*, on the merits of which there is no occasion to say any thing here, as they will speak for themselves on a perusal of the evidence. This trial has in fact no direct relation to the disputes between Lord Selkirk and the North-West Company; but his Lordship having all along endeavoured assiduously to impress on the public mind, the idea, that the desertions which took place from his Colony, were wholly to be ascribed to the persuasions and enticements of the North-West Company, the evidence produced on this occasion (which might have been multiplied to an indefinite extent, by the numerous other individuals who, having escaped from Red River, are now settled in Upper Canada), will clearly demonstrate, that it was the wretched state of misery into which these deluded people were plunged, and the oppressions they suffered, that produced the spirit of dissatisfaction prevailing amongst them, and induced them, some to find their way out at all risks, through the savage tribes by way of Fond du Lac, others to lay a plan for escaping

by the Mississippi into the United States, and the others to apply to the humanity of the North-West Company's people, to give them a passage to Canada. This testimony of their sufferings, and of the deceptions practised upon them by the Earl of Selkirk and his Agents, comes in ample confirmation of the prophetic view taken by the Honourable and Reverend Dr. Strahan of York, in his able Letter to the Earl, relative to his Red River Colony, published in 1815; and upon the whole, both with respect to those delusions, and to the calumnies heaped upon the North-West Company, it will now be found, that the veil is rent asunder, the mask is torn away, and the vile deformity they have hidden, is exposed to the view of the world.

For the Explanation of some technical and local terms and phrases, made use of in these Trials, a GLOSSARY *is subjoined, of such as are not familiar to general readers, viz.*

Anglois.—An Englishman, the English, but applied exclusively to the servants of the Hudson's Bay Company, whether English, French, or Half-breeds, in contradistinction to the fur-traders from Canada, who are called *François*, of whatever country or language they may be.

Arpent (as a measure of length)—180 French feet.

Bateau.—A boat or barge, which are only used on the large navigable lakes and rivers of the country: they are flat-bottomed, and carry about four or five tons.

Bois-brulés.—See *Half-breeds.*

Bourgeois.—Master, employer; applied both, specially to the person (whether partner or clerk) who has the command and superintendence of a trading-post, or of a canoe, and, generally, to persons ranking as gentlemen, or above the class of servants.

Brigade.—A fleet of canoes, bound to or from a particular trading-post or department.

Capote.—A great coat.

Conseil.—A council; generally applied to the formal meetings between parties of Indians, or between the traders and Indians.

Department.—Portion of country, the trade of which is placed under the special management of one or more partners or bourgeois.

Engagé.—An engaged servant: applied specially to the Canadians who engage as voyageurs or voyagers for a term of years in the service of the fur-traders.

English.—See *Anglois.*

Equipement.—Equipment; the clothes and other articles furnished yearly to the clerks and servants of the fur-traders, every individual in their employment receiving an equipment proportioned to his station.

Fort.—The trading-posts are always called forts, though in general no otherwise fortified than by being placed in a square inclosure formed of palisades or pickets; indeed every house in the Indian country is called *a fort.*

François.—A Frenchman, the French, but applied exclusively to the Canadian fur-traders, of whatever nation, to distinguish them from the traders who come from Hudson's Bay, who are called *Anglois*, English.

Freemen.—Canadians and others (not Indians or Half-breeds) who reside in the Indian countries, as hunters, fishermen, or farmers, and are not engaged servants of the fur-traders.

Half-breeds, Métifs, Bois-brulés.—The names given to the mixed population which exists in the North-West, arising from the connection of Europeans or Canadians with the Indian women. These appellations are synonymous. The first is the English one; *Métif* is a corruption of the Spanish *Mestice*, and the term of *Bois-brulé* is said to be derived from the sallow complexion of the Half-breeds being compared to the appearance of a forest of fir-trees that had been burnt, an occurrence frequent in those parts, and which assumes an universal brown and dingy colour.

Hangard.—An out-house of any description, whether a shed, a pent-house, or a closed store, in which goods are deposited.

Hommes libres.—Freemen; see *Freemen.*

Marché, march, a day's march.—The distance a canoe goes in a day.

Métifs.—See *Half-breeds.*

North-Canoe.—A canoe calculated for the shallow rivers, and difficult navigation of the interior; it is about half the size of a *Montreal canoe*, or one used in the navigation between Montreal and Fort William.

Pemican.—The meat of buffaloes, or moose-deer, dried and pounded, mixed with grease or fat; it is generally put into bags made out of the hide, and called *Taureaux*: it is the universal article of food amongst the engagés, Half-breeds, and Indians in the North-West, when travelling in the open season.

Piece.—A package made up, for the North-West, weighing about 90 lbs. for the convenience of carrying across the portages.

Portage.—A carrying place.

Prairie.—A level tract of country without wood.

Snow Shoes.—Net work made with thongs of raw hides stretched upon a frame of an oval shape from three to four feet long, and 18 inches broad, which are fastened to the feet in order to walk over the snow.

Taureau.—A bag of pemican, or pounded meat, made of raw buffalo hide, weighing usually about 90 lbs.

Train.—A sledge.

Voyageur, Voyager.—Canadians and others engaged by the fur-traders as canoe-men. The term applies also to the traders themselves.

TABLE OF REFERENCE.

TRIAL of PAUL BROWN and F. F. BOUCHER.

TRIAL OF THE ACCESSARIES.

TRIAL OF COOPER AND BENNERMAN.

APPENDIX.

TRIAL

OF

PAUL BROWN,

AND

FRANCOIS FIRMIN BOUCHER.

PROVINCE OF UPPER CANADA.

HOME DISTRICT.

Session of Oyer and Terminer, and General Gaol Delivery, held at York, in the Home District, on Monday the 19th of October, 1818.

PRESENT:

His Lordship Chief Justice POWELL,
The Honourable Mr. Justice CAMPBELL,
The Honourable Mr. Justice BOULTON,
The Honourable JAMES BABY, Esq. } Justices of the Peace for
WILLIAM ALLAN, Esq. } the Home District.

THE Commission, (Appendix A.) under the Great Seal of the Province, was read, after which the Grand Jury were sworn in, and charged by his Lordship the Chief Justice; the substance of which Charge, as far as related to the trials of offences committed in the Indian Territories, was as follows:

Gentlemen of the Grand Jury,

In addition to your ordinary function of delivering the gaol, and enquiring of crimes committed within this District, you will be called upon, under the provisions of a statute of the United Kingdom, passed in the 43d year of His Majesty's Reign, to enquire of crimes and offences charged to have been committed in territories not within the limits of the Home District, or of the Province.

To give this jurisdiction to this Court, the statute makes it necessary that the Governor of Lower Canada should, by an Instrument under the Seal of that Province, declare that justice may be more conveniently administered with relation to any particular crime or offence in Upper, than in Lower, Canada.

Under such a declaration, which will be manifested to you by production of the Instrument, charges will be exhibited against various individuals for the highest crimes,

murder, robbery, and arson, not only as Principals, or actual perpetrators of the crimes, but as Accessaries before and after the Fact.

It must be unnecessary almost for the Court to enter upon an explanation to you, Gentlemen, who have so long and so properly exercised the function of Grand Jurors, of what constitutes these offences.

Murder is that aggravated homicide, which is of forethought malice, and wants all the alleviating circumstances which the tenderness of criminal law admits to qualify homicide into manslaughter excuseable, or justifiable. This malice the law presumes, where the evidence of the fact shews not the contrary, therefore it is usual so to charge the homicide in the indictment, leaving it to the accused to shew, on his defence, to the petit jury, or jury of trial, the alleviating circumstances which, in their judgment, may constitute only an inferior offence. Robbery, you well know, is larceny, aggravated by force. It is the forcibly taking and carrying away the money or goods of another, against his will, from his person, putting him in fear, of whatever value the goods or money may be, and it may be, if the goods or money were not upon the person, but taken in his presence, by force, feloniously, and putting in fear. Robbery so defined is a capital offence in the actors present, and in the accessaries before the fact. Arson is the wilful and malicious burning of the house or out-house of another. Under this general definition is comprehended all out-houses, barns, and stables, that are parcel of the dwelling, though not contiguous to it, or under the same roof. But, to constitute this offence, it must be done maliciously, and not by accident, and there must, besides the attempt to set fire, be an actual burning, however small the consumption. This is also a capital offence in principal and accessary before the fact. Gentlemen, in the course of this investigation you will find facts charged as felonious, and wearing such an appearance in every respect, wanting perhaps that which ought to constitute felonious robbery or larceny, the *animus furandi*, and wanting that, the taking the goods of another, without his consent, is, in law, a trespass, and the nice shades by which the same act may be distinguished to be trespass or felony, is properly of the consideration of the jury of trial, since you can scarcely receive light from the *ex parte* testimony of the prosecutor, to shew that what he charges as felony is merely trespass; but, should that appear satisfactorily to you, and that there was no intention to steal, no *animus*

jurandi in the taking, you can not conscientiously put the accused to answer. The prosecutions are remote from the scene of action, and the facts charged to have been committed in the Indian Territories, visited by rival traders, where you can hardly expect to meet with impartial relations of facts; but that is the consideration of the jury of trial, who will weigh the credit of each witness. Your duty is also to decide according to evidence, but you are not expected to sift it so closely. It is sufficient for you to ascertain by evidence, that the fact charged has been committed, and that there is strong probability that the accused is the perpetrator.

Gentlemen, the publicity given to the details which are to be laid before you, by dispersing in pamphlets the depositions of witnesses taken before the magistrates, may have presented them to you, and made impressions on your minds favourable or unfavourable to these prosecutions. I need not tell you, that it is a first duty on your part, to divest your minds of all such impressions, and bring them to the legal enquiry, free and unprejudiced, so as to receive the evidence brought before you without bias, and to weigh it with the strictest impartiality, never forgetting, that your business is merely to enquire and report the truth of the fact, and the probability of the charge to be such, as should put the accused upon his defence.

There is also, I find, in the docket furnished by the Crown Officers, a Bill against more than twenty individuals, for a conspiracy to subvert the Settlement at Red River, also in the Indian Territory, and which must be subjected to the jurisdiction of this Court, and your consideration of it must be guided by the same course as the other crimes charged to have been committed there.

Conspiracy, strictly speaking, is an odious combination or concert, of two or more persons, to charge others with a criminal conduct which might expose them to danger from prosecution. But, in a wider view, the law considers as conspiracy, all concert and confederacies whatsoever, wrongfully to prejudice a third person, and subjects the conspirators, when convicted, to the heavy penalty of fine and imprisonment, and in certain cases, to infamous and corporal punishments. This concert may be without direct personal communication: any evidence which demonstrates that there was confederacy between the parties accused, to effect the criminal purpose, although that purpose should not have been actually effected, constitutes the offence of conspiracy, of which the overt-acts are confirmation.

Thursday, 22d October, 1818.

*Indictments (*Appendix, B, C, *and* D*), were found by the Grand Jury against*

CUTHBERT GRANT,
LOUIS PERRAULT,
PAUL BROWN, and
FRANÇOIS F. BOUCHER, } as Principals;

ALLEN MACDONELL,
JOHN SIVERIGHT,
SERAPHIM LAMARRE, and
PETER PANGMAN, } as Accessaries before, and

ALEXANDER MACKENZIE,
JOHN MCDONALD,
SIMON FRASER,
ALLEN MCDONELL,
SERAPHIM LAMARRE,
HUGH MCGILLIS,
JOHN MCLAUGHLIN,
WILLIAM SHAW,
JOHN SIVERIGHT, and
PETER PANGMAN, } as Accessaries after the Fact,

for the Murder of Robert Semple, Esquire, on the 19th of June, 1816;

GEORGE CAMPBELL,
CUTHBERT GRANT, and
WILLIAM SHAW, } as Principals, for Arson, on the 28th of June, 1815;

(The Indictment against DUNCAN CAMERON, *as Accessary before the Fact, being thrown out),*

And against PAUL BROWN, *for robbery in a dwelling-house.*

Friday, 23d October, 1818.

An Indictment against

GEORGE CAMPBELL,
ROBERT GUNN, and
HECTOR MCDONALD, } for maliciously shooting at Miles Macdonell,

was returned by the Grand Jury—*No Bill.*

Attorney-General.—I rise to move the process of the Court against the persons on the Indictment which the Grand Jury returned yesterday. Brown and Boucher, two of the principals, are in custody. I therefore move that process do issue against Cuthbert Grant, Allen M'Donell,—

Mr. Sherwood.—I beg leave to state to the Court, that the Gentlemen against whom the Attorney-General is moving that process do issue, are merely charged as accessaries, and they are all here upon bail. I believe it is never usual to move the process of the Court against accessaries, until conviction has taken place against the principals; but even were it the customary course, still the very different circumstances under which these Defendants stand, would completely set it aside. These persons have all been admitted to bail, have entered into recognizances which have been taken under the high authority of the Governor-General of the Canadas. Whether this bail or these recognizances are good or bad, is not now to be a question, it is sufficient that they have been taken under the highest authority, and that, in fulfilment of the obligation imposed by them, these Gentlemen are present in this Court. It is therefore incompetent to the Attorney-General to move the process of the Court against persons, who, in their presence, are fulfilling the obligation which they have entered into of appearing before the Court. But why should it be moved? they are all under bail, under bail in such sums as appeared adequate to ensure their appearance here, and they do appear. At any rate, till the principals are convicted, in no case, under no circumstances, is it customary to attach accessaries. The principals, or two of them, are in actual custody of the Court, and till they are convicted, I contend, a capias ought not to issue against those charged merely as accessaries, and who come forward and say, Here we are. Till authorities are shewn for such a course, I should think your Lordships will not sanction the application. These persons do not appear here in the ordinary course of things; the charge has been preferred against them in the Lower Province, a part were taken into custody, and a part were put under recognizance, and in this manner they have been transmitted by the government below, under the authority of the Act, the special Act under which they are indicted. It is, I have asserted, not a usual course to move the process of the Court against accessaries; then I ask, can any reason be assigned for doing so in the present case? Can there be any reason given for their being taken into custody here, when the go-

vernment of the Lower Province have admitted them to bail, and they fulfil their recognizance by appearing here? They were once in custody, and were sent below, and there a part were detained in confinement, and the others were liberated upon giving security. I advance then, that the principals alone having been sent in custody by the government of the Lower Province, whilst the accessaries appear here in obedience to the recognizances into which they have entered, under the sanction of the high authority of the Governor-General, in addition to the argument, that it is not usual to take accessaries into custody till after the conviction of the principals; I advance, that these Gentlemen stand merely like persons accused of a misdemeanor, and having given bail, and appeared in Court, it is not competent to this Court to issue their process against them. The Indictment under which they are charged, is preferred under a particular Act, from which this Court derives its authority, and which is a special act of conferring jurisdiction.

Chief Justice Powell.—These proceedings being founded on a special act, we must have the authority under which we are to take cognizance of them.

Mr. Sherwood.—I trust in the contest of these rival Companies no measures will be resorted to, calculated to gratify those vile passions, which unfortunately mark the conduct of some persons.

Attorney-General.—I know nothing of rival Companies, or of disputes between them. In the discharge of my duty I know nothing except what I obtain from informations placed before me, and from the returns of the Grand Jury. They have returned as true, a Bill of Indictment for murder, against a number of persons who are not in custody, and to bring them before the Court, I adopt the usual course, viz. that of moving that capias do issue to take them in custody. This is the ordinary course, and it is my duty to pursue it. Whatever indulgence your Lordships may be pleased to extend to them when before the Court, will be cheerfully acquiesced in on my part, but it is with your Lordships, and not with me. I know nothing of this, any more than any other case, but from the Grand Jury; and to bring the persons whom they accuse by the indictment before the Court, I move that its process do issue against those who are not in custody.

Mr. Sherwood.—Then I beg to produce high, very high, legal authority against the proposition. The authority upon which this proposition will be rested, is, I take it, the 2d

and 3d Edward VI. cap. 24. In Hawkins, vol. ii, p. 457, sec. 1. 50, (which Mr. Sherwood read, providing for the indictment, trial, judgment and punishment in one county, of accessaries to a murder committed in another). Now it might be, and is necessary to know if the imputed offence has been committed in any county, or, as that can not be, from the nature of the case, whether it was committed in Upper Canada. The Attorney-General will perhaps demonstrate, that the crime has been committed as laid, but then the legal question respecting the accessaries will remain. I thus early state, as to where the offence, if committed at all, was committed, we do not wish to raise a question. We have no desire whatever to question the jurisdiction, but to go to trial upon the plain and simple plea of not guilty. But surely, under all the circumstances of the case, the Attorney-General will not expect that the process of this Court shall issue against these Gentlemen before the conviction of the principals, or some of them, nor indeed can he move it when they are actually present. Referring to the authority which I hold in my hand, Hawkins, the law of exigent is clearly laid down, and all its features fully delineated, and there I find that capias is the first step in proceeding to outlawry, and is the incipient measure to bring before the Court, persons who, although bound to appear before it, do not come forward agreeably to the tenor of their recognizance; not against Gentlemen who manifest their anxiety to fulfil every obligation which the law has imposed upon them. The object and intent of capias being issued, is to prevent the public justice of the country from being evaded: it is issued *ex necessitate rei*, because, without it, the accused can not be brought to answer the charges and offences alleged against him; but here we are ready to go to trial, we present ourselves before the Court, and wait only its course of practice to enable us to undergo our trials, for which we are equally, if not more, anxious than the Crown. I state unequivocally to the Court, that the course proposed by the Attorney-General is one that I look, but look in vain, for any authority to support. If there are authorities to sustain such a course, they will doubtless be known to the Attorney-General, and if he will state any instance, a single instance, if he will produce any authority of exigent, to which, I repeat it, capias is the incipient measure; if the Attorney-General can exhibit a single instance wherein that course has been resorted to before a single principal has been convicted, I have done; but till Mr. Attorney puts

the principals upon trial, and convicts them all, or proceeds to outlawry in their cases, he can not, according to my judgment, be allowed process against Gentlemen charged as accessaries, who are under recognizances allowed by the Governor-General, and are moreover actually present.

Chief Justice.—As the question arises upon Indictments founded on the 43d of the King, till I see that we have authority to take cognizance of the offence and the offender, I can not proceed with the argument. Have you, Mr. Attorney-General, Great Seal Instruments from the Lower Province transmitting these persons, and the particular offence upon which the Grand Jury have returned a true Bill to this Province for trial?

(The Great Seal Instruments (Appendix K, L, M, *and* N,) *were then handed to the Court. The Chief Justice remarked, that it had been already held, that the Great Seal of the Lower Province proved itself, there could therefore be no difficulty).*

Attorney-General.—I move the process of the Court against the persons named in the indictment, for the murder of Mr. Semple, who are not already in custody.

Mr. Sherwood.—As Mr. Attorney-General persists in his motion, I beg to offer high, very high, authority in support of the opinions I have submitted, that the course taken by Mr. Attorney-General is as extraordinary and unprecedented, as it is, in the present instance, completely uncalled for. I produce first, Chitty, vol. I. who, your Lordship knows, invariably refers to the authorities upon which any opinion he advances is founded, and at pages 338 and 339, I find him considering the nature of process in general; page 338, he says, "*Process* is so denominated, because it *proceeds* "or issues forth to bring the Defendant into Court to "answer the charge preferred against him, and signifies "the writs, or judicial means by which he is brought to "answer." He then goes on to describe that what, before a Bill is returned by a Grand Jury, is termed a warrant, is subsequently denominated process; that in every Commission of Oyer and Terminer, the power of issuing process is incidentally communicated on the sound principle, that where power is instrusted to enquire into offences, the authority to compel the attendance of the party accused must necessarily be given; that it is founded upon the same reason that justices of the peace, whenever authorised to enquire, hear, and determine, have power to compel the defendant to attend; but that this power does not attach to

the commission of gaol delivery, and that under that, capias can not issue, because the jurisdiction is limited to the delivery of the gaol. And having thus shewn who can issue process, he says, " from the very nature and object of pro-" cess, it follows there can be no necessity for it when the " Defendant is present in Court, but only when he is " absent," and this doctrine he supports by reference to Hawkins, 2 book, cap. 27, sect. 1. It is clear, therefore, that the present case does not warrant the application of Mr. Attorney-General. Again, page 339, he says, " at " common law, the usual mode of bringing a Defendant into " Court upon an indictment found against him, when it " was not considered necessary to pursue him to outlawry, " he is left to the ordinary legal process." Under that, the ordinary legal process, these Gentlemen have been taken, have entered into recognizance in such sums as seemed fit to the highest authority we are acquainted with, viz. that of the Governor-General, and in fulfilment of that recognizance they come into Court and say, give us our trial. Surely the learned Attorney-General does not say in this case that he contemplates proceeding to outlawry, and if he does not, it is not competent to him to move for process against the Defendants.

Chief Justice.—Where do you find that learning? it is new to me.

Attorney-General.—I do not know, but I think that the authority referred to by the Learned Gentleman proceeds to state, that if a Defendant is in Court, it is discretionary, and not obligatory, in the Court to detain him. The measure that I have adopted is merely to bring these persons legally before the Court, because till they are so, no step can be taken to prosecute their trials. Relative to these Gentlemen being under recognizance to appear at this Court, it makes no difference at all to the argument, though, with regard to recognizances which have been sent from the Lower Province, I must say that I received a number of instruments from the Law-officers of Lower Canada, and amongst them, a number of recognizances of different persons to appear in Upper Canada to answer certain charges for offences of which they were accused. Upon examination, I considered that they were not such instruments as I could enforce, and I therefore do not present them to the Court. Thus situated, I know nothing legally of any recognizance, and I am only pursuing the ordinary course, in moving that process do issue to bring before the Court,

persons whom the return of the Grand Jury declares have committed an offence in the Home District, which is the way that the Indictments are prepared, and they have been so prepared, because it was thought the preferable course to adopt, as being that by which the Jury will be left with no duty but to say simply, has or has not the offence been proved to have been committed, of which the Defendants are severally accused, and, if committed, was it by them.

Chief Justice.—The suggestion of the Attorney-General, that he has laid these offences as being committed in the Home District, renders it desirable that we should again see the Great Seal Instruments, and clearly ascertain against whom it is we have authority to proceed, and we shall by that means see whether we have jurisdiction over the offence charged in the indictment, in relation to these persons against whom you are praying the process of the Court.

(The Great Seal Instruments were again examined, and *Allen M'Donnell*'s and *John Siveright*'s approved. *Seraphim Lamarre*'s being in the hands of the Chief Justice, enquiry was made, whether the Attorney-General prayed process against him, and the Court were answered, that Lamarre had died lately at Montreal. Relative to *Peter Pangman*, alias *Bostonnois*, the Attorney-General remarked, that as there was another Indictment pending against him, he should not move for process at the present moment in regard to him. In the cases of *Alexander M'Kenzie, Hugh M'Gillis, John M'Laughlin*, and *Simon Fraser*, the instruments were approved, and the Attorney-General stated that against them he moved for process. *Paul Brown*'s was the next, and the Attorney-General remarked, that he was in custody. *Louis Perrault*, alias *Morain*'s being examined, the Attorney-General said he was in a similar situation to *Peter Pangman*, and he did not at present move for process. The instrument transmitting *John M'Donald* was then examined and approved.)

Chief Justice.—I observe that an indictment has been returned by the Grand Jury against Cuthbert Grant, and William Shaw, for arson; is there any instrument transmitting the offence of arson against these individuals?

Attorney-General.—I pray the process of the Court against Grant, upon the indictment charging him with murder. The Great Seal Instruments transmit the individual named therein generally for trial for all offences.

Chief Justice.—Not to delay the bar, I will state to them that, apprehending that, during the course of the Court

now holding, cases would come on over which we have no jurisdiction, except by a special instrument from the Governor of Lower Canada, under the Great Seal of the Province, and also believing that important preliminary questions might be started, we have agreed to hear the arguments when we are all together. Our brother Campbell, therefore, has been sent for, and no doubt will be here in a few minutes, when we will hear you.

(Shortly after, Mr. Justice Campbell having taken his seat on the bench, the argument was resumed; the Chief Justice having informed the bar, that he had communicated to his learned brother the nature of the observations which had been made during his absence).

Mr. Sherwood.—If the Crown Officers agree with us as to the facts, that we are sent to this Province for trial, under the Great Seal Instruments from the Lower Province, and that the authority of those instruments is adequate to the putting us upon our trials at this Court, there perhaps will be no objection to our shewing by affidavit, that we have been admitted in Lower Canada to bail upon these charges, and that in furtherance of the recognizances taken there, we are now here, anxious to receive our trials. I would wish to know of Mr. Attorney-General whether, (if allowed by your Lordships), he has any objection to admit affidavits from these Gentlemen to that effect, viz. that they are under recognizances to appear here, and that in point of fact they do appear. If it is not assented to, I shall proceed with my argument, which questions the right of the Attorney-General to his motion for process of Court.

Attorney General.—I do not conceive that any course is open to me but the ordinary one which I have taken. As to recognizances, I have before said I know of none. I know legally nothing of this case, but what I obtain from the return of the Grand Jury, and upon that I move for process of Court against such of the Defendants as are not in custody, with the exceptions I have before mentioned of Lamarre, who is dead, and Pangman alias Bostonnois, against whom there are other indictments.

Mr. Sherwood.—Then I proceed to argue against this motion of Mr. Attorney-General; and I shall first refer to Mr. Chitty's work upon Criminal Law, as being an authority directly opposed to the motion of Mr. Attorney-General for process to issue, because I take it that if the Great Seal Instruments from the Lower Province are considered as valid, any other act performed by the same authorities must

be equally so, and that these Gentlemen are here under recognizance, results from their having been admitted to bail under the authority of the Governor-General, they giving security to appear at any Court which might be held in Upper Canada, and they *do* appear here. But there is another objection to this course of Mr. Attorney-General; the Court is but of one day, and therefore it is a premature motion, the Defendants being entitled to the whole session to make their appearance in, because such is the tenor of their recognizances. Both these positions are maintained by Chitty, vol. 1, page 342. "The practice in issuing "bench-warrants, (he says,) is, that where the parties "are not under recognizance, the prosecutor has a right, "during the assizes or sessions, to issue process against "them to bring them immediately into Court to answer." This is the course when Defendants are not under recognizance, but Mr. Chitty proceeds to say, "but when the "parties are under recognizance no process can be had "against them during the assizes or sessions, because it is "looked upon in law but as one day, and the Defendant "has the whole to make his appearance." These opinions of this eminent writer are supported by reference to Cro. C. C. 15, 2d Salkeld, 607, and Williams J. word *Process*. All that the Attorney-General can do in such cases is also set forth, and it is this: "In such cases, however, the prose-"cutor may, if the Defendant has not appeared, *bespeak* a "bench-warrant during the assizes or sessions, which will "be issued at the close thereof." Can it, I would ask, be denied, that we are under recognizance admitted by the highest authority which we know in these provinces, that of the Governor-General and dictated by His Majesty's Crown Officers, who I imagine must be allowed to be competent to the taking recognizances which could be acted upon in case of necessity. If then it is agreed, that we are under recognizance, and I do not see how it is to be denied that we are under such as in the Lower Province was esteemed adequate to ensure our attendance, there is, according to the authorities which I have referred to, but one case in which it would be competent to Mr. Attorney-General to mention the subject of a bench-warrant, and that would be to bespeak it, so that it might issue on the last day of the assizes or session, at the moment when default was made by the Defendants not being brought into Court by their bail, in conformity to the tenor of their obligation. But being under recognizance, the course open to Mr. Attorney-General against

these Gentlemen, (and most respectable Gentlemen they are,) is one which I feel persuaded he does not adopt because he can not in his conscience believe it to be necessary. When I say this course is open to him, I mean it would be open after convicting the principals, because I do not admit that before their conviction, it is competent to him to move against the accessaries at all, but in that case the course would be to call the accessaries upon their recognizance, and upon their appearing, to move for their immediate commitment, on the ground that he did not consider it safe to allow them to remain under recognizance; or if they did not appear, to bespeak a bench-warrant to be ready at the end of the assizes or sessions. This is the ordinary, and, as I contend, the only regular, course, and I humbly submit to your Lordships, that it is only in the regular and legal course that these trials ought to be conducted.

Chief Justice.—Certainly, it is only in a legal manner that they shall be allowed to proceed; but they are cases of a very peculiar description, and must be considered in reference to their peculiarities. It is very different arguing upon them, than if they were cases arising at Johnstown, or any where actually in the Home District. Of these recognizances we, at present, know nothing legally, though no question but some obligation was entered into by these Defendants in the Lower Province. It is reasonable that there should have been, but of whatever description they were, the persons making them stood in a very different situation then, to that in which we find them at the present moment. The temptation to fly from justice is much greater now that the Grand Jury have returned as true the Bill of Indictment, upon which Mr. Attorney-General founds his motion, and when I look at that and the great facility of escape that exists, I can not make any difference, or allow that there is any greater security to be found in the respectability of these Defendants. Nothing but general principles ought to influence us, principles which apply with equal force to all classes of persons, and one of those is, that the desire of preserving life is equally strongly planted in every man's bosom. Upon the legal question of right in the Attorney-General to move for process against individuals, after the Grand Jury have returned as true, bills of indictment against them as accessaries to murder, there can be no question, or indeed against any person, no matter what the offence, if he is not under recognizance. These Defendants are not under any recognizance, and, therefore,

can not be considered as being in Court. I never saw a single case wherein, upon motion of the Attorney-General, process was not issued as a matter of course, but with much less propriety can it be refused after a verdict or finding of a Grand Jury has declared that an accusation of an unclergyable offence is true. I never have seen a single instance wherein, (even in light offences,) a Grand Jury have returned a bill as true, and the Defendant has unadvisedly entered the Court, and the circumstance was officially communicated, but that the Court, whether it was a judge or justice presiding, detained that person, if called upon to do so.

Mr. Sherwood.—If we are driven to the necessity, we must contend against the power of your Lordships to issue process against any person for offences committed in the Indian Territory; but for the present we shall only respectfully affirm, that that can not be done against accessaries till the principals are convicted or attainted, and not at all if they are under recognizance, because it is the incipient step to outlawry, to which Mr. Attorney-General could not, from the circumstances of the present case, proceed, and we are prepared with strong authorities on these points.

Chief Justice.—A great deal of law learning entirely new to me is produced about process, that because capias may be followed by outlawry, therefore it cannot issue against these persons.—Exigent we know must remain, as relates to accessaries, until such as be appealed or indicted of the deed be attainted by outlawry or otherwise, but that is not to restrain issuing of process against any persons indicted by a Grand Jury.

Mr. Sherwood.—I beg your Lordship's pardon, but if it is new learning, I find the same in Hawkins, who confirms Chitty. In Book 2d, cap. 27, which is the first of his chapters on *Process*, he says, "For the better understanding "the nature whereof, (having premised that it seems plain "from the nature of the thing, that there can be no need "of it where the Defendant is present in Court, but only "where he is absent,) I shall consider it in general, without "any particular regard to process of outlawry, and also in "particular with regard to such process only." Here then, I submit to your Lordships, that neither with a view to outlawry, nor the reverse, can process issue against Defendants who are in Court. And in another part of this chapter, sect. 19, he lays down, that "a Defendant, having appeared to "an indictment or appeal of felony, and afterwards, before "issues joined, whether from his bail or from an actual

" prison, the common *capias alias* and *pluries*, &c. shall be " awarded, unless there had been an *exigent* before, &c." But here is no escape pretended on the part of Mr. Attorney-General, and I may presume that, as there is no necessity set forth for granting process, the Court will refuse it, and I humbly submit, that in producing Hawkins to your Lordship, I exhibit an authority on which I may rely.

Chief Justice.—So you may, and so do I, and should perhaps, in this instance, if I was not aware that the practice upon the law of exigent and process to outlawry, had been changed. The rule is, that *capias* must issue in all cases of felony, both against principals and accessaries, and when the proceedings require an exigent, that then it becomes matter of consideration who are principals and who are accessaries, that the proper course may be pursued in relation to both. It is our constant practice, and the Act upon which the indictment is founded, directs, " that " offences committed in the Indian Territories shall be, " and be deemed to be, offences of the same nature, and " shall be tried in the *same* manner, and subject to the " same punishment, as if the same had been committed " within the Province of Lower or Upper Canada." We shall, therefore, be governed by the rules we have been accustomed to observe, and I see no reason why process should not issue against persons whom a Grand Jury declare, have, in their judgments, committed an unclergyable offence. What if none of the principals were ever tried! Could not against the accessaries to a murder, committed in this district, process issue, though the principals never could be brought to justice?

Mr. Sherwood.—In that case there could be no doubt it would be a legal step. But that is not the present case. Two of the principals are in custody, and although it might be a question, whether any, or what, process should issue against accessaries, till all the principals were convict or attaint, yet I presume to offer that, till the principals actually in custody are convicted, it is not competent to the Attorney-General to move to commit these respectable Gentlemen, who are charged as accessaries, to the number of eight or ten, and who are anxious for their trials, and present themselves in Court. Why, I ask, should the Attorney-General move against ten or twelve Gentlemen charged as accessaries before the fact——

Chief Justice.—Oh no, there are only four who are charged as accessaries before the fact.

Mr. Sherwood.—I beg your Lordship's pardon, but it was the accessaries after the fact that I meant.

Chief Justice.—I mentioned it, because there is a great deal of difference between accessary before, and after, the fact; the one is a clergyable offence, the other unclergyable, and that makes a great difference as to the object of issuing process, and may perhaps as to the effect upon the Defendants. Their situations appear very different to me at the present moment, though not so as to render it unnecessary to bring them all into Court, after the Grand Jury have said, that they are accessaries before, and after the fact, to murder. There are, however, but four accessaries before the fact.

Mr. Sherwood.—There are not, my Lord, and in mentioning the names of the Defendants, the error would have appeared evidently the effect of accident. I contend, however, most respectfully, that the return of the indictment as a true bill by the Grand Jury, does not at all alter the situation of these Gentlemen, nor of any person who is included. Brown and Boucher, the principals in this charge, are, in the eye of the law, innocent at this moment, notwithstanding the Grand Jury have returned them as principals in the first degree. It is therefore incumbent on the Crown to convict them at least, before it seeks any step against those whose liability to be tried depends upon the conviction of the principals. I am aware that repetition is not argument, yet I can not refrain from again saying, that they are here. But if they were not, as the Court is but of one day, I contend they have the whole to appear in. The course, and, as I humbly submit to your Lordships, the only course that is legal, is to call them over, and if they do not answer, let Mr. Attorney-General, if he thinks it necessary, bespeak a bench-warrant; but they are here, and will answer if called. I would ask, how is it to be known that they do not fulfil their recognizance of appearing here, unless they are called upon to appear? I know of no case, nor do I think the learned Attorney-General can point out one, in which process of Court has been sued out against individuals in similar situations to those in which these Defendants stand, against accessaries, before a single principal is convict or attaint, (though some of the principals are in custody, and have been so too for an extraordinary period; upwards, I believe, of two years), against accessaries who, to fulfil their recognizance, have come here, and at the very moment that Mr. Attorney is suing

out processes to bring them into Court, are actually within its walls. The usual course is to move for process to bring A, B, or C, into Court, and then to commit them to prison; but there can be no reason assigned for issuing process to bring persons into Court who already are before it.

Chief Justice.—All this is mere affirmation, and does not bear at all upon the question. We know nothing of any recognizances, nor of Defendants before the Court, and it is therefore idle to talk about them. The Attorney-General does not admit that there are any recognizances, and he therefore wishes to bring before the Court persons whom a return of the Grand Jury declares to be guilty of murder, as principals and accessaries.

Attorney-General.—I did hope, my Lords, that I had stated, with sufficient distinctness, that I knew of nothing in this case to render a variance from the ordinary course necessary. I repeat, that I admit that certain papers have been transmitted to me from the Lower Province, purporting to be recognizances entered into by certain persons who were accused of having committed various offences in the Indian Territories, the tenor of which were, that they were to appear at the next Court of King's Bench, to be held in the district of Montreal, in the following September, or at the next Court of Oyer and Terminer which might be held in that district, or in any part of His Majesty's Province of Upper or Lower Canada, where crimes and offences committed in the Indian Territory, &c. might legally be heard. These recognizances were entered into in 1817, binding persons to appear at the next Court of Oyer and Terminer which might be held in any part of the two provinces, but they are perfect absurdities for me to file, and endeavour to act upon in October 1818. I therefore declare, that I know nothing of any recognizances by which I can compel these Defendants to come into Court, and I therefore move for process to attain that object.

Mr. Sherwood.—Then, I take, may it please your Lordships, a very different course. My objection to the motion of Mr. Attorney-General will remain, but it will be on very different grounds that I oppose it. I shall contend, that it is only by the Authorities of Lower Canada having exacted bail from them, that these Gentlemen are bound to appear here at the present moment, as also that it is only by the Great Seal Instruments of the Governor in Chief, that the Attorney-General is authorized to put them upon

their trials. I contend, if the one is a good and valid authority to put them upon trial, the other, which admitted them to bail, must necessarily be so, and must be equally acknowledged by your Lordships. Then, if the Attorney-General has not been premature in delivering bills to the Grand Jury against these Gentlemen, if he has not prematurely acted upon the documents received from the authorities of the Lower Province, he must, to be consistent in his admissions, receive their other acts in relation to these offences. He must admit that they had the right to bail the offender, and take recognizance for his appearance, as well as the power to transmit his offence to Upper Canada for trial, and therefore must proceed to ascertain whether they fulfil the obligation they severally entered into by calling them in Court, and if they make default this morning, he can only bespeak process against the defaulters, in as much as the Court, or rather Session, is but as one day, and the Defendants are entitled to the whole of it to make their appearance. I submit to your Lordships that, in construing this Act, the utmost strictness is required; that this Court can derive from it no power by implication, no power by inference, but that its authority must be clearly and explicitly shewn on the face of the statute. Adopting this rule, it is evident that the jurisdiction of your Lordships over these Defendants is derived from the Great Seal Instruments transmitted from the Lower Province, and that these documents must be taken *ab initio et in toto*. I will explain myself; these Gentlemen must come before your Lordships under the authority of the 3d section of the Act of the 43d Geo. III. from the Province of Lower Canada, being sent under a broad seal instrument, for it is only by the Great Seal Instrument that they can be sent. If they are not so sent, then your Lordships know nothing of the case in a legal point of view, but have a right to suppose that it is to be tried in Lower Canada, and that the Defendants are there, either as actual prisoners, or under recognizance. Why then has the Attorney-General commenced proceeding against these Defendants, if they are not sent here for trial? and if they are sent, surely it is not a question for Mr. Attorney to raise, when they appear here upon recognizances entered into under the authority of the Governor of the Canadas, whether they were bound to appear under them? If objections were allowed to be made to the forms of these instruments, it ought to be by the Defendants, but cer-

tainly not by the Officers of the Crown. We say at once they are legal instruments, we allow they are recognizances, having full force against us, and we manifest our conviction of their binding nature by presenting ourselves for trial, as by them we and our sureties obliged ourselves that we should do. I should feel extremely mortified, if by any ingenuity of the private prosecutor, or the Hudson's Bay Company, the Attorney-General could be led, or rather misled, to act upon a supposition that these recognizances, taken under the highest authority, are not valid, or that he should be induced to adopt a rigorous course under representations from them, that any advantage would accrue, even were obligations defective. I trust, as nothing can be farther from the intention of the Defendants, that I shall be spared the mortification of seeing my Learned Friend adopt a course that can only result from misrepresentation.

Attorney-General.—Respecting the last observation of the Learned Gentleman, I have only to remark that, in the prosecution of my duty, I shall allow no representations on the one hand or the other, either to lead or mislead me; but in these cases, as I do in every other, I shall act from my own conviction of what is required of me by the public justice of the country, without enquiring who is to be affected thereby. In thus fulfilling my duty, if the Grand Jury return a bill of indictment against persons who are not in the Sheriff's calendar, I conceive myself bound to take the necessary measures to bring the persons so accused before the Court; and I know of no method of doing so, but the regular one of moving your Lordships to issue the process of the Court against them. If your Lordships, when they are before you, shall be pleased to extend to them the privilege of bail, I shall not act so ungracious a part as, on behalf of the Crown, to object to any indulgence which the Court shall consider not incompatible with that security for the attainment of justice which the law requires. But it is from your Lordships, and not from me, that any relaxation of the ordinary practice must proceed; if, when these persons are before the Court, it shall be your Lordships' pleasure to grant their application to be admitted to bail, I repeat, that I shall not act the ungracious part of making, on behalf of the Crown, any objection to the proposition.

Mr. Sherwood.—The Attorney-General mistakes. These Gentlemen are not asking to be admitted to bail, for they

are already under recognizances, and come here in obedience to them; and I humbly conceive it is not the Attorney-General who is to judge whether the recognizances are good or bad, or whether he will act upon them up to their completion. Upon that subject the statute must be made our guide, and the Gentlemen are sent here by virtue of that statute, under recognizance to appear, and answer charges, which are transmitted by the Great Seal Instruments to this Province for trial. I humbly submit to your Lordships, that the consequent question upon the Great Seal Instruments is, are the offenders who are transmitted for trial by them, here? How is that point to be ascertained? The answer is obvious. If they are under recognizance they must be called up to appear. They must have been in custody from the words of the law, for they could not have been transmitted here for trial if they had not, and if they are here under recognizances, I repeat, that it is not in the power of Mr. Attorney-General to prevent the completion of them.

Chief Justice.—We know nothing of any recognizances; there are none produced to us, consequently we can know nothing of them, though they may have been taken in the Lower Province. The Attorney-General at once admitted that he had received papers, but as he did not consider them efficient recognizances, he should not file them, and till they are filed, it is idle to talk about them.

Mr. Sherwood.—Then I submit to your Lordships, whether the indictments and commissions are not incomplete and nugatory. I contend that the transmission of the offender is an indispensable part of the proceedings, and that if the Governor had not been well advised, but has transmitted invalid instructions, the defect is fatal to your Lordships' power. I contend that the offender not being sent here for trial, (for if he is neither in the custody of the Sheriff nor under recognizance, he is not here legally or by obligation), the very first step to give your Lordships power under the provisions of this Act has been omitted, and the instruments are radically defective. But we do not think so lightly of the law-advisers of the sister-province, and we accordingly are ready to answer, whenever called upon to fulfil our recognizances.

Solicitor-General.—I think, my Lords, that the motion of my Learned Colleague ought to be granted, for the reasons that he has stated, nor do I see what the objection of the Learned Gentleman amounts to. We ask of the Court, to

issue process to bring these Defendants legally before the Court, so that we may proceed to their trials. The Learned Gentleman says, they are in Court, and want their trials. Upon their own statement, I see no hardship which is to accrue from our motion being granted; but, on the contrary, we are accelerating the attainment of what they say they are anxious to obtain, viz. their trials. I can not therefore see any hardship that is done to these Gentlemen.

Chief Justice.—We are not talking of hardship; we are enquiring which is the proper course to take upon the bill which the Grand Jury have returned against a number of persons, accusing some of them of murder, and others of being accessaries before and after the fact. The Attorney-General has moved for process to issue to bring them into Court, and I have heard nothing adduced yet (though a great deal of our time has been taken up in talking about it), that goes to show it ought not to issue. There has been a great deal said about recognizances, of which we know nothing, except that the Attorney-General has declared, that certain papers sent to him, were inefficient for the purpose for which they were drawn up and transmitted, for which reason he did not file them; but we have nothing to do with hardships in considering the question.

Mr. Sherwood.—Undoubtedly not. We are talking of law, and we ask no favours, because we want none. We ask of your Lordships to say, whether we *are* here or not, because if your Lordships are against me on that point, I shall consider, as I am obliged to do, the authority of Hawkins nothing. I shall then be obliged to adopt another course. I shall be under the necessity, very respectfully, of denying the power of this Honourable Court to issue any process but a subpœna, under the Act of the 43d of the King. I am extremely sorry to be driven to this necessity, because it is what I was desirous to avoid, and I did not expect that the learned Crown Officers would object to instruments prepared by the law-advisers of the Governor-General of the Provinces of Lower and Upper Canada. But as that course has been taken, I am compelled to deny that this Court can, under the Act which gives it jurisdiction over offences committed in the Indian Territories, issue any process except a subpœna. It has no authority under the Act, to try any but persons sent by the Governor, Lieutenant-Governor, or person administering the government for the time being, of the Lower Province.

(Here the argument was interrupted by the Grand Jury returning true bills of the following Indictments, viz. against

CUTHBERT GRANT,
PETER PANGMAN, *alias* BOSTONNOIS,
JOSEPH BRISBOIS, and
PAUL BROWN,
} *for larceny on a navigable river, on the* 12*th May*, 1816, *at Rivière Qui Appelle.*

GEORGE CAMPBELL,
DUNCAN CAMERON,
CUTHBERT GRANT, and
WILLIAM SHAW,
} *for maliciously shooting at Miles Macdonell and others, on the* 11*th June*, 1815.

The Grand Jury having retired, the discussion was resumed).

Chief Justice.—If you wish to be heard further, you can; but as the Court is at present advised, we do not see that it will alter our opinion, which is, that whenever, under the 43d of the King, an offence charged to have been committed in the Indian Territories, is transmitted to this Province, by an instrument under the Great Seal of the Province of Lower Canada, declaring it to be more conveniently tried here, the Court of the Upper Province becomes possessed of every jurisdiction, power, and authority over the offender, and must proceed in precisely the same manner as if the crime had been charged to have been committed in the district. Therefore, upon an indictment for felony upon this statute, process to apprehend the offender charged therein, must issue, if he is not already in custody. In cases arising from this Act, and in the present case particularly then, we know nothing whether the accused are here or not, but by the calendar. If they are not in custody of the Sheriff, they must be brought into Court by process, or if they are in Court, and declared to be so, they must be committed or bailed here. We have, as far as the Great Seal Instruments are concerned, only to see that they transmit the offence for trial here, of which the Grand Jury accuse the Defendants, and that for the purpose of satisfying ourselves we are intended to have or exercise jurisdiction over it, and the moment we are satisfied that the offence was transmitted for trial to this Province, it follows, as a matter of course, that we have jurisdiction to apprehend the offender. It might perhaps have been a question, how far the Grand Jury might feel that they were authorized, but

they undoubtedly, by proceeding to examine and return the bill, have thought, and indeed been satisfied, that they had cognizance, and upon their coming up into Court and returning as true a bill, accusing a number of persons of felony and murder in different degrees, it was competent to the Attorney-General, instantly to move for process to apprehend such as were not in custody, and this Court would certainly have granted his motion, or have committed them, if he had declared they were within the walls of the Court. Till the Grand Jury had made its return, the Court would not have done so, though it might have been represented that they were persons accused of having committed offences in the Indian Territories, which were transmitted here for trial, because then we had no legal knowledge of the offence or offender; but now we have of both. Relative to the bailing of these persons, or the admitting them on recognizance to appear, the principals in murder cannot be bailed, and why should accessaries before the fact? It is a crime from which the benefit of clergy has been taken away, and very properly so too. The opinion of the Court is therefore, that against the persons not in custody, and therefore not before the Court, Mr. Attorney-General is entitled to his motion, and that the usual process must issue.

Mr. Sherwood.—I do not know whether your Lordship has given the final judgment of the Court, but if not, I would beg to make one or two observations, and I believe I am not out of time, as I think your Lordship commenced your observations by stating that we might be heard further if we wished. I would therefore, under permission of the Court, submit that the Governor-General cannot transmit any offender for trial to the Upper Province, who has not been in custody in the Lower; it is therefore, from his transmitting these persons hither, evident that they must have been in custody, and have been admitted to bail, for they could not be sent without having been in custody, and if they are not so at the present moment, it must be because they are under bail.

Chief Justice.—It is needless to pursue that argument, as we differ with you completely. In our opinion, it is the offence, and not the offender, which is transmitted by the Great Seal Instrument, and in transmitting the offence, jurisdiction was necessarily given over the offender, so that when the Grand Jury found that the offence had been committed in the Indian Territory, by the person named in the

indictment, we had the same power over the person of the offender, as if the offence had been committed within the Home District. It is the offence which the Great Seal Instrument declares can have justice more conveniently administered in relation thereto in the Upper, than in the Lower, Province, and that declaration necessarily includes in it a jurisdiction over the person of the offender.

Mr. Sherwood.—The words of the statute, my Lord, are so strong, that I hardly think I can be mistaken in saying, they expressly mention that it is the offender who is to be transmitted for trial, and not the offence. From the title to the last section, it is throughout an Act providing for the trials and punishment of persons committing offences in the Indian Territories. It is entitled, "An Act extending the "jurisdiction of the Courts of Justice in the Province of "Lower Canada, and Upper Canada, to the trial and pu- "nishment of persons guilty of crimes and offences within "certain parts of North America adjoining to the said "Provinces." The preamble merely declares the occasion that exists for passing the Act, and the first enacting clause declares offences committed within the Indian Territories are to be deemed of the same nature, as if they had been committed in the Province of either Lower or Upper Canada. In the second section there is something so peculiar, that I must read a part of it.

Mr. Justice Campbell.—You had better read the whole.

Mr. Sherwood then read the whole of sect. 2d.—I would ask, my Lords, why Commissioners were sent into the Indian Territory? Why was the Proclamation of His Royal Highness the Prince Regent issued, if it was not to bring offenders to justice? and why were these offenders to be brought to one of the two Provinces of Canada, but that they might be prosecuted and tried under this Act? In the first instance, jurisdiction, or the original jurisdiction, is given to the Province of Lower Canada by the Act of the 43d. It will be found in the 3d section, "And be it fur- "ther enacted, that every such offender." I beg the Court's attention to this part, as completely supporting the observations I have had the honour to submit; the words are, "And be it further enacted, that every such offender "may and shall be prosecuted and tried in the Courts of the "Province of Lower Canada (or." Now comes the paragraph which gives power to this Province, "or if the "Governor, Lieutenant-Governor, or person administering "the government for the time being, shall from any of the

" circumstances of the crime or offence, or the local situa-
" tion of any of the witnesses for the prosecution or de-
" fence, think that justice may be more conveniently admi-
" nistered in relation to such crime or offence in the Pro-
" vince of Upper Canada, and shall, by any instrument
" under the Great Seal of Lower Canada, declare the same,
" then that every such offender may and shall be prosecuted
" and tried in the Court of the Province of Upper Canada)
" in which crimes and offences of the like nature are usually
" tried, and where the same would have been tried, if such
" crime or offence had been committed within the limits of
" the Province where the same shall be tried under this Act;
" and every offender tried and convicted under this Act,
" shall be liable and subject to such punishment as may by
" any law in force in the Province where he or she shall be
" tried, be inflicted for such crime or offence."—Your Lordships cannot fail to remark, that the words made use of, are "*the offender*" and "*such offender.*" What offender? why, unquestionably the offender who, in conformity to the 2d section, had been apprehended, and safely conveyed to Lower Canada, and there delivered into safe custody, to be dealt with according to law. These Gentlemen, therefore, have been in the custody of the Governor-General of Canada, and are transmitted here by him for trial; and if they are not on the calendar of the Sheriff, as prisoners within the wall of the gaol, it must be because they have been admitted to bail, and therefore are under recognizance. They are so, and in fulfilment of it appear here. This, I submit to your Lordships with great deference, does not correspond with the construction which the Court has given to the Act.

Chief Justice.—I must construe the law so as to give it effect; there can not, I suppose, be two opinions on that point.

Mr. Sherwood.—Not by inference, I should apprehend, my Lord, and according to the actual words of the statute, these Defendants must have been in actual custody of the Governor of Lower Canada, and in point of law, actually are so at this very moment, they being under recognizance. He has transmitted the whole of these Defendants to this Province for trial, either under guard or under recognizances, as to his discretion appeared necessary. These persons then, I contend, must be here before Mr. Attorney-General could take one step against them. If they are not here under recognizance, they are not transmitted at all, because they

are not in custody of the Sheriff. The learned Crown Officers can not say these persons are transmitted here for trial by the Governor of Lower Canada, (whose peculiar province it is, when he thinks justice may be more conveniently administered in relation to crimes and offences committed in the Indian territory in Upper Canada, so to transmit the offenders,) unless he also admits that they have given recognizances. Then we ask to be called upon these recognizances, and we will demonstrate that we are here to fulfil the obligations entered into, and thereby relieve our bail. If the Attorney-General does not admit the recognizances, then the Great Seal Instruments are defective, and no step can be taken upon them at all. The Court will certainly infer, in my humble judgment, that every thing was done correctly in the Lower Province, and the more so, when we consider the high authority under which the Great Seal Instruments and other documents are prepared. I submit that the Attorney-General ought not to call upon your Lordships to infer that error has been committed, because, if it has, we not only are not bound to appear, but we actually are not sent here for trial, according to the provisions of the Act. The natural consequence of which must be, that the Attorney-General was not authorized to commence proceedings against us, because the Governor of Lower Canada had not delivered us from his custody to that of the Upper Province.

Solicitor-General.—The Court, I imagine, my L[illegible] will not *infer* any thing, and for this reason, that they are [illegible]ly able to hear and determine according to law. If upon this particular Act any difficulty arises, your Lordships will undoubtedly give such a construction as the necessity of the case requires, or, as was remarked by his Lordship the Chief Justice a few moments ago, you will construe the law so as to give it effect.

Mr. Sherwood.—Upon the general principle we perfectly agree, but I differ from my Learned Friend, the Solicitor-General, in the application of that principle. As to the construction that is to be given by your Lordships, being such as the necessity of the case requires, which Mr. Solicitor-General urges upon the Court, I beg to say, I do not admit the doctrine of *ex necessitate rei.* Necessity makes no law in a Court of Justice; it is the Parliament who make laws, and Courts administer them; but I hope we are not to hear of their being construed according to the necessity of any particular case. So much for the application of my

Learned Friend's principle, that the Court ought not to *infer* "any thing, but to hear and determine according to law," in which I concur: and for his argument or application of that principle, that your Lordships are to be guided in so doing by "the necessity of the case," from which I dissent. It appears to me to be a singular coincidence of circumstances, that the Crown Officers should dispute the goodness of recognizances which we admit, and to which we yield obedience. This Court, I imagine, will not be satisfied with Mr. Attorney-General's merely saying, that the recognizances are not capable of being enforced. It would, my Lords, be to throw great discredit on the law-advisers of the Governor of Lower Canada, to admit, that in cases of so much importance, they have taken recognizances which are so many pieces of waste paper.

Chief Justice.—We know of no recognizances; there are none produced to us, we can therefore know of none.

Mr. Sherwood.—Will the Court allow us to make affidavit that we are under recognizances, and that we are now in Court to take our trials, in obedience to the obligation we entered into in the Lower Province?

Chief Justice.—We have nothing to do with any recognizances entered into in the Lower Province. We know nothing about them, nor do we want to know, unless they are produced to us.

Attorney-General.—There is one thing which I forgot to mention. The Act, in its second section, directs that all offenders shall be sent to Lower Canada, there to be dealt with according to law. It is unquestionably to the Courts of that Province that original jurisdiction is given; there is, however, afterwards a limiting clause, by which power is given, upon the Governor of that Province declaring that justice may be more conveniently administered in the Upper Province in any particular offence, to prosecute and try the offender in the Court of the Province of Upper Canada, in which crimes or offences of a like nature are usually tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the Province, where the same shall be tried under this Act, and the offence may and shall be laid to have been committed within the jurisdiction of the Court where the trial is to be had. It is known to all of us that, at the time of the division of the Province of Quebec, a Legislature was given to each, with power to make such laws for the good government thereof, as were not repugnant to the act which

created them. From the tenor of this Act, in relation to the two provinces, it appears to have been understood in England, that each province had its peculiar laws, by which its jurisprudence was regulated, and the Act therefore declares, that at whatever Court in each province any offence committed therein is accustomed to be tried, a similar offence committed in the Indian Territory shall be tried. It appears, however, not to have been understood in England, what the differences were that exist between the two provinces, or what were the particular forms under which prosecutions are conducted; it therefore provides under this Act only, that offences committed in the Indian Territory shall be laid as having been so within the jurisdiction of the Court. In offences committed out of the realm of England, but for which the offenders are tried in England, the offence may be charged to have been committed in any county, and shall then be tried by a jury of that county in which the offence is so charged. I have therefore adopted a similar course, and have not charged the offence to have been committed in the Indian Territory, but in the Home District, at the town of York, the obvious consequence of which is, that it is charged to have been committed within the jurisdiction of this Court. These observations I think it my duty to submit, as explanatory of the views which have guided me in the course I have taken in these cases. I have considered that, the moment we had authority to enquire into an offence committed in the Indian Territory, power over the offender must necessarily be given, and I have in all the cases submitted to the Grand Jury, laid them to have been committed at York, in the Home District. In reference to the question immediately before the Court, I have no desire to supply more than what I ought to disclose, and as little to throw discredit on the law-advisers of the Governor of Lower Canada, but in my own justification, for what might otherwise appear to be an unnecessarily harsh course, I must be permitted to state, that I did not consider the recognizances sent to me efficient instruments upon which, in case of necessity, I could compel the individuals who had entered into them to come before the Court. That the opinion I formed was not incorrect, will, I think be apparent, when I state they were taken in the year 1817, in the month of March, I believe, and bound the parties, that the principal in the bond should appear at the next Court of King's Bench, to be held in the district of Montreal, in the month of September then following, or at the *next* Court of Oyer

and Terminer, which may be held in the said District, or *in any part* of His Majesty's Province of Upper or Lower Canada. Since the period at which these bonds were taken, there have been several Courts of Oyer and Terminer in the various Districts of this Province; I could not, therefore, force an appearance here by bonds which only obliged those who entered into them to appear at Courts which had already been held, and some of them were not even signed; I therefore could not but view them as instruments which were totally insufficient. As far as I am at liberty, consistently with my duty, to act, I have no disposition to be rigid, nor shall any rigour be exercised on the one hand, or laxity admitted on the other, but as I may consider them to be compatible with the attainment of substantial justice between the Crown and the accused. If in the present instance the Court think they can do it, I shall certainly not be so ungracious, as to object to the Defendants being admitted to bail. I feel I have done my duty when I bring them into Court, and whatever indulgence your Lordships consider it right to extend to them, will be acquiesced in on the part of the Crown. I do not deny that some, and I believe the whole, of the accessaries, have been admitted to bail in the Lower Province, though I did not feel myself warranted in filing the recognizances, for the reasons I have submitted to your Lordships.

Chief Justice.—If you allow that they were admitted to bail in the Lower Province, it will certainly have great weight, as far as some of the Defendants are concerned, but not in those cases in which the humanity of the law does not interfere in case of conviction. As no pecuniary sacrifice can be set in competition with a man's life, I can not take any step that shall hold out a temptation to escape from justice. Principals in murder can not be bailed, and why should accessaries before the fact, who in case of conviction are liable to the same punishment, be admitted to bail? The benefit of clergy has been taken away from accessaries before the fact; they are made to stand in precisely the same situation, in case of conviction, and they must do so after an indictment has been returned by a Grand Jury a true bill. We are bound to grant the motion of Mr. Attorney-General, and the accessaries before the fact equally with the principals must, when taken by the process, be committed. We can not think of bailing persons against whom, if convicted, the Court could not withhold the capital punishment of death. Relative to the accessaries after the fact, if convicted, they would have their

clergy, and their punishment thereby diminishing. I have no objection, if the Crown Officers, who are acquainted with the particulars of the charge, assent to it, to admit them to bail; but it must be in such amount of recognizance as is not only satisfactory to Mr. Attorney-General, but also calculated, from its extent, to ensure the attainment of justice. As to the recognizances which have been spoken so much of, we know nothing of them, they are not before the Court, and even if they were, could not be enforced. Upon the principle of difference between clergyable and capital felonies, and in deference to the example set by the sister-province, if the Defendants, who are accessaries after the fact, surrender themselves, and have bail ready, to the satisfaction of Mr. Attorney-General, it shall be received, but against the others process must issue.

Mr. Sherwood.—I beg to mention to your Lordships, that the accessaries before the fact were, after a review of the whole of the charges had been taken by the law advisers of the Governor-General, admitted to bail in Lower Canada.

Chief Justice.—I have nothing to do with that. I have no objection to follow the example set by the sister-province, where it was indulgent to the accused, as far as I can consistently with my duty, but no example on earth can influence us, or release us from the imperious duty of not allowing, for a moment, any thing that shall lessen the certainty of persons accused of unclergyable offences being brought to trial. If convicted, we could not withhold the sentence of death, and we have no right to consider any pecuniary bond adequate to ensure the trial of persons so accused.

(After some conversation, the Attorney-General consented to the Accessaries after the Fact, being admitted to bail, themselves each in the sum of Five Hundred Pounds, and two sufficient sureties in the sum of Two Hundred and Fifty Pounds each. Upon the sums being named, the Chief Justice remarked, that he had no objection, but he should have gone higher, had he fixed the bail, and then directed that the Defendants should not be admitted to be bound for one another. Messrs. *Alexander M'Kenzie*, *John M'Laughlin*, *Hugh M'Gillis*, *John M'Donald*, and *Simon Fraser*, severally surrendered themselves and gave the required bail).

PAUL BROWN and FRANCOIS FIRMIN BOUCHER, two of the Principals accused of the Murder of Mr. Semple, and others, were then put to the bar, and arraigned upon the Indictment, (Appendix B).

Mr. Sherwood.—Before the prisoners plead, they pray the Court to appoint them Counsel; and they ask that Mr. Livius Sherwood, Mr. Baldwin, and myself, may be assigned them as Counsel.

(The Court directed an entry to be made, that, upon application of the prisoners to the Court for Counsel, the three Gentlemen above named were assigned to them. The prisoners then severally pleaded *Not Guilty.*—The Court enquired of the Attorney-General when he would be ready to proceed with the trial: he intimated, that for himself, he was ready at any time, but as the *Earl of Selkirk* was deeply interested in the result of these accusations, and had given a great deal of attention to the investigation, he did not wish, in the absence of his Lordship, to put these men on their trial; he understood that the *Earl of Selkirk* was confidently expected to-morrow or Sunday, and he hoped therefore, if their Lordships were ready, to proceed with it on Monday. The Court, in stating that they should be prepared to enter upon it on Monday, took occasion to remark, that the trial could not be delayed on account of *Lord Selkirk*'s absence, if the Crown was ready to proceed. As it was, it made no difference, seeing that till Monday the Court could not take up any of these cases on the 43d of the King. The Court then proceeded to the ordinary business of the District, it being understood that nothing would be done in the cases from the Indian Territory till Monday, the 26th instant).

Monday, 26th October, 1818.

PRESENT:

His Lordship Chief Justice POWELL,
The Honourable Mr. Justice CAMPBELL,
The Honourable Mr. Justice BOULTON, and
WILLIAM ALLAN, Esquire, Associate Justice.

The Grand Jury returned true Bills of Indictment against

GEORGE CAMPBELL, ROBERT GUNN, and HECTOR MACDONALD, for maliciously shooting at Miles M'Donell, James Sutherland, Peter Fidler, John Warren and Archibald M'Donald, in a dwelling-house of the Rt. Hon. the Earl of Selkirk, on the 25th of May, 1815. (Appendix G.)

CUTHBERT GRANT, LOUIS PERRAULT, PAUL BROWN, and FRANÇOIS F. BOUCHER,	as Principals;
ALLEN MACDONELL, JOHN SIVERIGHT, SERAPHIM LAMARRE, and PETER PANGMAN,	as Accessaries before the Fact; and
ALEXANDER MACKENZIE, HUGH MCGILLIS, JOHN MCDONALD, JOHN MCLAUGHLIN, WILLIAM SHAW, JOHN SIVERIGHT, SIMON FRASER, ALLEN MCDONELL, SERAPHIM LAMARRE, and PETER PANGMAN,	as Accessaries after the Fact.

for the Murder of Alexander M'Lean, on the 16th of June, 1816. (Appendix H.)

PAUL BROWN,	for robbery in a dwelling-house, and stealing from William Corrigal, (Appendix I.)

Attorney-General.—In the case of the King against Cuthbert Grant, George Campbell, and the others who are either principals or accessaries before the fact, on the indictments just returned by the Grand Jury, I move that the process of the Court do issue.

Chief Justice.—Let capiases issue. This day I understood to have been specially appointed for the trials upon indictments under the 43d of the King. Are you ready, Mr. Attorney-General?

Attorney-General.—I am ready, my Lord. I take the charge of murder against Boucher and Brown, two of the principals who are in custody. The charge which I propose now to try them on, is for the murder of Governor Semple.

(The prisoners were accordingly put to the bar.)

Mr. Sherwood.—In that case I move the Court to admit one of the accessaries before the fact to bail; he is at present in custody, having been taken on the capias. I humbly apprehend that there can be no question as to the regularity of this motion, nor do I see any reason upon which it ought to be refused.

Chief Justice.—The question is already decided. It was refused the other day.

Mr. Sherwood.—I beg the Court's pardon, but I submit that we stand now in a very different situation. At that time Mr. Attorney-General stated to your Lordships, that he moved for the process of the Court in order to bring us before it, and I understood that till the capias brought us here, we could not be heard, because, although within these walls, yet in point of form, we were not before the Court. We are now here upon the process, and I move that Mr. John Siveright be enlarged upon bail.

Chief Justice.—Well, let us hear on what grounds.

Mr. Livius Sherwood.—The statute of Westminster the 1st my Lord, which distinctly states, "Those who are "accused of the receipt of thieves or felons, or of com- "mandment, or of force, or of aid of felony done, shall be "replevisable," &c. Second Hawkins, my Lord, page 159,—

Chief Justice.—So they were formerly, but you will find an Act afterwards, repealing that which you mention.

Mr. L. Sherwood.—Was there, my Lord? I was not aware of its being repealed.

Chief Justice.—Yes, it was repealed, and the statute makes the course the same as at common law.

Mr. Sherwood.—I beg to represent to your Lordships, that the words of Serjeant Hawkins, in explaining the Act of Westminster 1st, are, "all accessaries, whether to ho- "micide or any other felony, are bailable till the principal "be convicted or attainted, and even after, on pleading to "the indictment." I refer to Hawkins as decisive authority. 2d Hawkins, Pleas of the Crown, page 159, sect. 53. "As "to the branch concerning those who are charged as ac- "cessaries, which is in the following words, 'those who "'are accused of the receipt of thieves or felons, or of "'commandment, or of force, or of aid of felony done, "'shall be replevisable, &c.'—it is observable, that not- "withstanding the statute mentions only those, those who "are accessaries to a felony any other way, as by persua- "sion, or any procurement, or abetment, have always "been taken to be within the equity of it, and most of the "books relating to this matter, seems generally to hold, "that all accessaries, whether to homicide," (the very case here, and there is no exception made relative to it, *all* accessaries, is the word,) "to homicide, or any other "felony, are bailable till the principal be convicted or at- "tainted, and he goes even much farther than this, for he

says, " they are bailable even after such conviction or at-
" tainder, upon their pleading to the indictment," and this we have done, "and do not express any limitation or res-
" triction that they be of good fame, or but slightly sus-
" pected, &c." He then quotes a case of "25th Edward
" III. 44, pl. 14, wherein a person appealed of murder, as
" having holden the deceased in his arms while the other
" killed him, was not let to mainprise;" the reason given for it by the reporter is, " because the defendant in a manner
" was principal; for that otherwise being accessary only,
" he ought to have been let to mainprise by the intent of
" the statute." I cite this authority to your Lordship as conclusive, that accessaries, having pleaded, are admissible to bail, and that the usual and ordinary course is to bail them. If your Lordships will take the trouble of looking at this authority, I think you will find it completely satisfactory.

Chief Justice.—I do not wish to see it. I know that formerly it was so, and so does every one else, but that Act has been repealed.

Mr. Sherwood.—I have always considered Hawkins, my Lord, as authority, and I have been reading from him.

Chief Justice.—So have I too, and do so still, but all that you have been reading refers to the law as it stood before the repeal of the Act referred to. Common sense as well as justice, would suggest, that after an indictment has been returned by the Grand Jury a true bill upon a charge which, although once entitled to benefit of clergy, (and then bailable), has since been rendered incapable of receiving it, the humane provisions of the law should vary, according to the different circumstances which the new enactment presented, for it would be an absurdity, that the same rule should prevail relative to a supposed crime or offence, as when it was entitled to benefit of clergy, after that humane provision of the law had been taken away. Bail an accessary for an unclergyable offence, and why refuse the principal? Are not their cases as to punishment the same? Death. It is sufficient for me that twelve men have returned as true, an accusation involving the life of an individual without benefit of clergy, and I consider it impossible to allow him to be bailed under any rule of law.

Mr. Sherwood.—Hawkins, my Lord, goes much farther; he says that until the principals are convicted, or attainted, that they shall be bailed, and even after conviction they shall be entitled to it, if of good reputation.

Chief Justice.—State things correctly, Mr. Sherwood; it does not say *shall* be bailed, but *may* be bailed. It is completely in the discretion of the Court, whether they will bail an accessary or not.

Mr. Sherwood.—I am perfectly aware of that, my Lords, and I humbly move that Mr. John Siveright be admitted to bail. I have never contended for the right in any other way than subject to the discretion of the Court, and under that restriction I present my motion.

Chief Justice.—My own opinion is against your application. The offence which the Grand Jury have returned as a true bill against the Defendant, is one which is not clergyable, and ought not to be admitted to bail. That is my opinion. The Court is full, and you can have the opinions of my brethren upon it. Whatever might have been the practice before the repeal of the benefit of clergy, I consider that, after that period, no person against whom twelve men, as a Grand Jury, return a true bill, ought to be admitted to bail.

Mr. L. Sherwood.—Was it the 31st of Charles, to which your Lordship referred, as repealing the previous law, because the words of the Act I refer to are exceeding strong, that nothing but the want of a good reputation can hinder the person accused of being accessary from being bailed, and a very strong case of murder is adduced as the authority in support of the doctrine for which I contend—

Chief Justice.—The question must be set at rest. My brothers agreeing with me, that bail cannot be taken for an accessary to a crime which is unclergyable, let the prisoner be committed. No injustice is done by this. After the declaration of a Grand Jury, that they consider a man ought to be put upon his trial for an unclergyable offence, the ground I take is, that there are strong presumptions of guilt against one so charged, and he ought not to be allowed to remain, or be placed again in a situation capable of effecting his escape.

Mr. L. Sherwood.—If there is presumption admitted in one case, then there must be in all. Relative to the remarks upon the presentation of the Grand Jury, I humbly conceive, that it amounts to nothing more than an affidavit or information, made on oath I allow, but founded on *ex parte* statements, and therefore not conclusive as to guilt, or alterative of any right belonging to the individual before its return. He is held to bail to take his trial, and the utmost length the return of the Grand Jury goes, is to say, that

it is right the accused should be put to answer, but it does not take from him any right that he possessed before the return. There is only one criterion by which to judge of the admissibility or inadmissibility of an accessary to bail. Is he of good reputation? We say Mr. Siveright is of good reputation; if he is not, let it be shewn; but I humbly contend that, unless that is shewn, he cannot be excluded from putting in bail. I humbly submit, my Lords, that it is a right which he is entitled to.

Chief Justice.—If means were used to bring the question before the Court of King's Bench, there it is in the power of the Court to bail under any circumstances which appear to them to be justifiable; but we are sitting as a Court of Assize, and we do not feel disposed to bail a person charged on the oaths of twelve men with an unclergyable offence.

Mr. Jones.—I might, perhaps, be permitted humbly to submit an authority. It is to be found in Leach, p. 138, Rex *versus* Rudd, by which it is laid down the Court has the power to bail for any murder.

Chief Justice.—What Court has that power? a Court of Assize? Have you any authority for a Court of Assize bailing for murder? What Court does the authority refer to?

Mr. Jones.—To the Court of King's Bench.

Chief Justice.—Nobody questions that it has the power, but what has that to do with a Court of Assize? We told you, that if the question was before the Court of King's Bench, they might bail, if they thought proper, in any case. It is not right to produce authorities referring to another description of Court, and argue upon them, as if they had a bearing upon the question, when they have none whatever. Let the Jury be sworn——

Mr. Sherwood.—I might, perhaps, be indulged by a reference to that great authority, Sir William Blackstone, who, I do think, may be cited as decisive authority on any point upon which he treats; and he clearly allows, that an accessary to any felony may be admitted to bail; nay, goes much farther, they must be bailed upon offering sufficient security, vol. iv. p. 298. After considering, 1st, who are clearly not admissible to bail by the justices; 2nd, others whose bail, from the dubious nature of the offence, appears to be in the discretion of the justices, he says, "the last "class are such as must be bailed upon offering sufficient "security;" such are, "persons of good fame charged "with a bare suspicion of manslaughter, or other inferior

" homicide, such persons being charged with petit larceny, " or any other felony not before specified, or with being " *accessary* to *any* felony."

Chief Justice.—I am sorry to see quotations made from law authorities, when it must be known to the Gentlemen making them, that they can have no influence whatever on the decision of the Court. Hawkins and Blackstone are undoubted authorities, but all that has been cited from them, refers to the law as it stood at a different period, namely, before the statute of Edward was repealed. If, in reading Hawkins, you had gone on a little farther, you would have seen that modern rules have completely changed the practice upon this head. In Hawkins, at the very place where you stopped, you might, (had you read another sentence), have seen, that the doctrine of bailing accessaries *of course*, had been questioned as early as the 21st Edward IV.; and he remarks on the very case cited of the 25th Edward III. " that it may be more reasonable to intend in the above " cited case of 25th Edward III. that such person was " denied the benefit of mainprise by reason of the notoriety " of his guilt; for he says, it seems clear both from the " Register, Fitzherbert and Dalton, that accessaries to " felonies are not to be bailed, unless they be of good " reputation, and if the want of a good reputation, which is, " at the most, but a very slight inducement to presume " them guilty of a particular crime, be a good cause to ex- " clude them from the benefit of mainprise, which is given " them by the general words of the statute, it seems strange " the strong and unquestionable evidence of their guilt " should not much more exclude them from it, especially " considering that it is an allowed rule, that bail is only " proper, where it stands indifferent whether the person " accused was guilty or innocent." But that is not the case in the present instance, for later statutes have put the crime charged beyond the benefit of clergy, and therefore, in case of conviction, it is only the life of the person that can satisfy the justice of the country. Hawkins continues, " and since " later statutes have, in many instances, excluded accessaries " before the fact, from the benefit of clergy, it seems absurd " to say that persons notoriously guilty of being accessary " to the crime, which excludes them from the benefit of " clergy, shall be admitted to bail, whereas, if they had " been committed to prison on the like evidence of guilt as " principals, for felonies within the benefit of clergy, or " even for inferior offences of an enormous nature, they

" could not have had the like privilege." And surely this reasoning is fair and correct. Before the passing of the Act referred to, all accessaries were bailable, but the right having been taken away, it is now a question for a Court exercising its discretionary power, or rather, is a rule for their guidance, that it be " a matter of indifference whether the " person accused were innocent or guilty." The prisoner is charged with an offence from which the right of being bailed is taken away, and it is impossible to say, that it is one of that light description that it is a matter of indifference whether conviction does or does not follow. It is not a good reputation alone which will justify a Court in bailing accessaries. Their guilt must not be notorious, and the reasonableness of this restriction is apparent. " Since" (says Hawkins) " the general words of the statute con- " cerning the replevising of accessaries are agreed to receive " the above-mentioned limitations, ' that they ought to be of " good reputation, and to plead first to the indictment', if " the principal be attainted, why should it not be reason- " able to admit this further restriction; ' that their guilt be " not notorious,' ' which seems admitted to be implied in " most of the other clauses of the statute, which yet are " penned in as general terms as that relating to accessaries.'" This man is charged in the indictment with an unclergyable offence, and the presumption is at present against him, inasmuch as twelve men, on their oaths, have returned the indictment a true bill. The matter, however, is set at rest by the later statute. " But this matter seems at this day," (continues Serjeant Hawkins), " to be put beyond all ques- " tion by 31st Car. II. cap. 2, sec. 21, by which it is " recited—' That many times persons charged with petit " treason, or felony, or accessaries thereunto, are com- " mitted on suspicion only, whereupon they are bailable or " not, according as the circumstances making out that sus- " picion are more or less weighty, &c. &c.' " And thereupon it is enacted, " That no person so charged, shall be " removed or bailed by virtue of that Act, in other manner " than he might before." " From which" (he adds) " it " seems clearly to follow, that where there are strong " presumptions of guilt against a person so charged, he " neither was bailable before that statute, nor is now bail- " able by virtue of it." This man is charged with an unclergyable offence. If he is convicted, he must be executed. It is, therefore, impossible to say that it is a matter of indifference whether he is guilty or innocent, and equally so

to say, that the presumption is in favour of his innocence, when he stands here to answer to the bill of the Grand Jury, which forms our only means at present of estimating the culpability of the accused. Their return puts him to answer to a charge affecting his life, without the humane interposition of the benefit of clergy in case of conviction. By the process of this Court he has been taken into custody, and as there is no pecuniary consideration that can be set in competition with a man's life, this Court is not disposed to admit the prisoner to bail, and thereby put the means of escaping from justice into his power. There are no circumstances that could induce me ever to bail for an unclergyable offence. Nothing but the life of the offender can satisfy the law, and there is no pecuniary obligation that can be equivalent security in such a case, according to my ideas.

Mr. Sherwood.—I beg leave, my Lord, most respectfully to state, that I have read with great, with very great attention, all the law upon the subject that I have a knowledge of, and should be disposed to contend that, the principal not being convicted or attainted, we might, according to strict legal principles, demand to be admitted to bail. The first principle I submit is, "that the prisoner shall be of good reputation," and then it is in the bosom of the Court to bail. The prisoner, in this case, my Lord ——

Chief Justice.—Don't go into the question, it is of no use. We are fully satisfied upon the suoject, that in an unclergyable offence, a prisoner ought not to be admitted to bail. What pecuniary consideration can be put in competition with a man's life? The admitting accessaries in unclergyable offences to bail, was one of the errors of former practice, which is removed or corrected, by later statutes, and very properly too, for it is an absurdity to talk of a pecuniary bond in a case where life is the forfeiture.

(The Jurors were then called, and upon a Mr. Johnson coming to the book to be sworn, he was challenged by Mr. Sherwood, on behalf of the prisoner Boucher. The Chief Justice said, that if the prisoners did not agree in their challenges, they must be tried separately, the pannel of jurors not being large enough to admit of their challenging severally; and as the sense of the thing must be obvious to the Prisoner's Counsel, they must determine either to unite them in their challenges, or the Crown must sever them in their trials. Mr. Sherwood having consulted with the Prisoners, agreed to make it an united challenge).

After various challenges on the part of the Prisoners

and of the Crown, the following Gentlemen were sworn as a Jury:

JOHN WILSON, 3d.	JOHN M'DOUGALL, jun.
GEORGE BOND,	WILLIAM MOORE,
JOSEPH HARRISON,	ALEXR. MONTGOMERY,
JOSEPH SHEPHERD,	PETER WHITNEY,
MICHAEL WHITMORE,	RICHARD HERRING,
JOSHUA LEECH,	HARBOUR STIMPSON.

Counsel for the Crown,

Mr. Attorney-General ROBINSON,
Mr. Solicitor-General BOULTON.

Counsel for the Prisoners,

SAMUEL SHERWOOD,
LIVIUS P. SHERWOOD, } Esquires.
W. W. BALDWIN,

Solicitor-General.—This indictment——

Mr. L. Sherwood.—I beg to submit (with permission) before the Solicitor-General opens the case, that Siveright, who is charged as an accessary before the fact, be permitted to take his trial now with the principals. I believe, though an accessary can not be compelled to go to trial till a principal is convicted or attainted, if he waives the privilege, there is no hindrance to his being included in the trial, although the Jury has been sworn.

Chief Justice.—I do like to march on the old beaten road that I am acquainted with. I know of no case in which a Jury have been sworn to try two persons, and then their duty altered, or any change made.

Mr. Sherwood.—Perhaps it might be considered an analogous case, where a Juror, from sickness occasions a change.

Chief Justice.—That arises from the visitation of God, and is an exception which can not be avoided, but this proposition is no way similar.

Mr. Sherwood.—I should imagine that there could be no objection to the accessary being tried with the principals, if he waives the privilege of not being put to answer till the

principals be convicted or attainted. The rule is in favour of the accused, that he shall not be compelled to trial before the principal is convicted or attainted; but not that he may not go to trial, if he is willing to forego the privilege, and the accessary here wishing it, I see no objection.

Chief Justice.—It is really wrong at this time, to perplex us with a new question. When the Crown offered the course you now ask, you refused it.

Attorney-General.—Upon consideration, I must oppose the proposition of the Learned Gentlemen. It may perhaps raise some new question which may embarrass our proceedings, and involve us in difficulty.

Mr. Sherwood.—I do not press the proposition. I have to move the Court that the witnesses on the part of the Crown may be ordered to withdraw. The Crown have consented that Colonel Coltman, the Honourable Wm. M'Gillivray, and Mr. Simon M'Gillivray, should remain in Court. I have no objections to a similar indulgence being extended to their side, as a return for the courtesy. (The Attorney-General said he did not desire it). The witnesses on the part of the Crown and of the Prisoners then withdrew.

Solicitor-General.—Gentlemen of the Jury. This is an indictment preferred against the prisoners at the bar, Paul Brown, and François Firmin Boucher, for being present, aiding, abetting, and assisting a Mr. Cuthbert Grant, in the murder of Robert Semple, Esquire, and, as you will have perceived from the reading of the indictment, in the Indian Territory. There is, however, nothing different in this indictment to one which charges an offence to have been committed in your own district, only that it is brought forward under an Act of the 43d of the King, which extends the jurisdiction of the Court of this Province, under certain regulations, to the trial of offences committed "in the Indian Ter- "ritories, or parts of America not within the limits of either "of the Provinces of Upper or Lower Canada, or of any "civil government of the United States of America." The circumstances of the case, Gentlemen, will be fully detailed to you by the Attorney-General. If it shall appear to you that the evidence on the part of the Crown does not make out the case, it will be your duty to acquit the prisoners; on the other hand, if the testimony does bring home the charge contained in the indictment, it will be your painful duty to find them guilty. You will attend to the evidence that will be produced, and the directions of the Court, and there can be no doubt but you will give a ver-

dict that will be alike satisfactory and consistent with the justice of the case.

Attorney-General.—May it please your Lordships—Gentlemen of the Jury. As you have just heard from the learned Solicitor-General, the prisoners at the bar now stand before you, charged with the crime of murder in the Indian Territories, and are put upon their trial here under the provision of the statute for transmitting, where considerations of a local or municipal nature, shall indicate that justice may be more conveniently administered in the Upper, than the Lower, Province, any crime or offence committed in the Indian Territory, " for trial to that Court " of the Province of Upper Canada, in which crimes or " offences of a like nature are usually tried, and where the " same would have been tried if such crimes or offences " had been committed within the limits of the Province of " Upper Canada." Original cognizance of offences committed within the " Indian Territories, or parts of America " not within the limits of either of the Provinces of Upper " or Lower Canada, or of any civil government of the " United States of America," is given by the Act of the 43d of the King, to Lower Canada, but authority is given to the Governor, Lieutenant-Governor, or person administering the government for the time being, to transmit, under the circumstances I have before mentioned, by an instrument under the Great Seal of Lower Canada, any crime or offence for trial to Upper Canada. Therefore, Gentlemen, being once informed of this fact, and the Great Seal Instruments being exhibited, you can have no difficulty in considering yourselves, (as in reality you are), impannelled to try an offence committed in your own district, for so the indictment does charge it. Having stated this to you, Gentlemen, my province of advocate is very limited; it is merely to lay before you an outline of the case, which we shall support by evidence. It is not my duty to expatiate on criminal law, or to put this on any other footing than that of ordinary cases; wherever it may differ, you will have the benefit of every assistance from their Lordships. It must be a matter of satisfaction, however, to reflect, that twelve men more completely strangers to the difficulties which have existed in that unfortunate country, men more completely unbiassed, men more anxious for the investigation of truth, could not perhaps have been found. It may, nevertheless, have come within your knowledge, that the Earl of Selkirk, about six years ago, commenced a Settlement in that part of the country, and that difficulties, to which, happily, we

are strangers in this Province, have existed between the traders and others residing there, or following their occupations. I have only, if such should be the case with any of you, Gentlemen, to beg that you will divest yourselves entirely of every recollection of any thing that may have heretofore reached you on the subject, and, impressed only with the sincere desire of rendering impartial justice, attend alone to the evidence which will be exhibited before you, and the charge you will receive from the Bench. Having taken the liberty of offering these preliminary remarks, I shall proceed immediately to place before you a brief outline of the case, and of the nature of the testimony which we shall produce in support of the charge. The Settlement which I have before mentioned to you, Gentlemen, was erected in a country where a number of merchants, associated under the name of the North-West Company, have been accustomed to trade, and its population consisted chiefly of persons who had emigrated from the parent state. They had been settled there for four or five years before this unfortunate and horrid catastrophe of the 19th June, as farmers; they followed their agricultural pursuits, houses were built, their farms were cultivated, and every thing was proceeding according to the ordinary course of a new settlement. In the vicinity of this settlement, at the Forks, as they are called, of the Red River, was a fort called Fort Douglas, which was occupied by Mr. Semple, the unfortunate gentleman whose death is charged in the indictment, and who was the governor of a territory ceded by the Hudson's Bay Company to the Earl of Selkirk. The natural state of the country, Gentlemen, had this infant Settlement experienced no previous disasters, would render it necessary to have a place of strength in its neighbourhood, and this fort was such, being constructed at the Forks of the River Assiniboin and Red River, contiguous to the farms, and serving as a residence for the Governor, Sheriff, and other officers of the colony. A few miles below this fort was the Settlement, extending along the Red River for the space of two or three miles, in the same way as settlements or new villages do here. It will appear in the course of this trial, that from some reasons which the witnesses will detail to you, apprehensions of the most serious nature had for some time been entertained, that the Settlement was to be attacked. On, or a little before, the 19th June, it is certain that considerable alarm existed on this subject, owing to intelligence which Mr. Semple received, that the

Indians, and Bois-brulés, at the instigation of the French traders, (the name by which the North-West Company are distinguished in that country), were about to attack and destroy the Colony. This information caused them to be much upon the watch, and as will be fully detailed to you by the first witness we shall call, in the evening of the 19th June, a report was made by the person at the watch-tower, that a number of persons on horseback, to the extent of about forty, were passing the fort at some distance, and going towards the Settlement, which, as I have before observed, extended about three or four miles below. Upon this report being made, Mr. Semple took a spy-glass, and went to the look-out station, whence he perceived that a great number had actually passed the fort, mounted on horseback, and were going towards the Red River Settlement, which, being a very unusual circumstance, led Mr. Semple to fear that the information he had received of an intended attack, was but too correct. It is material to mention to you, Gentlemen, that these persons were painted and armed more than is usual. Their being painted and disguised forms a very material fact, because it shews a premeditation to commit hostilities, it not being the custom of the Indians and Bois-brulés to paint themselves, except on warlike pursuits, and, when you consider the information which had been previously received by Mr. Semple, will be found a circumstance strongly corroborating its correctness. Governor Semple, seeing that this party of horsemen were proceeding to the Settlement, directed about twenty men to follow him in the direction they had taken, to ascertain what was their object; they took their arms with them, but no ammunition. That these persons went out with no hostile intention, you will, I think, consider evident, from there being but about twenty who went, whereas there was a much greater number at the fort who could have gone, and indeed were desirous of going, but Mr. Semple only allowed about twenty to accompany him. As they proceeded along the road which led to the Colony, they were met by a number of the settlers, who were running to the fort for protection, and crying that the Half-breeds were come. No notice, it appears, was taken of these persons, but Mr. Semple and his party continued to advance towards the Settlement. They had not, however, proceeded far, before they observed, behind a point of wood, thirty or forty persons armed and on horseback, but upon a nearer observation, they discovered it to be a more numerous party

amounting, as they then supposed, to fifty or sixty persons, the whole mounted and armed. Upon this it appears that Mr. Semple and his party stopped; and, as appearances were now so alarming, a Mr. Bourke, who will be examined before you as a witness, was sent by Mr. Semple back to the fort for a field-piece, and as many men as Mr. M'Donell, the Deputy-governor, could spare. Mr. Bourke, however, not arriving with the cannon and men as early as Mr. Semple expected, they proceeded on again, and had not gone far before the Half-breeds advanced upon them, and surrounded them in the shape of a half moon, or semicircle. They were not far from the river, and by the Half-breeds forming themselves into this figure, they completely cut off all communion between the Settlement and Mr. Semple's party. It will be very necessary, Gentlemen, that you bear in mind, that up to this moment, nothing, on either side, of a hostile description had occurred, nor any, except that a gun had by accident gone off in the hands of Mr. Holte, one of the persons who was afterwards killed, and Mr. Semple reproved Mr. Holte for not being more careful of his arms. I have mentioned the circumstance, that you may be aware that, when during the trial we speak of the first firing, we mean the shot by which this same person, Mr. Holte, fell, although, in the accidental manner I have related, a gun did go off previously, but it was some time before the affray, and had no connection with it. They had not been long surrounded by this large party of armed and mounted men, before one of the prisoners at the bar, François Firmin Boucher, (the least of the two,) advanced towards Mr. Semple, and asked, "What he wanted there?" To this interrogatory, which was made in a very authoritative and insolent tone, Mr. Semple replied by enquiring of Boucher, "What he and his party wanted?" Boucher said, "we want our fort," to which Mr. Semple rejoined, "well, go to your fort." Boucher then, in a most daring manner, said, "you damned rascal, you have destroyed our fort." Mr. Semple, although a man of extremely mild manners, and of a highly cultivated mind, was, as might be expected, indignant at such an address, and incautiously caught hold of the bridle of Boucher's horse; a controversy ensued, or rather a few words passed between them, previous to the melancholy catastrophe, the particulars of which will be detailed to you by the witnesses, according as their situations afforded them an opportunity of hearing. It will, I believe, appear from the evidence, that at the

same time Mr. Semple also laid his hand on the stock of Boucher's fusil, and instantaneously two shots were fired in immediate succession, by the first of which Mr. Holte, whose name was mentioned before, fell, and by the second Mr. Semple was wounded. On receiving his wound he called out to his people to do what they could for themselves, but they, perceiving him struggling in the agonies of death, almost immediately, whether from panic, or from affectionate attachment to their governor and friend, you will judge, gathered round him, and made no resistance. Whilst they were thus situated, gathered round the dying man, a volley was poured in, by which nearly the whole were killed.

Mr. Sherwood.—I object, my Lords, to Mr. Attorney-General making statements of this kind. We are not indicted for pouring in a volley of shot, and killing a number of persons who are not named; we stand here to answer a specific charge; that of the murder of Robert Semple, and upon that charge the Attorney-General undoubtedly is entitled to open the evidence to the Court. But I submit that Mr. Attorney-General has no right to go into a long statement of the supposed murder of a number of other persons, for the purpose of prejudicing, or the effect of which may be to prejudice, our case.

Attorney-General.—One murder is the same as another, in the scene of confusion which ensued, and if I prove that Mr. Semple was killed, and that the prisoners were there when he was killed, though I may not prove by whose individual agency he actually lost his life, yet they must be found guilty of murder, because to be present at a murder is, in the eye of the law, to be guilty of it; and it is necessary, in opening the evidence to the Jury, that I acquaint them with the whole of the melancholy circumstances, as best accounting for the uncertainty that may appear as to the individual who actually killed Mr. Semple, whose particular murder is charged in the Indictment at present before the Court. The prisoner Brown, it appears, is rather a superior man for his station; he was educated at Montreal, and I shall prove that he acknowledged that he was engaged in the affray, although he might not perhaps, have admitted that he aided Cuthbert Grant to kill Mr. Semple individually. I state to you, Gentlemen, and I think the Court will confirm me in so doing, that if I prove, by any evidence, that Paul Brown was present at the time that Governor Semple was killed, although I may

not prove that he was actually killed by Cuthbert Grant, yet the prisoner is as clearly guilty of the murder, as if I did prove that the individual, Cuthbert Grant, charged in the Indictment as the murderer, was so in fact, for, Gentlemen, I am satisfied their Lordships will tell you, that whether Mr. Semple was killed by the person named in the Indictment or not, if the prisoners were present at the time of the murder, they were aiding and abetting it, and are guilty of the crime, no matter by whose hand the unfortunate Gentleman met his death. I take the liberty, Gentlemen, of remarking to you these principles of law, because, thank God, in this civilized and happy part of His Majesty's dominions, it is scarcely possible, or even necessary, that you should be acquainted with them; for here, by night as well as by day, we have the security of the law as a sure protection against scenes such as those, which, I am sorry to say, will be detailed to you in the course of this trial. It is only necessary for you, Gentlemen, in endeavouring to attain the ends of public justice, to be satisfied that A, B, or whoever may be charged as having been killed, actually was so, and then, Gentlemen, any act of the prisoners or others, aiding and abetting the murder, though it might be committed, in point of fact, by a different person to that charged in the Indictment, constitute such individuals guilty of the murder, either as principals or accessaries; as principals in the second degree, if present at the commission of the crime; as accessaries if absent. It is only necessary, in short, for me to satisfy you that the murder has been actually perpetrated, the prisoners being present, and I sustain the Indictment, and they, of course, are amenable to justice. The first witness whom I shall call will be Michael Heden, who will recount to you, in a very direct, not a circumstantial, manner, who fired first: he will narrate to you all the circumstances that occurred, from the moment of first seeing these people to the end of the melancholy catastrophe. He will relate to you, Gentlemen, that from sixty to seventy persons came down with an intention to drive these settlers from the colony, which it appears had been an object of dislike to the persons accustomed to trade in this wild country: but, Gentlemen, whatever were the pursuits of those settlers, whether those of husbandry, or any other, whilst they were peaceably engaged therein, there was nobody had any right to disturb them. I do not know whether, from the too great anxiety that pervaded Mr. Semple's mind for the

Settlement, you may not find that he unadvisedly went out of the fort to meet these people; but, Gentlemen, if you find in his going out nothing more than a very natural and even praise-worthy anxiety for the fate of those, whom he considered as relying upon him for protection, it can form no excuse to say, that if he had not come out of the fort they should not have gone to him, any more than, in ordinary cases, an act of indiscretion, in itself unjustifiable, can be pleaded in justification of murder. Another witness I shall bring before you, is John Bourke, the person who was sent by Governor Semple to the fort for the cannon, and with the message to Mr. M'Donell to send as many men as he could spare. It seems that Mr. M'Donell could only allow one man to go, who set off with Mr. Bourke and the cannon. It was very natural for Mr. M'Donell to be desirous to keep the men who were in the fort with him, because, in case of attack, that must have become the place where at last they must have defended themselves, and where the settlers must have come for protection and refuge. When Mr. Bourke had proceeded about half a mile from the fort, he perceived that the horsemen had surrounded the Governor, and they heard the report of guns, and saw the flashes, but could not, at the distance they were, distinguish from which party the reports or flashes proceeded. Apprehensive lest the cannon should be intercepted by the retreat to the fort being cut off, Mr. Bourke sent back the man with the cannon, but himself proceeded on, (being joined by eight or ten persons who had come after him from the fort), to the place where he expected to find Mr. Semple.—Advancing farther, he perceived that the horsemen, whom he had previously observed surrounding the Governor, were dispersed over the plain; but as he did not see any thing of Mr. Semple or his party, he determined to return. At this stage of this melancholy and horrid outrage, a circumstance took place, Gentlemen, which shews but too plainly the disposition of that armed party to have been very different from the mere desire to protect themselves and their property, because, whatever might be the pretext for the attack on the twenty persons with Governor Semple, there could be none for that which was made upon Mr. Bourke after the lamentable affray had ended. Mr. Bourke, seeing nothing of Governor Semple, or any of the people who had accompanied him, was dubious whether he should go any farther, or return, when some of the other party called out to him that Mr. Semple was there, upon which he advanced

a little; but, from their further language, doubting the truth of their assertion, and fearing that the Governor had met that fate which unhappily attended him, and that he might share a similar one, he endeavoured to escape with the people who were with him. In their retreat they were fired on by the Half-breeds, and Bourke was wounded, and another man, named Duncan M'Naughton, was killed. You are not, Gentlemen, trying the prisoners at the bar for the murder of M'Naughton, but I feel it my duty to call your attention particularly to this incident, as shewing clearly the hostile spirit of this party: when all shew of resistance subsided, if ever any was made, they fired upon persons who could have given them no provocation, not having been near this scene of desolation. I fear, Gentlemen, that this circumstance carries too strong a conviction of the real intention; shews too clearly the sanguinary disposition; gives too great a colouring of truth to the circumstantial evidence which I have detailed to you, and shall in the course of this trial produce, to leave a doubt upon your minds, of the real object of this party being the destruction of the Settlement, of which the unfortunate Mr. Semple was Governor, by any means, however repugnant to justice and humanity; because, in these instances of Bourke and M'Naughton, no provocation by possibility could be given. There are other persons included in the Indictment as accessaries before and after the fact; but to them, Gentlemen, you will give no attention, as it is solely with Boucher and Brown, the prisoners at the bar, that you are charged. In reference to them, Boucher undoubtedly was armed, and was very forward. He came out of the ranks, either voluntarily, or was sent by Grant, (who appears to have had the principal command), and certainly made use of most insulting language to Mr. Semple, though he does not appear at the moment to have offered any personal violence. There is a paper, Gentlemen, to which I shall advert for a moment, because it is possible it may be produced as evidence; it is an examination of the prisoner Boucher, taken before a Magistrate, and read and acknowledged by him. It would not be reasonable, nor correct, nor is it necessary, to read it at the present moment, but it is possible it may be read in evidence, though it sets out by most distinctly and unequivocally denying any participation in the murder of which he is accused. Having done that, he says that he was sent, four days previous to the death of Governor Semple, by Mr. Alexander M'Donell, who was a Partner in the North-West

Company, from Portage la Prairie, for no other purpose but to carry provisions from thence to the Frog Plains. He admits that it was proposed at first, in order to weaken the Hudson's Bay people, by the Bois-brulés, to carry off some of them, and that, assisted by him as interpreter, one was actually taken prisoner.

Mr. Sherwood.—I am sorry to interrupt the learned Attorney-General, but I consider his remarks so illegal, that I should be most culpably negligent of my duty, if I sat still. I submit, my Lords, that the whole course taken by Mr. Attorney-General has been a most extraordinary course; but the latter observations are so perfectly illegal, that I appeal to your Lordships to interpose your authority to check it.

Chief Justice.—I shall not stop the mouth of the Attorney-General in opening the case, for not a word has been said that is not strictly in order. He must state the nature of the evidence by which he intends to prove his case; when it is produced, if it is illegal testimony, oppose its being received, and if you shew it is so, it shall be rejected: go on, Mr. Attorney-General.

Attorney-General.—The object in view was, according to Boucher, to reduce the Colony by famine, and it was, with a view of weakening the Hudson's Bay people, proposed to carry some of them off, and some three or four persons were taken prisoners. He states that the firing began with the Hudson's Bay people; and here I would remark to you, Gentlemen, that whether the party with Mr. Semple are called the *Settlers*, the *Colonists*, or the *Hudson's Bay people*, is of no consequence, as the only difference between them is, that the Colonists are generally persons who have been servants to the Hudson's Bay Company, but their term of service having expired, they have become settlers in the Earl of Selkirk's colony, and the Hudson's Bay people are the servants of that Company; the difference, therefore, is not of the least importance to you; but as, during this trial, there is no doubt but the whole of these terms may be made use of in describing the party opposed to the Bois-brulés, I felt it desirable that you should be acquainted with the distinction, though so completely unimportant to any question that can arise during the trial. Resuming what Boucher says, he asserts, that the firing commenced with the Hudson's Bay people, though the Bois-brulés had wanted to fire, from a supposition that, as the people from the fort were armed, they meant to attack them. This,

Gentlemen, is the tenor of his examination, taken before a Magistrate. Brown, the other prisoner, denies being there at all during the battle; but I shall produce satisfactory evidence that he was there. Heden, the first witness I shall call, saw him there, and could not be mistaken, I think, as he knows him well. To conclude, Gentlemen, if Cuthbert Grant was the man who killed Governor Semple, in so unprovoked and premeditated a manner, from malice of heart, and the prisoners at the bar were two of the party helping and assisting him, they are equally guilty of murder with Grant, because they were present at the time, and are considered by the law as aiding and abetting the commission of the crime. But, Gentlemen, if Cuthbert Grant should appear innocent, either from his conduct resulting from provocation, which might reduce his crime to an inferior degree of homicide, or that he did not actually perpetrate the murder, still it might be murder in them, and would be, unless they were included in the provocation, and that it was of a nature to deprive them of their judgment by an excess of passion; or, though Grant did not actually kill Governor Semple, still these two men may be guilty of aiding and abetting his murder, which is the charge against them. They, Gentlemen, from the nature of the accusation brought against them, are principals in the murder, although in that manner which the law designates as being in the second degree; and it is not necessary to their guilt that we should satisfy you, that, in charging Cuthbert Grant as principal in the first degree, we have named the person who did, with his own hand, murder Governor Semple; for the moment that we establish that the crime was perpetrated, and that Paul Brown and François Firmin Boucher were present, aiding and abetting the murder—and if they were present, the law considers them as aiding and abetting—it becomes your duty to find them guilty of the crime whereof they are accused. I shall now proceed to call the witnesses on the part of the Crown, and you will pay attention to their testimony, as you will also, I am confident, to those who may be brought forward on the part of the prisoners, and, after receiving from their Lordships such directions as may appear to their wisdom required by the case, you will, I am sure, return a verdict which will do perfect justice to the country and to the accused.

Mr. Sherwood.—In the course of the very extraordinary opening speech of Mr. Attorney-General, such one as, I may say, I never before heard, it is not one of the least ex-

traordinary, that this Mr. Robert Semple, who is charged to have been murdered by Cuthbert Grant, has been constantly dignified with the appellation of *Governor* Semple. The Indictment charges that Robert Semple was killed and murdered; it says nothing about his being a Governor, any more than a justice of the peace, and in point of fact, he was just as much an emperor as he was a governor. They called him Governor in the colony which my Lord Selkirk was establishing in this land of milk and honey, and whilst his title is kept, he, or any other person holding the situation he occupied, may be termed *there* an emperor, or a bashaw, for what any body will care. The motive from which he is decorated with this title *here*, however, is apparent in a moment; it is indeed too glaring to be concealed. I beg my Learned Friend the Attorney-General not to consider me as imputing to *him* the design, he is only following the narration which has been given to him by the prosecutor, who has, to answer his own private views, dubbed Robert Semple a Governor; but the object is to impress the Jury with an idea that he had a legal right,—a lawful commission, an appointment from His Majesty or the Prince Regent, to act as Governor, and that all opposition to his mandates were a species of treason. Only let the impression of legal authority be once fastened on the minds of the Jury, and there is no defence to be brought forward which, as loyal subjects, they would consider entitled the prisoners to acquittal; but let them see, as during the trial we will do, that this pretended authority was an illegal assumption of power, arrogating to itself prerogatives, such as are not exercised by the King of England, and very different indeed will be their view of the transaction. Let Mr. Attorney-General call him here, as he has done in the Indictment, Robert Semple, and all he charges us with, we are ready to answer and to justify, but as he was not a governor, let us not be——

Chief Justice.—Do let the trial go on; it is no matter whether he was or was not a governor, or what he was called, or called himself; he is not to be murdered though he was not a governor.

MICHAEL HEDEN, sworn.

Examination conducted by the ATTORNEY-GENERAL.

Chief Justice.—What countryman is this witness? Is he French or English?

Attorney-General.—He is English, my Lord, at least will speak English.

Heden.—I resided in the month of June, 1816, and for some time before it, at the colony at Red River. I was blacksmith there. I had lived there a long time before, for a space of three or four years. In the months of April, May, and the beginning of June, of that year, I was there. I knew one Mr. Semple, his name was Robert. He came out to the Settlement in the fall of the year, 1815, and acted as Governor. He was Governor of the Settlement. I know something of the death of Governor Semple.

Attorney-General.—Well then, tell slowly and deliberately, the whole that you know about it, to their Lordships and the Jury.

Heden.—What all? Am I to begin on the day he was murdered, or before?

Attorney-General.—As a fact, I will ask him, my Lords, whether he had, or whether generally they had, any reason to apprehend that an attack would be made upon the Settlement?

Heden.—We were warned in March by the Freemen and Indians in the neighbourbood, that the Settlement was to be attacked during the summer, and we were all much alarmed, because it had been attacked before, and we kept a constant watch, after receiving the information, at the fort. Mr. Semple resided at Fort Douglas, which stands upon the Red River. There was a Settlement lower down upon the river; a Settlement of the same kind as are upon these rivers; they were just beginning to build houses; there were none built at that time, the settlers lived in tents, and in the fort; the nighest part of the Settlement was about a quarter of a mile from the fort, and extended to about three miles below. There was a part of the land cleared, and crops had been raised and come to perfection. Potatoes, corn, barley, and different kinds of vegetables, had been grown. In consequence of the information which was received, a constant watch was kept, day and night, from a sort of watch-tower.

Attorney-General.—Well now, tell us, Heden, was any attack made upon the Settlement, and by whom, and when?

Heden.—Not since 1815, till then.

Attorney-General.—He does not appear to understand the particular time I wish him to speak to. I will put another question to him, by which I doubt not he will go at

once to the circumstances which it is necessary he should give evidence of. You know that Governor Semple is dead. Will you tell us all you know relative to his death?

Heden.—Between six and seven o'clock, as I think, on the evening of the 19th June, that year, the man in the block-house, who was at the top, keeping a look-out, to see if these people were coming——

Attorney-General.—Do you think it was not earlier than six or seven o'clock?

Heden.—I do not know the time exactly, but it was six or seven o'clock, or thereabouts, I think, when the man at the block-house called out, a party of horsemen with two carts, were coming towards the Settlement. Governor Semple directly went into the watch-house, and Captain Rogers with him, and looked with his spy-glass to see what they were. When he saw that they were armed and on horseback, he told about twenty of his people to get their arms and follow him, to see what these fellows were about, or what they wanted. The men, to the number perhaps of twenty-eight, were ready to go, but Mr. Semple would only let about twenty accompany him. He had not got far when we met some of the settlers running towards the fort, saying, that the North-West servants were coming with carts and cannon, and that they had taken some prisoners.

Chief Justice.—Who was it said that they were coming with carts and cannon; and who did they say were coming with them?

Heden.—It was some settlers whom we met running towards the fort, who said they were coming with carts and cannon. They said the servants of the North-West Company were coming, and that they had taken some of the settlers prisoners. We went on after hearing this for about a mile, when we met more settlers, who told us that they had both carts and cannon. Governor Semple then told one of his men to go to the fort, and get a small piece of cannon which was there. It was to Mr. Bourke that he gave these directions; he told him to make haste, and go to the fort, and get a piece of cannon, and to tell Mr. M'Donell to send as many men as he could spare. Mr. Bourke not coming back soon, we went on towards the Settlement, and when we came in sight of the party of Half-breeds, they gallopped up to us, and almost surrounded us, by making themselves into the shape of a half-moon, going to the river on the one side, and getting beyond us on the other. One

of their people on horseback came up towards us. It was Boucher. He came up towards us, and the Governor asked him, "what he wanted?" and Boucher said they wanted their fort. He said, "we want our fort." Mr. Semple answered, "well, go to your fort," and Boucher answered, "you damned rascal, you have destroyed our fort, you have took down our fort." Upon this Governor Semple said, "you scoundrel, do you dare to tell me so?" and called out to some of our people to make him prisoner, and laid hold of the reins of Boucher's bridle.

Chief Justice.—Was there any action accompanying the words made use of on either side? how were they spoken?

Heden.—They were spoken in a loud voice, but there was nothing done except that Governor Semple laid hold of the bridle of his horse, when Boucher told him he had destroyed their fort; and he kept hold of it for some time. When Boucher heard Governor Semple call out to us to take him prisoner, he slid off his horse on the other side, and ran away.

Attorney-General.—At the time, what you have related, as having passed between Governor Semple and Boucher, took place, how far were your party from that of the Half-breeds? how far was Boucher in advance of his party, and could you see what passed between the one party and the other? did any thing interrupt your view, or was every thing visible?

Heden.—When Boucher came forward towards our party, we were within about a gun-shot of each other. There was nothing between us but a few willows and brush, every thing was visible. As soon as Boucher slid off his horse, a shot was fired, and Mr. Holte fell. The Half-breeds fired the first gun, and by it Mr. Holte was killed; there was no firing before that, and immediately after another was fired, almost directly after, and Governor Semple fell.

Attorney-General.—I beg your Lordship's pardon, but I will here ask him relative to the accidental discharge of Mr. Holte's gun, to which I adverted in opening the case. I fear I am breaking upon your Lordship's notes, by not having taken it in the order of time, but it did not occur to me before. In coming along, did any of your party discharge a gun, or did one go off by any means, and if there did, tell us how it happened, and where about you were at the time?

Heden.—At about half a mile from the fort, Mr. Holte's gun went off by accident, and Mr. Semple was very much

displeased, and told Mr. Holte very sharply, that he should be more careful of fire-arms, or he might kill somebody; this was some time before our coming up with the Half-breeds, and had no connection with the firing between the parties. It was quite an accident. The two shots of which I spoke, when I said they were the first that were fired, came from the Half-breeds.

Chief Justice.—By the first, I think, he says Mr. Holte fell, and by the second, Governor Semple.

Attorney-General.—He does, my Lord. I shall now ask him how he was placed, because I want, from circumstances as well as his positive testimony, to shew, from the positions of the two parties, that the two first shots must have come from the Half-breed party. Where were you, Heden, at the time these shots were fired?

Heden.—I was on the right of the Governor, and very near him. All our party were withinside of the half-moon line, but they were scattered here and there, before the shots were fired by which Mr. Holte and Governor Semple fell. It was just as Boucher slid off from his horse, that the first shot was fired, and by it Mr. Holte fell.

Attorney-General.—You remember the parley between Governor Semple and Boucher. Were Holte and Boucher during that time looking towards the half-moon line?

Heden.—Yes, they were.

Attorney-General.—Were your party generally armed, and how?—and, as I suppose you had guns, tell us how they were loaded.

Heden.—My gun was loaded. Our guns were some of them loaded, and some not. Those that were loaded were loaded with ball, as I suppose. We had no other arms but guns. Boucher's arms consisted only of a gun, but others of his party had tomahawks, bows, and arrows, and spears. Both Mr. Holte and Governor Semple fell by the two first shots, and after then, when the people had gathered round Mr. Semple, and were in a cluster, the volley was poured in, and nearly the whole were killed or wounded.

Attorney-General.—Now, Heden, from the situation in which you stood, can you say that you know the two first shots came from the Half-breed party?

Heden.—Oh, my God! I could not but know, for I saw all, and shall never forget it.

Attorney-General.—Whereabouts was Governor Semple, that is, opposite to what part of the semicircle or half-moon line was he?

Heden.—He was pretty near the centre of the half-moon, and the two first shots came from about the centre of the half-moon. I saw the smoke, and could not be mistaken. Boucher slipped off his horse before the first shot was fired, and ran towards his own party. There was none fired before that. I did not see Boucher fire, nor do I know that he did fire. I do not know which of our people fired. I know that Mr. Semple blamed Mr. Holte very much for letting his gun go off.

Attorney-General.—Did Mr. Semple, or any body else, give you orders to fire, or say any thing about it?

Heden.—Mr. Semple said, all he wanted was to see what those fellows were about, and that he wanted no firing at all. I heard him say that he wanted no firing at all, and I heard him tell some of his people to take Boucher prisoner, but not to fire, and if he had given any such directions, I must have heard them. There was no order of march kept up by our party, we went as it happened, or we liked. Mr. Semple gave no particular orders to his men how to behave. To the best of my recollection, he gave no orders at all. I am sure he did not give any to fire, nor did any of our people, to the best of my belief. At the time of the conversation between Boucher and Governor Semple, I was looking towards the Half-breeds, and I saw amongst them three Indians in blankets, and only three, and they did not fire. The Bois-brulés, before any firing took place, gave the war-whoop; they gave it as they were forming the half-ring. I got very much alarmed when I saw the people wounded, and in the confusion that took place I made my escape with my life.

Attorney-General.—How long was it, or was it soon after Governor Semple fell, that the general firing by which the others were killed and wounded took place?

Heden.—I can not say how long exactly. I was very much frightened when I saw Mr. Holte and Governor Semple fall. A short time after I saw the wounded men crying for mercy, but the Half-breeds rode up to them and killed them.

Mr. Sherwood.—I beg leave, my Lords, to rise, not for the purpose of objecting to the testimony, though I think it very wide of the case, but merely to ask whether your Lordships consider it regular? if it is so considered, I have no objection to offer to it, because I shall meet it by similar evidence of foreign circumstances and conduct of other persons, than those at present introduced.

Chief Justice.—Do let the trial go on, unless you have some objection to make. If you have, state it, and you shall be heard.

Attorney-General.—You saw Mr. Semple fall by the second shot, do you know whether that shot killed him?

Heden.—I did see Mr. Semple fall, but I don't know whether that shot killed him. As soon as he was wounded he called to his people to take care of themselves. He was wounded, as far as I can guess, about the shoulder. Mr. Wilkinson said that after.

Chief Justice.—You must not tell us what any body told you, or said; you must speak only from your own knowledge of circumstances.

Heden.—I did not see Governor Semple get up after he was wounded; he did not while I was there. One M'Kay and I, in the confusion, made our escape, and got to the river. Michael Kilkenny and one named Sutherland also got away to the river, and swam across it, and by that means got safe. Mr. White, the surgeon, thought also to escape with us, but we were pursued by six men who fired at us, and wounded him in the thigh, or the hip, and whilst they were engaged in killing him, we escaped, M'Kay and I, by a canoe, and Kilkenny and Sutherland by swimming. In the course of the night we got back into the fort. On the next day I saw the dead bodies, and nine of them were were brought in by the Indians, and among them was the body of Mr. Semple. I could not say where the ball struck him, or by which wound he lost his life, as his body was all over spear marks, so that I could not distinguish one from another. The Bois-brulés were very strongly armed; they had, besides, guns, bows and arrows, spears and tomahawks. I saw a number of the Half-breeds the next day at the fort, and Cuthbert Grant was amongst them. They took away a good deal of the property. The next day after the massacre we remained at Fort Douglas, and also the following day, when the Half-breed party, headed by Cuthbert Grant, took all the public property, and all the settlers were obliged to go away, and a good deal of our things was taken from us.

Chief Justice.—It is not larceny, Mr. Attorney, that we are trying, but a murder. You must keep your evidence to that point.

Attorney-General.—Your Lordship will see, indeed, I think must see, the impossibility of this case being tried without going into statements of the outrage connected with the murder. It is easy to see what the nature of the defence

must be, and to substantiate the guilt of the prisoners, it is necessary that, by their subsequent conduct, I should shew (and it is only for that purpose that it is introduced,) their prior intention; but in so doing it will, I fear, be impossible not to mention other acts connected with the outrage of the 19th June.

Chief Justice.—It is very difficult, I admit, but it is a very dangerous path, on a distinct charge of murder, to go into evidence of larceny, which happened some days after. Any thing bearing on the charge of murder, you may go into, but you must not adduce evidence relative to offences for which the prisoners are not upon their trial.

Heden.—The Bois-brulés encamped that night at the Frog Plains, and the next day they came to the fort, and ordered the settlers away. I saw Boucher at the fort on the next day; he was not armed, but he came with the others. I know Cuthbert Grant, he was there on the day of the murders, and he came to the fort the next day. He is a Bois-brulé, and was one of the band of Bois-brulés. The Bois-brulés insisted upon our giving up the fort, and going away from the Red River country, and a capitulation was entered into between Mr. M'Donell, the Sheriff, and Cuthbert Grant, by which the fort, with all the public property, was to be given up, and we were all to go away. Cuthbert Grant was with the Half-breeds at the time Mr. Semple and the others were killed. I know him very well, and I am sure I saw him there. He was painted.

Mr. Sherwood.—I should submit to the Court, whether the Attorney-General is now within the limits of legal rules upon the point of evidence. I do not think it is competent to the Attorney-General to go into evidence of what occurred after the battle. We are not brought here to answer a charge of taking possession of a fort; when we are, we shall be ready to answer, and I doubt not satisfactorily account for our so doing. It is a charge of murder which is brought against us, and I can not see what right Mr. Attorney-General has to go into other matters. The effect of his being permitted to do so will, my Lords, be this, we must go into the history of aggressions of a similar nature committed by their party, to shew that the taking of Fort Douglas had been provoked, and was only in retaliation for the taking of Fort Gibraltar by them, and so it will be with every circumstance not immediately connected with this battle, which they provoked. Let the Attorney-General confine his examination to the 19th June, or to whatever has

relation, in his opinion, to the death of Robert Semple, so as to lead to it, and the case will be very short; but if Mr. Attorney is permitted to go into evidence of taking forts, I must do so too, and let him go as far back as he may, we are furnished with matters equally early, to bring in justification of our conduct on all occasions. It has always been in self-defence, or in the endeavour to regain our own property, or in return for some aggravated attack and aggression, that we have interfered with the Earl of Selkirk, the Hudson's Bay people, the Colonists, or any of the persons or property of what may be considered the opposite party; and notwithstanding all that has been said to the contrary, so it will this day appear, if Mr. Attorney-General is, upon a specific charge of murder against Paul Brown and François Firmin Boucher, to be permitted to go into an investigation of all the difficulties that have occurred within those territories since my Lord Selkirk has been a trader there. Relative to Cuthbert Grant, or what he may have done, I do not see how it is to affect us in any measure, especially what he may have done after the alleged murder.

Chief Justice.—Of the homicide there can be no doubt. The Crown charges that Mr. Semple was murdered. Whether his death was occasioned in a manner to render the charge of murder correct, remains to be seen, but, in ascertaining the fact, they must be permitted to shew the conduct of the persons who were engaged in this melancholy affray, to enable the Jury to distinguish whether it was as charged in the Indictment, murder, or whether, from the peculiar circumstances of the case, it resolves itself into any, and what, inferior degree of homicide. As to Cuthbert Grant, he is charged in the Indictment with having actually perpetrated the murder; he is the principal in the first degree, and it therefore can not be objected that evidence be gone into as to his conduct before the murder.

Attorney-General.—I humbly submit, my Lords, that, even if he had not been named in the Indictment, the moment I prove him to have been there, I am entitled to go into evidence of his conduct, because I charged the prisoners with being present, aiding and abetting in the murder of Governor Semple on the 19th day of June; and if this man was justified by any conduct of Mr. Semple's in the part he acted, even though it was to the taking of his life, still it might, from those very circumstances, support the charges against the prisoners. But having charged Grant as the principal, having charged him with committing the murder,

I must acknowledge, that I can not see on what principle the Learned Gentleman questions my being within the strict rule of evidence, in laying before the Jury the whole of the conduct which he pursued on this occasion. My object is, by his subsequent conduct, to prove what was his prior intention, and thus enable the Jury to determine, from seeing the *quo animo* of this party and their leaders, what were the real objects they had in view in going to this Colony, and nothing more than this, am I desirous of obtaining from the witness——

Chief Justice.—To any thing that occurred previous to the death of Mr. Semple, you may certainly examine the witnesses, but not to events subsequently, as they could not influence it. It is a charge of murder, and must be tried as cases of murder are usually tried; you may go into evidence of what occurred at the time, or previous to it, but not as to occurrences that took place subsequently, except as the prisoners now actually at the bar are concerned.

Attorney-General.—I am under the correction of your Lordship in this, as in all other cases, and shall, in conducting the trial, confine myself within the rule which you have prescribed. My only object was to shew, by their conduct afterwards, what had been the spirit by which they were actuated, and to strengthen, by the acknowledgments of the individuals who had been engaged in the horrid scene, the strong evidence of malice which the catastrophe itself too powerfully presents. I have conceived that, in thus endeavouring to elucidate the *quo animo*, which in all cases of murder forms the first object of enquiry, I was not going beyond the rules by which the examination of witnesses in criminal prosecutions are regulated; but, under your Lordship's correction, I shall leave the question I had proposed putting to the witness, as to the conduct of Cuthbert Grant, whom we charge to have committed the murder, and whom already we have proved to have been present when Mr. Semple received the shot, which we charge to have occasioned his death.

Chief Justice.—In the manner you now mention, viz. to elucidate the principle of action, or the motives that governed the conduct of this party, you have a right certainly to put the question, having proved that Grant was there. Go on with the examination.

Attorney-General.—Did you see Cuthbert Grant at the time of the firing on the 19th; was he armed, and did he fire?

Heden.—I did see Cuthbert Grant there, and he was armed, but I cannot say that he fired, for I did not see him fire. I saw him on the next day at the fort, and he then acknowledged that he had fired the day before, but he did not confess that he had fired at Governor Semple. He told me to be gone from that part of the country, and warned me when I did go, which he said would be in a day or two, never to come back, at the peril of my life. I saw nothing of the prisoner Brown till the next day; he was not in the company of the party who came with Cuthbert Grant on that day to the fort, but he came with them at the time we all went away, and left their party in possession of the fort. On the day after the battle he came to my tent, and there he told me that he had been there the day before. He had two pistols in his sash, and he put one to my breast, and threatened to kill me, and I believe would have done so, but for an Indian woman who was in my tent. He told me he had killed six Englishmen, and I should be the seventh. He talked both in Indian and French, in broken French, and he made signs by which I understood very well what he meant. I had not seen him before that day, but I am sure the prisoner Paul Brown is the man who came to my tent, and told me that he had killed six Englishmen. He did not say when or where he had killed them, he only said he had killed six Englishmen, and I should be the seventh, but he did not say where or when he had killed them. He said that he had killed six Englishmen, and that I should be the seventh, and that he would not leave the tent till he had taken my life. By the six people he said he had killed, I understood him to mean six of the party who were with Governor Semple on the day before. I had no conversation with him at the time about Governor Semple, but that was what I understood. At that time I believe that Brown would have killed me, but that he was hindered. I do not know that Brown was in the affray of the 19th; I do not recollect to have seen him before he came to my tent. I have no recollection to have seen him on the 19th, but I am sure it was him who came to my tent on the 20th, and said he had killed six men, and I should be the seventh. I did not see Boucher after he joined his party, which he did directly he slid from his horse. I am certain that I saw Cuthbert Grant there on the 19th June, and that he was armed and painted; but I cannot say whether he took the command, but I always understood that he did.

Attorney-General.—We only require from you what you

know of your own knowledge. Do you, Heden, recollect any thing else relative to the conduct of Cuthbert Grant, or of either of the prisoners Brown and Boucher, on the 19th June, or any material fact connected with the death of Governor Semple? If you do, relate it.

Heden.—I do not recollect any thing else that is particular; I believe I have told all.

Attorney-General.—You have said, I think, that you saw Governor Semple fall, and that on the next day you saw his body. I think, in answer to a question I put to you, as to whether you saw any wounds which had apparently been given by the balls, you said the body was so completely lacerated with the marks of spears, that you could not distinguish. Was that the case?

Heden.—Yes, it was. His body was all over spear-holes, so that I could not see whether there was any ball-holes or not. I could not distinguish.

Cross-Examination, conducted by Mr. SHERWOOD.

Heden.—I do not know how far it is through Lake Erie and the Woods to Red River country, but it is a long distance. There are no civilized Courts there, having Judges.

Mr. Sherwood.—Do you know, that before this battle of the 19th June, in which your party appear to have got the worst of it, long before that, enmity and war subsisted between the Hudson's Bay Company and the North-West Company, and their servants, in that country?

Heden.—I know that in 1815 we were turned out of the Red River country, and the Settlement burned, and the fort; by the fort, I mean Fort Douglas.

Mr. Sherwood.—Do you know of any disturbances between them before that, and that they were began on your side?

Heden.—Yes, I know there were quarrels between them, but I do not know that the Hudson's Bay people began them.

Mr. Sherwood.—Then I will try and refresh your memory. Do you happen to know whether there was any pemican seized by your people from the North-West Company, or any of their people?

Heden.—No, I do not know of any being seized.

Mr. Sherwood.—Oh, you do not, then you was not one of the party, nor do not know any thing about it?

Chief Justice.—What is this about seizing pemican?

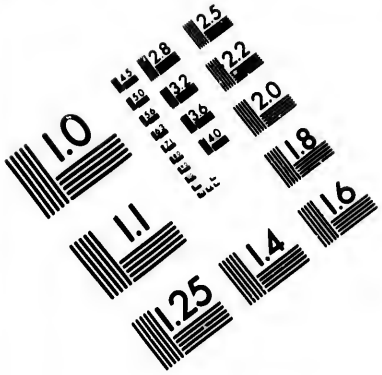
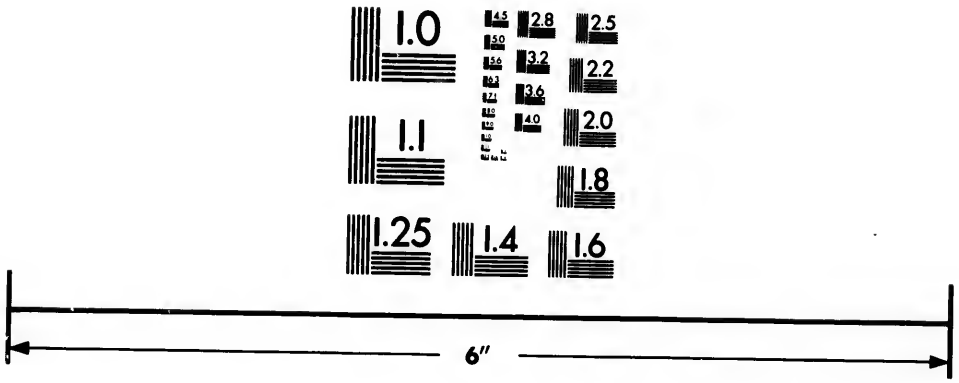
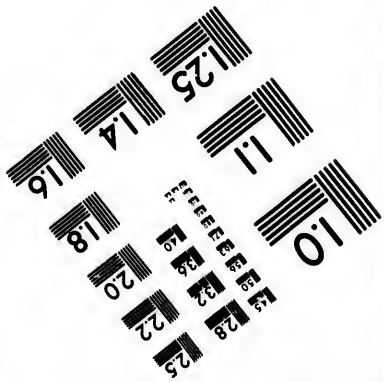


IMAGE EVALUATION
TEST TARGET (MT-3)





Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.5
2.2
2.0
1.8
1.0

If witness had seized it, or been engaged in seizing it, or any thing else, however improperly, how is such a circumstance to be a defence against an indictment for murder?

Mr. Sherwood.—I beg your Lordship's pardon, but the defence we shall set up for these men, renders it extremely important that I should have an answer, and a clear and positive answer to the question I have put; and I am confident, as I consider it important, I shall be permitted to put the question to the witness again. I ask you now, Heden, on the oath you have taken, do you know of a quantity of pemican having been seized by your party from the North-West Company, in consequence, or by virtue of a proclamation of Mr. Miles M'Donell, whom, I believe, you called Governor M'Donell? Do you, or do you not?

Heden.—No, I do not. I was not there when any was taken.

Mr. Sherwood.—Very well. In what capacity did you go to this land of promise, and where did you go from?

Heden.—I went as a servant to the Hudson's Bay Company in 1812, from Ireland. I agreed with his Lordship's agent at Sligo. I was to work as a blacksmith for a year for the Hudson's Bay Company, and then to go to the Settlement, and have lands. I went there by the way of Hudson's Bay. There were no quarrels there in 1812; at least, I heard of none. I do not know if the lands I had were bought from the Indians or not. There is not in that country a surveyor-general's office, or a council-office, as there is at York, to grant lands there. I did not pay for them. It was agreed with Lord Selkirk, I was to have lands there before I went.

Mr. Sherwood.—Then how dare you, or any body else, go and take lands in that country, any more than this? Would you think of taking lands in Upper Canada, without paying for them, or without a deed, or a scrape of a pen, to shew your right to them? Do you know who gave Lord Selkirk authority to let his agent agree to give you lands there?

Attorney-General.—I must appeal to your Lordships, at once to stop this most irregular and unprecedented course which the gentleman is pursuing. It is permitted to the prisoner to cross-examine witnesses, it is true, but it must be to the facts of the case, to circumstances to which he has given evidence in his examination in chief. What can

the nature of this witness's engagement with the Hudson's Bay Company, or with the Earl of Selkirk, have to do with a charge against the prisoners at the bar for murder? I appeal to your Lordships to interfere, and put a stop to a course of examination so completely beside all rule.

Chief Justice.—It had been the usual practice, that any questions which a prisoner might wish to put, should be be propounded by him to the Court, and by them put to the witness. It was the old-fashioned way, and it is a pity it was ever changed. Lenity, however, to prisoners has led to a change in the practice, and Courts now are in the habit, upon the application of a prisoner, to assign him counsel, but I repeat that the indulgence is so frequently abused, that it would be well if it had never been allowed to creep into our practice. If you intend to cross-examine the witness, it must be conducted according to the practice in ordinary cases; we can not allow you to go into matters totally irrelevant. It is completely misusing the indulgence that the humanity of our practice has, most unhappily, introduced into our criminal Courts, and that at a very late date too.

Mr. Sherwood.—I am aware that the allowing to prisoners this privilege is the humane introduction of a late day; and I recollect also, that it was the old practice, not only, not to allow to prisoners the advantage of Counsel, but also not to permit witnesses to be examined in their behalf. This we all know was the old practice.

Chief Justice.—And it would have been very well for the real interests of justice if the rule had never been changed, for the petulance of Counsel, and the unrestrained license which is assumed in the cross-examination of witnesses, and on examinations in chief of prisoners' witnesses, is such, that the humane alteration, as for the good it produces, is more than overbalanced by the evils that the abuse of a well-meant humanity have clogged the administration of justice with in our day.

Mr. Sherwood.—In ordinary cases, it is the practice when a witness on the part of the Crown has been examined in chief, that the Counsel for the prisoner shall cross-examine him; and so fully countenanced is this practice in our day, that to the Counsel in conducting a cross-examination, are given privileges which are not extended to the examination in chief. In this, which is an extraordinary case, I shall imagine we might exercise the privilege to its fullest extent. It is a case of such an extra-

ordinary nature, as imperiously to call for it; it is a case such as perhaps never came before a Court of criminal jurisprudence.

Chief Justice.—It is a case of murder committed in the Indian Territory, and is, under the Act, to be tried in the same manner as if it had been committed in the town of York, where, in fact, the Indictment charges it to have been committed; there is, therefore, nothing more in it than in an ordinary case of murder, at least nothing to induce us to let you pursue that course of cross examination.

Mr. Sherwood.—It is, my Lord, a case of murder, and, as your Lordship remarks, it must be tried under the statute, as cases of murder generally are; it is nevertheless a case completely *sui generis;* and in the conduct of any case, whether the offence occurred at York or at Red River, we must be more or less governed by the particular circumstances which are connected with it. Applying this, which I consider to be a general rule, to the present case, I say, though one of murder, and to be tried in the same manner as if the offence had been committed in the Province, it is a most extraordinary case, and I humbly conceive, were your Lordships as fully acquainted as I am with the facts connected with it, I should not have been stopped in my examination of the witness. Mr. Attorney-General's opening was an extraordinary one, and your Lordships, I am sure, will do me the justice to remember, that I took the liberty of remarking, at the time I appealed to the Court to interpose its authority, and compel that Learned Gentleman to confine himself to the circumstances actually connected with the affair of the 19th June, and again during the examination of this man, when I made a similar appeal, or rather when I asked whether the Court thought it in order, that, if that was your Lordships' opinion, I must meet it by similar evidence, of circumstances foreign to the abstract charge of murder. I am now doing so. We have already heard a great deal in Mr. Attorney's address to the Jury, of a Settlement, of a Colony established by my Lord Selkirk, and a great deal more of it shall be heard during this trial, as well as of its Governors, as they are facetiously called. Mr. Attorney follows up his speech by examining this witness as to attacks made on this Settlement, and not content with extracting every thing which, however unconnected with the affair of the 19th June, might, as having happened before, by remote possibility, be connected with

it, he goes beyond the death of Robert Semple, into an examination of the conduct of a number of persons to these settlers, to prove, as he says, against Brown and Boucher, the prisoners at the bar, the murder of that individual. This witness, Heden, is a very proper person to bring forward for the purpose, and I ask him by what right he held his lands there. All he appears to know about it is, that he was there; but I am going on to shew that all the title which either he, or those who sent him there, had to this flourishing Colony, was the sturdy right of possession. I am going on to shew that, not content with taking the lands without any title, and then quietly living on them, they assumed to themselves lordly, aye, more than kingly, authority. Not only the land they occupied was to be theirs, but the beasts of the forest, the fowls of the air, and the fish of the rivers, and the lakes were to be theirs too; and the actual lords of the soil, the Bois-brulés, who had been enabled to live by means of hunting and fishing, were no longer to exchange for their necessaries, which their wants required, the surplusage of the chase, as they had for a century been accustomed to do, with the traders frequenting their country. No, the new-fangled Governor issued his proclamation, declaring they were to trade with nobody but himself; and if they were detected in disobeying his mandates, or it was suspected they would do it, their property was taken from them. I was about asking this witness whether this state of things existed to his knowledge; and if he had admitted a knowledge of the famous proclamation of Governor M'Donell, as he was called in the Red River country, I should have extended my enquiries as to what had been done under it. I shall hereafter make evidence of this proclamation, surpassing in its assumption of prerogative all that ever were issued by regal authority, and I shall prove the conduct which followed it. Mr. Attorney thinks it necessary to shew that Fort Douglas was taken; I think it necessary, and shall shew, that Fort Gibraltar had been previously taken, and so I propose to do with every extraneous circumstance that may be produced on the part of the Crown. If Mr. Attorney confines himself to the 19th June, I shall shew that all we did then, was in self-defence, and therefore justifiable; whilst, if he goes back to circumstances of an earlier date, so shall I too, and I shall shew that such was the state of that country, arising from the disputes occasioned by the conduct of this Colony and its adherents, that it was only a great trespass that could

have been committed there, and not murder. This is the defence which the prisoners have to present to the Court if permitted, and I hope, in conducting it, I shall not incur the charge of petulance in counsel, which your Lordship has so strongly characterized as more than overbalancing the benefits of the humane alteration of our system of criminal jurisprudence, which formerly did not allow Counsel to prisoners, or witnesses to be examined on their behalf; but, whilst I avoid exposing myself to such a censure, I shall insist on all that I consider my right, from having been appointed of Counsel to the prisoners, and I have stated to the Court the nature of the defence I intend to offer.

Attorney-General.—I consider it to be one that is completely inadmissible, and shall resist it. If in this Indian country they do not consider that killing a man in cool blood is murder, and that they are amenable to justice for so doing, it is time they were better instructed. The observation of the Learned Gentleman, as to my having produced evidence of what took place *after* the horrid scene on the plains, and of the course which he intends to pursue in consequence, I answer, by submitting to your Lordships the absolute necessity which exists for sustaining the charge against the prisoners, that I shew the intention with which these persons came to the Settlement. How am I to prove their intention, but by their conduct? We say that the object for which they set out from Qui Appelle, was to destroy this Settlement. They allege that it was merely to carry provisions. In proving our assertion of their object to be correct, it is indispensable that I bring their subsequent conduct before the Jury, and shew that they effected that which I say they set out to accomplish. But is my doing so to admit the gentleman to go back to every aggression which may have been committed by any of the servants of the Hudson's Bay Company, or settlers of the Colony, and thus set off one crime against another? Admit that Fort Gibraltar was taken, that it was an unjustifiable aggression, (though, if even that affair was gone into, the very reverse would, I believe, appear), can that be adduced as a justification for the murder of twenty-one persons? Admit even that murder had been committed on the other side, still is one murder to be set up as a justification for committing another? The observations do not at all apply. If it should not be in the power of these persons to shew that they had a legal right to the lands they occupied, still the absence of this right

does not justify a party of sixty or seventy persons to come and shoot them. If this has been considered in that unhappy country to be law, or that the right existed of their recovering even that which belonged to them, it is, I repeat, high time that they were taught to the contrary; and it is sincerely to be hoped that these trials may have the effect, by shewing that individuals who travel in that country are still under and amenable to the law, and that His Majesty's subjects, so far from being out of his protection, because they are in a distant part of his territory, are as fully entitled to it, as if they were living in the most civilized part of his empire.

Mr. Sherwood.—The persons trading into this country are undoubtedly entitled to the protection of His Majesty's government, but it nevertheless cannot be considered as a part of His Majesty's empire. It cannot be a component part of his dominions till purchased from the aborigines. These persons, calling themselves the settlers or colonists of my Lord Selkirk, have assumed to themselves the right of taking a quantity of these lands, and had they merely proceeded to cultivate them, they would not have been molested, unjustifiable as was their settling there without leave from the aborigines. But when, beyond the robbery of their lands, they establish and exercise a sovereignty or despotism, which is to prevent the Bois-brulés from trafficking; when they forbid them to hunt buffalo on the plains which God and nature have made their own, is it to be expected that these people will tamely submit? or that, if it is attempted to take their property from them, they will not protect it? Most assuredly not; the consequence of attempting it we see in the transaction of the 19th June. Here were a number of persons conveying provisions to meet their traders who would require it; they are prevented taking it the nearest and most convenient way, by water, because they would, by that route, have to pass Fort Douglas, the residence of Mr. Semple, which he had fortified, together with the banks of the river, to prevent their passing. Compelled by this circumstance to go by land, they proceed, and agreeably to the instructions they had received, they pass at as great a distance from the fort as the nature of the road would admit, when Mr. Semple, ludicrously called Governor, marched out, accompanied by twenty armed men; and what is the reason assigned, even by their own witness, for so doing? He wanted to see what these fellows wanted, being apprehensive they were come to take posses-

sion of this flourishing Settlement, where nothing can ever ripen, seeing that there, even in summer, it is no unusual occurrence to have frosts which penetrate five or six inches into the ground. He went out to see what these fellows wanted; and they, seeing an armed force coming towards them, wished to know what *they* wanted, and sent one of their party to ask the question. According to Heden's own testimony, an assault was committed upon Boucher, who was the person sent from the Bois-brulés' party; and it will, I think, appear very clearly in evidence before the trial is finished, that that assault was followed up by what might very naturally be expected, from the temper in which Semple's party went out of the fort, viz. their firing upon the others. I shall submit, my Lords, that this country was open alike to all who chose to become fur-traders; and that only for the purposes of commerce had either the one or the other party any right there, and for that purpose these rights were equal. The Hudson's Bay people had as good a right as the North-West, and the North-West as the Hudson's Bay. If I shew that I was prevented carrying on my lawful trade, by my rival assuming to himself territorial rights which did not belong to him; if he interdicts, or attempts to rob me of my property, and death results from it, the consequence is with him; because it is in defence of myself and my property that I take his life. Resistance to these assumed powers has been made, and we are ready to justify it. It forms an aggravated part of the attacks which have been made upon us, that it is since this Settlement has been on foot they have been made; and that, not only had those who established it no right even to make the Settlement, but that all their attacks are justified by reference to the proclamations and notices of the self-created Governors of it. We have heard a great deal about the philanthropy of establishing Colonies, during the course of these disputes, but the philanthropy of the founders of this Colony consists in an endeavour to extend their own commercial enterprises, by destroying their rivals; and this Settlement forms a rendezvous for the former servants of the Hudson's Bay Company, from which they can most conveniently intercept the supplies and returns of their rivals in the fur trade. We set out in our defence, by denying that the Hudson's Bay Company possess any territorial rights in this country, or any of any description beyond those of mere fur-traders. We admit they have a right to trade there, but so have we also. What I want to do away from the minds of the Jury

is, any impression that exclusive right or sovereignty belong to the Hudson's Bay Company, or their partner the Earl of Selkirk; and I wish thus early to correct the erroneous view which my Learned Friend's constantly calling the person charged to have been murdered *Governor* Semple in his opening, and then following it up by examining the witness as to the manner in which *Governor* Semple lost his life, might lead the Jury to take; because I think it will not, for a moment, be denied, that the situation in which we stand must very materially depend, in relation to our guilt or innocence in the opinion of that Jury, on our proving that every power, beyond that of mere fur-traders, was an illegal assumption of authority. I shall, therefore, proceed with my examination of the witness with that view. You always call Mr. Robert Semple *Governor* Semple; do you know how he happened to be called Governor, any more than any body else? Do you know who made him a Governor?

Attorney-General.—Then, my Lords, I continue my opposition, and I call upon the Court for its decision, whether they consider the mode which the Learned Gentleman has stated he intends to pursue, one which they can permit him to adopt. I oppose the question just put.

Chief Justice.—We decide against you, Mr. Sherwood. We have nothing to do with these two Companies, and can not, therefore, allow you to examine the witness as to their quarrels. It is the opinion of the Court, not my own alone, that the question you have just proposed can not be put to the witness.

Mr. L. Sherwood.—Though that is your Lordship's opinion, I do not suppose you wish to preclude our raising a question of law, and shewing that we were, under the circumstances of that country, incapable of committing murder there. This then we propose to do, and are prepared with authorities to support our position. We intend to shew that war existed between these two Companies and their servants, and therefore the deaths, which might take place in consequence thereof, could not be called murders.

Mr. Sherwood.—Our position is simply this; that what from the different circumstances of the country would have been murder *here*, was only misdemeanor *there*, and I contend for the right to put the question I submitted before, because I have a legal right to shew whatever I can in justification, and the state of that country is a material point.

Chief Justice.—We do not think so, because the Act says, offences shall be tried in the same manner, though com-

mitted in the Indian country, as they would have been if perpetrated in the Province.

Mr. Sherwood.—I admit that, but I do not conceive that the Act of 1803 at all altered any law already in existence; it merely provided for the trial of offences committed against the laws, and declared that, although there was not a civilized Government in the Indian Territories, yet offences committed there should be considered as offences of the same description and turpitude, and should be tried in the same manner, and subject to the same punishment, as if they had been committed in either of the Provinces of Canada, in the Courts of which Provinces this Act provides that offenders shall be tried. All that is freely admitted, but this does not create a new law. It makes no new offence, nor does it change the nature of any old one. That being the case, I contend then, what might be murder *here*, from the state of that country, was not murder *there*. Where war exists in any part of the dominions of the King, and is not carried on against His Majesty, but between private individuals, we know it is only a misdemeanor, such as a riot or contempt; whereas if it was against the King, it would be high treason. This doctrine is not only laid down by my Lord Hale, but a century afterwards by Sir William Blackstone. That offences may vary in their nature according to circumstances, is evident, and under this rule, that which is in some cases an atrocious felony, is in others only a slight misdemeanor. Sir William Blackstone, in treating of treason, says, vol. iv. page 82, the third species of treason is, "if a man do levy war against our Lord the "King." After describing that other taking of arms than with a design to dethrone the King may be a levying of war against him, and therefore high treason, he goes on to shew, that resisting the King's arms, may also be a levying of war. He then proceeds to shew what offences, in some degree resembling treason, and which would be so under certain circumstances, are not so, and he instances the case of the Barons of England in the feudal times. "So if two sub- "jects quarrel, and levy war against each other, then (in "that spirit of private war which prevailed over all Europe "in the early feudal times), it is only a great riot and con- "tempt, and no treason. Thus it happened between the "Earls of Hereford and Gloucester, in 20th Edward I. "who raised each a little army, and committed out- "rages upon each other's lands, burning houses, attended "with the loss of many lives; yet this was held to be no

" high treason, but only a great misdemeanor." The same doctrine is laid down in a much larger form by my Lord Hale, in his Pl. Cor. vol. i. p. 136, and the solemn decision upon the case of the Lords Marchers is set forth. " In the parliament of 20th Edward I. (now printed in Mr. " Ryley, p. 77,) it appears there arose a private quarrel " between the Earls of Gloucester and Hereford, two " great Lords Marchers, and hereupon divers of the Earl " of Gloucester's party, with his consent, *cum multitudine* " *tam equitum quam peditum exierunt de terra ipsius co-* " *mitis de Morgannon cum vexillo de armis ipsius comitis* " *explicate versus terram comitis Heref. De Brecknock,* " *et ingressi fuerunt terram illam per spatium duarum* " *leucarum, et illam deprædati fuerunt et bona illa depræ-* " *data usque in terram dicti comitis Glocestriæ adduxerunt,* " and killed many and burned houses, and committed di- " vers outrages, and the like was done by the Earl of " Hereford and his party upon the Earl of Gloucester: " they endeavoured to excuse themselves by certain cus- " toms between the Lords Marchers; by the judgment of " the Lords in parliament their royal franchise were seized " as forfeited during their lives, and they committed to " prison till ransomed at the King's pleasure;" although, says my Lord Hale, in commenting upon the case, I have read, " although here was really a war levied between these " two Earls, yet inasmuch as it was upon a private quarrel " between them, it was only a great riot and contempt, " and no levying of war against the King, and so, neither at " common law, nor within the statute of 25th Edward III. if " it had been then made, was it high treason." The case of the Duke of Northumberland and the Earl of Westmoreland, immediately follows in Hale, but it is unnecessary that I should read it at length. The judgment of the Lords, to whose examination it was referred, to say whether it was high treason, after view of the statute 25th Edward III. and the statutes of liveries, is in these words: " *Ad-* " *judgerent qe ceo qe fuit fait par le comite n'est pas treason* " *ne felony mes trespass tant solement pur quel trespass le dit comite deust faire fine et ransom à volunté du Roy.*" These cases I adduce as strong evidence that, when the state of a country is such that the law is suspended by the quarrels of powerful individuals, as in those of the Earls of Westmoreland and Northumberland, and of Hereford and Gloucester, then, what, under other or ordinary circumstances, would be felonies, are only misdemeanors. This, I

contend, my Lords, was law before the 43d of the King, and that it is so still can not be doubted. The Act of the 43d did not alter any law, or make any new law, it provided only for the trial and punishment of persons who broke the laws already in existence. If this position is correct, and I think I can not be mistaken in assuming that it is, then I say, my Lords, that, owing to the state in which the Indian Terrritories, and particularly this Red River country, were, that what *here* might be felony, such as murder or treason, was *there* nothing but a great misdemeanor. Here unquestionably the very circumstance of a party of sixty or seventy persons going armed with guns, axes, scythes and sickles, would of itself be an offence; for a party of persons to go riding through the country armed would here, undoubtedly, be an offence; but in this Indian country, it is unfortunately necessary that they should do so, for the purpose of self-defence; and I add that, in this state of things, what at York, in the Home District, would be a high offence, at Fort Douglas, in the Red River, is not; that that which would be murder *here*, is not murder *there*, owing to the irritated state of that unfortunate country. I consider that, in just and equitable defence of these prisoners, I ought to be permitted to shew the state of this country, and the many acts of outrage and aggression which had been committed against the traders by the Hudson's Bay people and these settlers. I consider that I have a right to shew the exasperated state of mind in which these two great rival Companies were to each other. As Mr. Attorney-General has been permitted to shew that we took Fort Douglas, I have a right to shew that they had not long before taken one of our forts, cut down the picquets, and floated them to this same Fort Douglas, where they were found at the time, and to which Boucher alluded when he said, "we want our fort." Boucher, I fear, was, not understood by your Lordships, when the witness represented that Boucher said, "we want *our fort*." Your Lordships will, during the course of this trial, see that forts have been taken from us, as well as by us. Boucher's allusion was to the taking of Fort Gibraltar, a North-West fort, which was razed to the ground, and floated to this same Fort Douglas; and this outrageous act formed only one of a train of vile aggressions, such as I think never was heard of in a court of justice before. This furious and flagrant outrage had been committed only a little before, and if this party had actually been sent to retake their fort,

I do not conceive it would have been unjustifiable, looking at the state of the country. That the principle, which I have the honour of supporting by the authorities of Hale and Blackstone, is applicable to this case, I might be permitted to mention, is agreed by all the Counsel engaged in the defence in these trials, and they are not a few. I, therefore, the more confidently submit to your Lordship, that I am completely entitled to go into evidence of any circumstance, which will have a tendency to shew the state of hostility in which these Companies were, and the exasperated state of mind of their servants.

Chief Justice.—We are desirous that every thing calculated to shew the innocence of these prisoners should be brought forward; we are willing that you should shew the state of excitement that existed at the time of this truly lamentable affray, but it can not, in the present instance, be a question that can at all bear on the case, one way or the other, whether or not these lands were ever bought from the Indians? Whether they were husbandmen, traders, or settlers, or servants of the Hudson's Bay Company, is of no sort of consequence to the question before the Court, which is, whether these two men, Brown and Boucher, are, or are not, guilty of murder? We have nothing to do, at present, with any body else.

Mr. Sherwood.—So I should imagine, my Lord, and it was therefore that I considered the question of the Crown a very improper one, and opposed it. Mr. Attorney, however, was allowed to put it, and from the answer it appeared that Fort Douglas was taken possession of, and the Settlement was destroyed or broken up. This is no way connected with the charge of murdering Robert Semple, of which these two men are accused, and yet it may prejudice their case very much, if they were not permitted to shew that forts had been taken from them, and as to the lands, that they belonged to the Bois-brulés, (of which people the prisoner Brown is one), and that these people had no right to them whatever, though they had taken possession of them. My question was to ascertain whether the Bois-brulés acknowledged their possession.

Chief Justice.—Your question might perhaps be so put as to ascertain whether they had a quiet possession, but it could not be permitted to be taken any farther. The question of Mr. Attorney-General was to shew the disposition in which they left home, and came to this place, and any

thing that will shew the temper of mind of these people, must undoubtedly be evidence in an offence where the *quo animo* is the very foundation of the crime. On the other hand, you certainly are at liberty to shew any thing you can, that will demonstrate the temper of mind, created by circumstances of continued irritation, to be such as must reduce, on the part of the prisoners, this case from aggravated murder to manslaughter: so long as you shew a continuance of this irritation, by proving that the state of excitability in which the tempers of these people were left by the contests in which they were engaged, never allowed their passions to cool, you may certainly go back to any distance of time; but you must never lose sight of this rule, that it must be an uninterrupted irritation, of an extent sufficient to diminish the crime to manslaughter, if proved against the prisoners.

Mr. Sherwood.—That, my Lord, is all we want. Nor should we ever have asked for that, had not the Attorney-General called this place a Settlement, and following up his opening speech, he would, by his examination of this man, (who is a very fit person), have led the Jury to infer that this was an infant Settlement of industrious farmers, who had been completely rooted out of their legal possessions, without any provocation whatever, by these hard-hearted *Bois-brulés;* instead of which, it will in the sequel appear, that this flourishing Settlement, without a single house, was nothing more than the camp of the hunters and servants of the Hudson's Bay traders.

Attorney-General.—It matters not, as I consider it, whether they were settlers, hunters, or traders, they are equally entitled to the protection of the law, and to take the life of the one or other unjustifiably, is murder. There was, as I stated in my introduction of this case to the attention of the Jury, a Settlement, and the object with which these people set out, was to destroy it. I have, by this witness, shewn that it was destroyed by them; so far their acts correspond with what I allege was their original intention, namely, the destruction of the Settlement.

Chief Justice.—It appears rather, Mr. Attorney, to have been habitations than a Settlement.

Mr. Sherwood.—And those the habitations of the servants of the Hudson's Bay Company, instead of agriculturists and farmers.

Cross-Examination, continued by Mr. SHERWOOD.

Heden.—I was in the battle of the 19th June, 1816. I did not see the cannon which the settlers we met said the Bois-brulés had with them.

Chief Justice (to Mr. Sherwood).—My brother Campbell has just spoken to me, to say that he wishes you most perfectly to understand, that though you are permitted to go back, you must go no farther than you can keep up a degree of excitement sufficient, if the prisoner should be found guilty of the death, to diminish the offence to manslaughter. I therefore remind you of it again.

Cross-Examination, continued by Mr. SHERWOOD.

Heden.—The Bois-brulés did not come to our fort on the 19th; they kept at about a quarter of a mile distant from it, and passed it. We had cannon at the fort.

Mr. Sherwood.—Did you take them to the battle with you, or did Mr. Semple send for them afterwards?

Heden.—No, we did not. Mr. Semple sent Mr. Bourke for one, after the people met us, and said the Half-breeds had come with carts and cannon.

Mr. Sherwood.—Did Mr. Semple want a cannon to see what those fellows were about, or what did he want it for, if he did not go out to fight?

Heden not answering for some time, the question was repeated, Mr. Sherwood adding, that he insisted upon an answer, though the witness was swearing in his own cause.

Chief Justice.—Do not say that, Mr. Sherwood. He is a witness brought here on the part of the Crown, and entitled to, and shall receive, the protection of the Court. Every man is bound to appear in Court and give his evidence in all cases when subpœnaed, whether of breach of the peace, felony, murder, or any other. Do not, therefore, talk of being a witness in his own cause, when he is here on behalf of the Crown.

Mr. Sherwood.—I assure your Lordship that no word shall be used by me that is not well weighed; he has told us he was in the battle himself, and before we have done with the business, we may perhaps give a very different appearance to the proceedings of the 19th June, to what Mr. Heden has put upon them. You was in the battle, was not you, on the 19th June?

Heden.—I do not know that it was a battle.

Mr. Sherwood.—Why I thought you said just now, that you was in the battle.

Heden.—I do not know that it was a battle; we were ordered not to fire, but if it had been a battle, I should suppose we would have fired. We did not go to fight; all the Governor said was, to see what those fellows wanted.

Mr. Sherwood.—You had guns when you went out, you say; had they bayonets to them?

Heden.—Yes, some of them had bayonets, not all.

Mr. Sherwood.—If you did not go to fight, what did you want with bayonets; were they to spear fish?

Heden.—I do not know. I only know that the Governor's orders were, not to fire; he said he did not want any firing at all; he only wanted to see what these people wanted. He said, we must see what those fellows want.

Mr. Sherwood.—Take care and don't swear too fast. As he was your Governor, you, I suppose, were bound to do all he told you to do. If he had led you out to attack this party, who had passed your fort without molesting it, you would have been bound to obey him, as you say he was your Governor?

Heden.—He was our Governor; we always called him Governor, and obeyed him as such.

Mr. Sherwood.—Now, I do not know whether, under the permission I have obtained for conducting this defence, your Lordship will be disposed to permit me to follow up the last question, by asking the witness if he knows who made him a Governor, because he was just as much, or no more, a Governor than he was a Bashaw; and we consider it extremely important to let the Jury have that fact before them in evidence, to counteract any unfavourable impression which Mr. Attorney-General's opening may have made.

Chief Justice.—You may call him, or they may call him, just what they or you will: Landlord, Master, Governor, or Bashaw, it makes no difference to the fact which the witness has most distinctly sworn to, viz. that they had received information that they were to be attacked, and in consequence thereof, had kept a constant look-out, and on the 19th day of June, a large party of armed horsemen being seen from the look-out place, about twenty of them accompanied Robert Semple, whom they had been accustomed to call Governor Semple, to see what they wanted; that a parley took place between one of the other party and Mr. Semple, in which high words passed, and Mr. Semple told his people to make Boucher, one of the men at the bar, a prisoner; that Boucher slid from his horse, and joined his

own party, and immediately a firing commenced from the Half-breeds, and by the second shot Mr. Semple fell, and subsequently nearly the whole party. Now how these circumstances are to be at all varied by the name given to this unfortunate Gentleman, I cannot for a moment conceive. Indeed I think it approaching very closely to what I have before remarked as one of the abuses of the humanity which led to assigning Counsel to prisoners.

Mr. Sherwood.—There shall be nothing like petulance on my part, I assure your Lordship, and I hope there will be none on the part of the Crown Officers; but, with great deference to the Court, I must be permitted to do away the smallest impression that can, by possibility, attach itself to the mind of even a single Gentleman of that respectable Jury, from the course which has been pursued on the part of the Crown. I know that with loyal subjects a degree of awe attaches itself to any thing approaching to contempt of, or opposition to, legitimate authority; and if the Gentlemen of the Jury could once be made to believe that Robert Semple was a Governor, appointed by the authority of the Prince Regent, like the illustrious Governor of the Canadas, or his distinguished relative, Sir Peregrine Maitland, the situation of the prisoners at the bar would indeed be critical. I must therefore shew the Jury, that he was no more a Governor than he was a Turkish Bashaw—no more than he was an Emperor. Did you ever ask this Governor of yours, how he became so?—you don't, I suppose, know whether he had a commission from His Majesty or the Prince Regent, in the same way that the Duke of Richmond and Sir Peregrine Maitland, who are Governors, have?

Heden.—I do not know how he was a Governor; I never asked him: it was not my place to do so.

Mr. Sherwood.—You do not know whether the North-West Company acknowledged him as a Governor; whether they called him *their* Governor?

Attorney-General.—I really cannot see upon what ground it is, that the Learned Gentleman puts questions of this nature to the witness. If I had put the offence on a different footing to what it is, by charging the prisoners with levying war against, and in that war killing the Governor of, the Colony, there would, perhaps, be some occasion for them; but in this case of murder of an individual, I do not conceive to what object they are to tend.

Mr. Sherwood.—Will the Crown admit that he was not a

Governor; that he had no authority constituting him a Governor? If the Attorney-General will admit that he was not a Governor, I have no desire to put a single question on the subject of his assumption of authority.

Attorney-General.—I have nothing to do with what his rank was; for it can be of no consequence what his rank or authority might really have been, or what he might have assumed. He was generally known in that country under the appellation of Governor Semple; but I neither admit that he was not legally a Governor, nor do I assert that he was. I do not charge these men with the murder of *Governor* Semple, but they are indicted, as principals in the second degree, in being present, aiding Cuthbert Grant to murder Robert Semple; we say nothing about *Governor* Semple.

Mr. Sherwood.—Very well; then good bye to the Governor. Do you remember any conversation at the time of your going out with *Mr.* Semple? Speak of *Mr.* Semple, because he is not to be Governor any more. Do you recollect his saying any thing about taking of pemican?

Heden.—I do not remember any conversation at the time of going out, except what I have mentioned about going to see what they wanted. I am sure that we did not go to take pemican, nor did I hear Mr. Semple say any thing about taking it from the North-West Company, or that he would have their lives. I know what pemican is. I have frequently eat it myself; it is food prepared for the support of the traders, and is carried frequently from one post to another, where it is wanted. I do not remember any other conversation but what I have told. The Half-breeds had passed our fort before we went out; they did not interrupt us in going by. I can not say whether they would have come back to us, if we had not gone out to them. The rivers which form what are called the Forks of Red River, are the Red and the Assiniboin Rivers, and Fort Douglas is at the Forks. The Red River receives the Assiniboin River at the Forks, and they both fall into Lake Winnipic. *(A map was here handed to witness, who said he did not understand much about maps.)* The Half-breeds were mounted on horseback. Fort Douglas was fortified. It had been fortified for fear of the North-West people and Half-breeds coming. I did not hear Governor Semple say that he would fire on the Half-breeds, nor did I hear Mr. Holte or any other person say they would. I read and write very

little. I do not think I should know Mr. Holte's writing. *(A Letter was here shewn, but he said he could not say whether it was Mr. Holte's writing or not.)*

Mr. Sherwood.—Did you ever say to any body, no matter whom, "We have been disappointed, we deserved what we "got; we fired first, and if we had got the better, we "should have served them the same;" or words to that effect? Now, recollect yourself. Did you ever tell any body so?

Heden.—No, I did not. I never said any thing like it.

Mr. Sherwood.—And every thing you have sworn to to-day, is as true as this, is it?

Heden.—Yes, it is all true.

Mr. Sherwood.—I ask you, is it all as true *as this*, "that "you never said your party fired first?"

Heden.—I never did say so—I could not, because I knew the Half-breeds fired first; and all I have sworn to is as true as this.

Mr. Sherwood.—You have spoken of a report that you were to be attacked; where did that report come from?

Heden.—We were warned by some Indians, that they were gathering at *Qui Appelle* to attack us, and we had been told before that we were to be attacked. They did not tell us that Brown and Boucher were to attack us. There was a fort a little above Fort Douglas, belonging to the North-West Company; I was told it was destroyed, but I do not know that it was: it might have been sent down to Fort Douglas in a raft, and I might have seen it, but I do not know that I did. We see so many rafts there, that it would be hard to tell one raft. It was generally said, Fort Gibraltar was taken by the Hudson's Bay people, that is all I know about it.

Attorney-General.—It is no matter; for it cannot be evidence, either one way or the other. It has nothing to do with the case.

Chief Justice.—I do not know; it may depend upon how long it was before this affair of the 19th June took place.

Mr. Sherwood.—I will ask you once more before I finish with you, did you ever tell any body in *this town*, or any where else, that it was your party or the Hudson's Bay people, who fired first?

Heden.—I have told you before.

Mr. Sherwood.—And you must tell me again.

Heden.—I never did say that our party or the Hudson's Bay people, fired first. When Boucher said he wanted

their fort, he did not say Fort Gibraltar, but I do believe that he meant Fort Gibraltar.

Re-examined by the ATTORNEY-GENERAL.

Heden.—I do not know that it was taken, for I did not see it taken. I heard that it was taken in March.

Attorney-General.—And this battle was the 19th June, I should therefore think, it can be of no consequence.

Mr. Sherwood.—We have as yet only got a part of the truth from this witness, but we shall prove it by others. It was taken in the early part of the summer, and floated down to Fort Douglas. The Red River is frozen up in March, and long after, therefore it could not have been in March. You say you had notice some time before, that the Half-breeds were to attack you. What was the information which you received?

Heden.—We were told they were to assemble at Fort Gibraltar, when the river broke up, and attack us.

Mr. Sherwood.—And you, like good generals, attacked them first; however, we will leave the fort, as you did not see it taken, and go to Paul Brown, of whom you have given us this terrible account. You say he spoke to you in the Cree language. Have the goodness to tell in *Cree* what he said.

Heden.—Brown, when he came to my tent, spoke in Cree. *Witness here repeated some Indian words, and said that in English it was,* "I have killed six Englishmen, "and you shall be the seventh." I had no quarrel with Paul Brown. It took place on the 20th June, the day after the battle at the Plains. I can talk a little Indian, and so I could in June 1816, when this happened. I should have understood Brown, had I not been able to speak it, as he put up his fingers, and made signs.

Mr. Sherwood.—I am afraid your Indian education is of a very recent date. Can you say any thing else in Cree, or, I ask you on your oath, could you at that time speak any Indian?

Heden.—I could speak it then as well as now.

Chief Justice.—He says; if he had not spoken it, he should have understood the prisoner by the signs he made; besides, he has given you the words, and swears that he knew them then as well as now, and he has given you their meaning; there are persons here understanding Cree, I dare say. You understood him, did you, by what he said, and by signs?

Heden.—I understood the words he said, and I should have understood them by the signs he made. I do not know of any pemican being taken. I did not assist to take any; there was a report of it having been taken from the North-West Company: this was about 1813 or 1814.

DONALD M'COY, sworn.

Examined by the SOLICITOR-GENERAL.

M'Coy.—I arrived in the Red River country in 1812, and I was there in 1816, in the month of June. I heard, a little before June 1816, of threats to destroy the Colony at Red River. I had, as long as I had been there, heard that its destruction was threatened, but I heard it then more particularly than before. I saw in that year, in the month of May, Cuthbert Grant, at River Qui Appelle, as I was stopped by him; I do not know if Boucher was with them, but I saw him afterwards at Brandon-house. I was coming down the River Qui Appelle with provisions, and was stopped by Cuthbert Grant, and made prisoner by him and an armed party, and taken back to the North-West Company's fort at Qui Appelle. It was in May that same year, that this happened. Cuthbert Grant and the prisoner Paul Brown were among that party, but Boucher was not. There were about twenty-seven, or twenty-eight persons, but with the Bois-brulés there were fifty or sixty. I saw François Deschamps, and he was there. Cuthbert Grant commanded the party who took me prisoner. Whilst at the fort at Qui Appelle, (where I was kept four days), I heard Deschamps say, they must go down and destroy the Colony at Red River. I saw the prisoner Boucher at Brandon-house, he said he was glad our people were taken at Qui Appelle; and when I answered that there were a good many more at the Settlement, he said they would go down and destroy it. This was the very end of May, or might perhaps be in June. We left the armed force which had taken me prisoner at the fort at Qui Appelle, and went on to Brandon-house. Boucher, one of the prisoners, was there. Hoole was not, neither was Grant. Very soon, I believe, only one night after, we continued our route to the Settlement. I heard no other than what I have told, but when we got to the Settlement, we heard the report that they expected to be attacked, and they were armed to protect themselves. We always kept a look-out at the fort,

and on the 19th June, some one at the look-out gave notice that a party were coming down towards the Settlement. The Governor came out with a spy-glass, and after looking through it, he called to about twenty of his people to go with him, and see what they wanted. I was one that went out with Governor Semple. We were armed, and as we were going along, Mr. Holte's gun went off by accident, and the Governor scolded him for not taking better care. A short time after this, we were surrounded by this party, who were generally painted. I knew some of them; we were close to them, or nearly so, but I do not know if Boucher was painted, or if Deschamps was there. They were strongly armed, having guns, bows and arrows, spears, and tomahawks. When they were surrounding us we stopped, for they came up very quick, being on horseback, and were going to fire. Mr. Semple ordered us to stop, and see what they would do. I saw a shot fired, but before that took place, Boucher came out from his party, and came over to ours, and had some conversation with the Governor, and I saw the Governor catch hold of the butt of his gun. I heard at the same time some words, but could not understand what they were. Boucher then sprang off his horse.

Mr. Sherwood.—Will your Lordships allow me to ask you if you have taken that the witness saw Mr. Semple take hold of the butt of Boucher's gun, because I consider it very material?

Chief Justice. I have taken it. What did Boucher do when Mr. Semple took hold of the butt of his gun?

M'Coy.—He got off his horse, and as soon as he was off, I heard a shot, and saw Mr. Holte die, and immediately after, another. I afterwards saw that most of my party were down. Governor Semple was killed directly after Mr. Holte, for two shots went off directly after one another, by one of which (the first) Mr. Holte fell, and by the other, Mr. Semple, who immediately called out to his people to do what they could to take care of themselves. I did fire myself, but not before Mr. Holte and Governor Semple fell, nor did I hear, nor do I believe, that any of our party did. I do not know what they did after I saw most of our people down, as I endeavoured to make my escape. The next day I saw one of our party, whom I had heard call for mercy, with his head cut open. Some of this party were Indians, and some Half-breeds, and some Frenchmen. Cuthbert Grant was there, but I do not know that he was at the

head of the party. The Half-breeds do not generally paint; it is not common for them to do so. There were only three or four of our party who made their escape. I got to Fort Douglas that night, and I slept there; the next day I saw Boucher come with the party to the fort. I knew Grant, Boucher, Fraser, and Paul, *(the prisoner Brown)*, who were among them. I do not know if they were all there the day before. I, that day, heard Brown ask where Heden was, and his (Heden's) wife said he was in the tent, and I heard Brown say, that he would kill him. I saw Governor Semple fall. I can not say if Cuthbert Grant fired at him, nor if the shot I saw him receive killed him, nor did I see him alive afterwards. He was wounded in the thigh and in the arm. I did not see him buried.

A Juror.—Was there any blood when Mr. Semple was wounded and fell?

M'Coy.—Yes, there was.

Chief Justice.—Did you not say, that you went away directly you saw Mr. Semple fall?

M'Coy.—When I made my escape I only saw four or five of our party alive. When we went out I heard Mr. Semple say nothing but that he would go and see what those people wanted, or what those fellows were doing. As we were going along, the women came running towards us. There were some of the settlers taken prisoners before the party's coming up, and I saw them, but I did not see them taken. The gun by which Mr. Holte was killed, was not fired near me, nor by any of our party, as I think; if it had been, I must have heard it nigher. My back was towards Mr. Holte at the time, and when, on hearing the report of the gun, I turned round, I saw him down, being wounded. I only saw one of our party fire, and he was with me; it was on our retreat; a man on horseback was coming down upon us with a spear, and we fired.

Cross-Examination, conducted by Mr. SHERWOOD.

M'Coy.—I did not see Boucher fire during the whole affray, nor did I see Brown there. I do not know that Fort Gibraltar was taken from the North-West a little before the provisions were taken from us by them. I do not know of any other pemican being taken. I do not know of any thing taken from the North-West Company. I know Mr. Miles M'Donell; he had command of us before Governor Semple. I know of a Proclamation of Miles M'Donell. I

read but very little, not enough to understand the Proclamation, but I know there was one. After this Proclamation, I do not remember that two trains of pemican were taken, but I do know of some boat-loads being taken by our people from the North-West Company, but I do not know the quantity, but I believe two boat-loads. I do not know any thing of the great quantity of pemican taken by Mr. Spencer, amounting to five hundred bags. I do not know of any pemican being taken by the North-West people, before this was taken from them. There were cannon at Fort Douglas, but I do not know that they were to prevent the North-West people going down. I heard no threats from Governor Semple that they should not pass, or that he would fire on them if they attempted to pass. The party had provisions and went with carts, but I do not know why. The North-West Company had been accustomed to send their provisions by water, and they came from the River Qui Appelle to Portage des Prairies by water this time. Portage des Prairies is a good day's march from Fort Douglas. At the time that Governor Semple and the rest of us went out, the other party were going towards the Settlement, they had passed the fort, but had not come towards it. I saw Mr. Semple seize the butt of Boucher's gun, but I did not hear whether he threatened him, or whether Boucher was in fear of his life. I did not hear what passed on either side.

Mr. Sherwood.—Did you not observe what Boucher did—did he laugh, or did he cry, or what?

M'Coy.—He did not laugh certainly. I did not hear what passed. I fired myself, as I was running off, at a man who was pursuing me. At the time I heard our people crying for mercy, it was before I went away, both parties were then close together, and some of them were running about. John Greer it was that I heard call. I heard Governor Semple order Mr. Bourke to go for a cannon. I did not see that the North-West had any, but the settlers we met said they had, and then Governor Semple sent for one. I did not see that Mr. Semple had a gun or a rifle.

Mr. Sherwood.—You have been talking about a Settlement, will you now tell us what sort of Settlement this was? and what grew there?

M'Coy.—There was a good many people there, perhaps forty or fifty, who lived near the fort. They had raised grain.

Mr. Sherwood.—Grain! what sort of grain ever was raised?

M'Coy.—Wheat and barley.

Mr. Sherwood.—Do you mean to swear that they ripened?

M'Coy.—Yes, it had ripened the year before, and was gathered, and potatoes in great plenty; wheat had ripened, and was sown again this year. Mr. Holte's gun went off quite by accident, and Mr. Semple was quite angry with him for not giving better care to his gun.

Re-Examination by the ATTORNEY-GENERAL.

You have said you know of pemican being taken from the North-West Company by the Hudson's Bay people; did you ever know of their people taking away the lives of any of the North-West Company, or do you know of any lives being lost in any other affray by the North-West Company?

M'Coy.—No, I do not. I do not think there have been any.

JOHN P. BOURKE, sworn,

And examined by the SOLICITOR-GENERAL.

Mr. Bourke.—About the month of June, 1816, I was at Red River; there was a report current at that time of an attack being expected from the North-West people. I heard that they were assembling at a North-West post, but I know nothing myself of it being expected particularly from the people of Alexander M'Donell, but I know that it was a general report that the Settlement was to be attacked, and in consequence of this expectation, sentries were kept constantly at Fort Douglas. I remember the 19th June in that year; about five o'clock in the afternoon of that day, notice was given by the man upon the look-out station, that the Half-breeds were coming down, and were going towards the Settlement. Mr. Semple took his spy-glass and went to the look-out station. I accompanied him, and after looking some time, he told about twenty men to follow him, and see what these people wanted, and a number accordingly went out, perhaps about twenty, or rather more; after going a little way, we met some women coming from the Settlement, running, and crying that the Half-breeds were coming down upon them with carts and cannon. Upon this Mr. Semple sent back to the fort for a small piece of ordnance which was there; it was me that he sent; he desired me to go back and get the cannon, and tell Mr. M'Donell to send as many men as he could spare. I accordingly went back and got the cannon, but Mr. M'Donell

could only spare one man; as I was returning, I saw the Half-breeds coming up towards the Governor's party in a straight line. Presently after they made a half-circle, and nearly surrounded them; I saw the flash of a gun, and immediately after another, and shortly after I saw a general firing along the whole line of horsemen. The firing ceasing some time after, and seeing none of our party, I was afraid that I might be intercepted with the cannon. I therefore returned with it, but did not go back to the fort myself, as after we had gone a little way, I determined to go and see what had become of Governor Semple, being joined at this time by some men who had come after me from the fort. I therefore sent the man who had come with the cannon, back with it, through the bushes to the fort, and we went on to where we expected to find Governor Semple; when we had nearly got to where we supposed he might be, we saw some men in the bushes, and also farther on some men taking care of the people's horses, who were now dismounted and spread over the ground, but I did not see any of our people. I at first thought that these men in the bushes were some of our people, who had made their escape. They called out to us, saying they wanted us, and called to me that the Governor was there, and wanted me. I stood a little time, not knowing whether to go on or not, when they called out again, "Come on, come on, here is your Go-"vernor, and he wants you, won't you come and obey him?" They were concealed in the bushes and brushwood, but I saw presently afterwards that they were Half-breeds, and I perceived one of them in a sort of shirt, with a large bunch of feathers in his hat, resting his gun upon a stump and levelling at me. I and those that were with me, immediately turned back, and as we were making our escape, we were fired at, and I was wounded, and one of the men who was with me was killed by another shot. I do not know any thing about who fired first at the Plains, but I always heard it was the Half-breeds, and that Mr. Holte was killed by it. I never saw Mr. Semple afterwards. I saw a number of bodies from the window of my room, but being wounded, I could not go about. I saw both the prisoners afterwards on the next day at the fort, but I did not speak to them. I understood that they intended to kill two or three more, and I expected I was to be one. The fort belonging to the North-West, at which I spoke of the people assembling to attack the Settlement, was their fort at River Qui Appelle, and Mr. Alexander M'Donell was in

charge there. I saw Cuthbert Grant on the day after the outrage at the fort. I could not distinguish him on the 19th, but I always heard that he had the command on that day. I heard it generally said so.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Bourke.—Ever since I came to the country in the Indian Territory, I have been a clerk, partly in the service of the Hudson's Bay Company, and afterwards in the service of the Earl of Selkirk, at the Settlement at Red River. I have heard it reported, and I can not say I have any doubt, though I do not myself know it, that Earl Selkirk is interested in the Hudson's Bay Company. I have heard that he was a partner, and I do not myself know that he was not, any more than that he was. I always observed the orders of Mr. Semple, and I suppose his authority came from the Hudson's Bay Company. I know Mr. Miles M'Donell; he was at the Colony before Mr. Semple, and I was there before he was. I have seen Mr. M'Donell write, and should know his hand-writing if I saw it. *(The Proclamation was then produced and shewn to witness, who said)*, I believe the signature to this paper to be Mr. Miles M'Donell's hand-writing; I have no doubt of it at all.

Mr. Sherwood moved that the Proclamation be now read.

Attorney-General.—I wish to know what possible effect any Proclamation of Mr. M'Donell's is to have upon this charge, or upon what principle it is that this paper is to be introduced as evidence upon a charge of murder against these prisoners. It does appear to me a most extraordinary course that the Gentleman is taking.

Chief Justice.—The object is evident. This is the Proclamation we have heard so much about, authorizing the detention of provisions, if attempted to be sent out of that part of the country where this Colony was, and which, as they say, rendered it necessary, when they sent provisions, that they should be accompanied by a guard to protect them.

Mr. Sherwood.—That is precisely our object, and one which we consider ourselves perfectly entitled to attain in this way. We propose to put this Proclamation in as evidence, and then shew, that in consequence of it, all these difficulties have occurred, and by which we mean to justify our conduct.

Chief Justice.—I fear this, under the ordinary course of

criminal justice, would do you a great deal of harm. I do not know what may be its effect here. You of course know your own defence, and it perhaps may not have that effect in this case, but in ordinary cases, it certainly would tend to prove the *malus animus*, and to account for it. Relative to the right of putting the question, and having the Proclamation read, I can not but say that I consider, after the questions proposed by Mr. Attorney-General, as to what occurred after the murder, I do not think you ought to be restricted. I certainly consider an investigation into events that occurred even one day after the murder, as more out of the course, than the putting in of this Proclamation. In the Defence, an unusual course has been taken, and from the necessity of the case, allowed, and they say that a part of this case that they intend to make out as exculpatory of their conduct, is this Proclamation, because they allege that the grievances of which they complain, were committed under the authority of this paper; a paper issued, as they say, by a person having no authority to issue it, and placing them under circumstances, that, had they not resisted it, they must have suffered very materially in their interests. I do not see but it must be read, though, as I said before, it is for the prisoners' Counsel to consider whether it may not do harm.

Mr. Sherwood.—That we will risk. We wish the Proclamation of this self-created Governor to be read; this issuer of proclamations might as legally have issued a Proclamation, forbidding the people of Yonge-street to come to York market. We wish the Proclamation to be read, whatever may be the effect.

Attorney-General.—I certainly object to any Proclamation of Mr. Miles M'Donell's being read. I feel it my duty, solemnly to protest against it being admitted as evidence, as I do against the course which the Gentleman appears to have marked out for conducting the Defence. I have no wish to exclude any thing that, by possibility, can be beneficial to the prisoners, and that can consistently be admitted; but it can not be allowed, that a sort of arbitration, or balance of crimes, shall be made. This mode of justifying one crime by another, (admitting for a moment that unjustifiable acts have been committed by the servants of the Hudson's Bay Company), can not, I maintain, be allowed to be produced as any defence to the charge which we bring against the prisoners, of aiding and abetting in

the murder of Mr. Semple. It is absolutely necessary that, to put a stop to this most irregular course, a beginning should be made, and I therefore, on the grounds I have mentioned, object to any paper from the pen of Mr. Miles M'Donell being read.

Mr. Sherwood.—The case, my Lords, at present before the Court, I again remark, is *sui generis*, and can not therefore be reduced to the ordinary rules that govern every day trials; but Mr. Attorney-General totally misconceives our Defence, when he alleges that we propose to justify one crime by another; far, very far, is our course from an attempt of that kind. We propose, not to produce crime to justify crime, for we say the crime is all on one side, and *that* on the side of the prosecution. Our crime consists in this, that we did not stand still and be beat. We say that, if by crime they have provoked blood to be shed, on their heads be it. We say that on the 19th June, we have committed no crime; because we were quietly pursuing, under great inconveniences imposed by them, our lawful trade, and they came out to us and attacked us. We have already, by their own witnesses, proved an assault upon Boucher, and before we have done, we shall prove a great deal more. The circumstances of that country are not like those of this civilized province, where recourse can be had to the protection of the law; there a man is compelled to be his own protector. It would be an absurdity to say, that the prisoners might not prove, (Brown for instance, who is a Half-breed), that a prohibition of trade was a prohibition of right. I do not wonder at the prosecutors not wishing this Proclamation to be read, because it exhibits at once the leading cause on their side, of all the outrage and rapine that has occurred since 1814. I am not only to be permitted to prove acts of aggression, but I may go farther, and shew the spring of them. At present I am contented to rest at the date of the issuing of this Proclamation, and from that time I shall follow it up, by act of aggression upon aggression, committed upon us by virtue of it, or of the principles contained in it, and in so doing, instead of justifying crime by crime, as Mr. Attorney-General represented he understood I intended to do, I throw that upon the opposite party, whilst I am justifying our innocence by the crimes of our adversaries, which makes a very material difference.

Chief Justice.—As I before mentioned, we had, as it was not impossible but questions arising in these trials might be

be brought before us in the King's Bench, agreed to be together when any new point was started for discussion. This is one; and my Brethren on the Bench are against me in opinion, and think the Proclamation offered by the Counsel for the prisoners cannot be read. I have thought that, in the process of this trial, every thing that could shew the malice existing from the one party to the other, might be shewn. Their endeavouring to starve each other; the endeavouring to furnish provisions in opposition to this Proclamation, to the engagés; in fact, every thing on both sides that could throw any light on this melancholy transaction. I did understand, and do now, that the Defence of these men is, that, at great expence, they had sent in carts a quantity of provisions, necessary for the supply of the traders who were expected; that hitherto they had been accustomed to send them by water, but that, the fort at the Forks being fortified to prevent their passing, they had been compelled to adopt this expedient; that, in the prosecution of it, they had no intention whatever to interfere with the Hudson's Bay people, but that they were attacked by them. In corroboration of this statement, they wish to prove the Proclamation, forbidding provisions to be taken to where they had occasion to send them; and I had thought my Learned Brethren concurred with me, that under the course this trial had been allowed to take, it was consistent and right to admit the Proclamation; but it appears I misunderstood them; it therefore cannot be read.

Mr. Justice Campbell.—When our Learned Brother, the Chief Justice, declared in open Court, that, according to our view of the subject, the Defendants might go back to any time, to prove an exasperated state of mind, I was very desirous that it should be distinctly understood, that my opinion went no farther than this, that you could go back no farther than you could prove a continuance of the excitement; and that, not only must it be proved to have continued without cessation, but that there had been no time for reflection, and cooling of the passion; it was upon that ground, and that only, that I consented to admit you to go the length you have gone. It was on this ground, that you would not only prove that the irritation had existed from any period to which you went back, but that there had been no time for reflection to take place, and for the irritation to subside, owing to the continued or uninterrupted nature of the aggressions.

Mr. Livius Sherwood.—That, my Lords, is not exactly our Defence——

Mr. Justice Campbell.—It is the only defence which can be offered for murder.

Mr. Livius Sherwood.—With great submission, my Lord, I beg leave to contend, that in arson, murder, or robbery, or any felony, it is open to the accused to shew whatever he can in the conduct of those who accuse him, that will, in any degree, account for his own, or reduce the enormity of the offence of which he is accused. So I say, in this case, we have a right to take any date we think proper, and follow it up wherever we meet any of the opposite party, and shew, from the peculiar circumstances of the case, that felony and murder was not committed by us. This doctrine I am prepared to support by authority.

Mr. Justice Campbell.—You may trace back the irritation at this moment to any particular period, but you cannot put in this Proclamation, and say it is a justification, or that it will exculpate you, because you were irritated at acts which you say had been done under it, whether they were right or wrong, is now of no consequence——

Mr. Livius Sherwood.—That, my Lord, is a part of the *res gesta* of our Defence, and I hope to satisfy your Lordship that it is a legal ground. Our Defence is, that at this very moment, from a concatenation of circumstances, a state of exasperation and irritation existed, which was excited by the Hudson's Bay people's illegal conduct, manifesting itself in various ways, and commencing with this Proclamation. We go no farther back at the present moment, because we consider this sufficiently remote to meet Mr. Attorney-General's case, as at present it stands; if he goes to more remote periods, so must we. We propose to put in this Proclamation, forbidding the exportation of provisions; we shall then shew that our pemican was taken from us in virtue of it; that we were threatened with our lives if this Proclamation was disobeyed. In this way we purpose shewing a train of circumstances down to this very day, which will lead us to the conclusion which we are aiming to establish, and we cannot arrive at it, unless we are permitted to shew from the beginning to the end. This circumstantial sort of proof, if detached, is of no weight—it would amount to nothing; but taken together as a whole, and it is stronger even than positive testimony, for, as is well laid down in an authority to which we daily refer, positive testimony may err, circumstantial cannot. It will appear then,

that a state of irritation existed, from the imminent danger we were at all times exposed to of losing, not only our property, but our lives, by disobedience of this Proclamation; which we humbly contend we are entitled to make evidence on the grounds which have been submitted.

Mr. Justice Campbell.—If there is no discontinuance of this irritation, and that the outrages to which you refer were so continued that there was no time for this exasperation to cool or subside, then you may perhaps be permitted to have it read.

Mr. Sherwood.—We shall, if permitted to read this Proclamation, go on to shew that, without this food called pemican, trade can not, in that country, be carried on. We should then shew that it had before, when passing in boats, been most outrageously taken from us; that, at the moment we took the precaution of sending it down under a guard competent to protect it, it was actually required to meet persons who were expected, and who, if they did not receive it, must starve; we shall prove, as indeed we have already done by their own witnesses, that we had no intention of interfering with these people at all, that our sole object was safely to carry our provisions by the route that was left us; we shall most fully prove that they came out, not merely to see what we wanted, but to attack us, but that they this time had been deceived as to the number of persons, and I am much mistaken if we do not also clearly establish that they actually fired first. All these circumstances we contend we have a legal right to shew. We wish to commence with the Proclamation.

Attorney-General.—It is of no real consequence that, in point of fact, a systematic plan of opposition existed between these two trading Companies, and that in our own imagination, very illegal acts have been committed on both sides; the only point which can, in my humble judgment, bear on this case is, was a provocation given to them in the lawful pursuit of their trade that justified these Half-breeds in resorting to arms? As to my having examined the witness as to what took place the day after this murder charged in the Indictment, I went no farther than to shew that the object we say they had in view when they left Qui Appelle was actually carried into execution. We say that it was not to convey provisions, but to destroy this Settlement, that this party came down in hostile array, and we have shewn that they did destroy it. I can not therefore see that my proving, by a witness, that which was actually necessary to substantiate,

the assertion that we make of the real intention of these persons, can open the door to them to go years back into a history of, perhaps, mutual aggressions, and offer them as a defence on a specific charge of murder. If the Gentleman can prove their only object to have been to take provisions, let him do so; but it can not be necessary, to establish that point, that he should prove a Proclamation years before, by a person whose name does not even appear in the present transaction. It is however completely with the Court.

Mr. Sherwood.—I must prove my case, without any direction from Mr. Attorney-General, in my own way, and I shall prove it, link by link. It is a chain of testimony that I have to produce, and I shall, in my cross-examination of his witnesses, attempt to prove as many links as I can, and the remainder by my own. Having done so, it will be for your Lordships, and not for the prosecutor, to tell the Jury what I have not proved.

Solicitor-General.—I do not imagine that your Lordships intend that an animosity kept up for months or years, (according to what the Learned Gentleman proposes to himself), should be considered as that state of exasperation which had not time to cool. I conceive the Learned Gentleman has misapprehended what your Lordships meant.

Chief Justice.—In the first latitude given to this Defence, the Court did it because, from the circumstances which had been shewn, it thought it absolutely necessary to the substantial justice of this case (so very peculiar in its nature), that evidence should be admitted to shew an exasperated state of feeling, and that under it, excesses had been committed. This was allowed, not with any view of admitting these excesses to be pleaded as a justification for a constant irritation of one, two, or three months, or weeks, or even days, or hours, but that these repeated aggressions created an irritation in their minds, which raised such a suspicion of injury being done them, whenever they met the opposite party, as to justify, in the unhappy and peculiar state of that country, their resorting to arms for self-protection, even before an actual attack had been made upon them. My idea was, that the prisoners might be permitted to shew that such was the state of that country, from the hostility of these two great Companies, that it was necessary to go armed; and if, in addition, they could prove that a constant irritation was kept up in their minds from any time down to this melancholy 19th June, not only without interruption, but that the causes of this irritation were in such constant

succession as not to allow the passions to cool, and reason to resume its sway, that it was no matter where they began, and therefore, when their Counsel said he would begin with this Proclamation, (about which we have heard so much, that we all know what it amounts to), I thought he might be permitted to do so. I merely cautioned him that, in ordinary cases, such a course would do harm, and might do in this, as it must depend entirely upon what the Jury think of these provocations. These were the reasons which induced me to give the latitude in the first instance, and, having permitted an enquiry to be gone into, of what occurred after the murder charged in the Indictment, I thought it but right that the prisoners should be allowed to shew what they could, to account for their conduct. My Learned Brethren, under this explanation, that the irritation must be in such immediate succession that there was no time for passion to subside, do not object to the Proclamation being read.

The following Proclamation was then put in and read.

PROCLAMATION.

WHEREAS the Governor and Company of Hudson's Bay, have ceded to the Right Honourable Thomas Earl of Selkirk, his heirs and successors, for ever, all that tract of land or territory, bounded by a line running as follows, viz:—Beginning on the western shore of the Lake Winnipic, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to the Lake Winipigashish, otherwise called Little Winnipic; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude, intersects the western branch of Red River, otherwise called Assiniboin River; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Mississouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipic, (meaning by such last-named river the principal branch of the waters which unite in the Lake Saginagas,) thence along the main stream of those waters and the middle of the several lakes through which they pass, to the mouth of the Winnipic River; and thence in a northerly direction through the middle of the Lake Winnipic, to the place of beginning. Which Territory is called Ossiniboia, and of which I, the undersigned, have been duly appointed Governor.

And whereas, the welfare of the families, at present forming Settlements on the Red River, within the said Territory, with those on the way to it, passing the winter at York and Churchill Forts in Hudson's Bay; as also those who are expected to arrive next autumn; renders it a necessary and indispensable part of my duty to provide for their support; in the yet uncultivated state of the country, the ordinary resources derived from the buffalo and other wild animals hunted within the Territory, are not deemed more than adequate for the requisite supply. Wherefore, it is hereby ordered, that no persons trading in furs or provisions within the Territory, for the Honourable Hudson's Bay Company or the North-West Company, or any individual, or unconnected traders or persons whatever, shall take out any provisions, either of flesh, fish, grain, or vegetable, procured or raised within the said Territory, by water or land carriage, for one twelvemonth from the date hereof; save and except what may be judged necessary for the trading parties at this present time within the Territory, to carry them to their respective destinations; and who may, on due application to me, obtain a license for the same. The provisions procured and raised as above shall be taken for the use of the Colony; and that no loss may accrue to the parties concerned, they will be paid for by British bills at the customary rates. And be it hereby further made known, that whosoever shall be detected in attempting to convey out, or shall aid and assist in carrying out, or attempting to carry out, any provisions prohibited as above, either by water or land, shall be taken into custody, and prosecuted as the laws in such cases direct; and the provisions so taken, as well as any goods and chattels, of what nature soever, which may be taken along with them, and also the craft, carriages and cattle instrumental in conveying away the same to any part, but to the Settlement on Red River, shall be forfeited.

Given under my hand at Fort Daer, (Pembina,) the 8th day of January, 1814.

(Signed) MILES M'DONELL, Governor.

By order of the Governor,

(Signed) JOHN SPENCER, Secretary.

Mr. Sherwood.—Now, I suppose, it will be admitted by the Crown, though just now they did not choose to assent or deny the validity of Mr. Semple's authority as Governor, that Mr. Miles M'Donell, who was Mr. Semple's predecessor, and had just the same powers, had not any authority to lay an embargo, as he does in this Proclamation.

Chief Justice.—It is of no consequence whether he had authority or not, to this trial for murder.

Mr. Sherwood.—If, my Lord, any weight can be given

to the opinion of Counsel, I beg leave to say, that is of great importance. This is a Proclamation by the predecessor of Mr. Semple, Mr. Governor M'Donell.

Chief Justice.—We know it is, but we are not trying Mr. M'Donell, and it therefore has nothing to do with the case. You have put in a piece of evidence; now make what you can of it, to exculpate the prisoners from the charge of murder. If we were trying Mr. M'Donell, it might be a question, whether he had any authority, or how far it extended; but it can not in this case.

Mr. Sherwood.—We had no idea of trying Mr. M'Donell, and yet imagined we might, if the Crown did not admit it, prove that he had no authority to lay an embargo. I will, however, go on with the cross-examination. Do you know of any provisions being seized, in consequence of this Proclamation, by the Hudson's Bay people from the North-West Company, and by whose authority, or who gave the orders?

Mr. Bourke.—I do not know of any provisions being seized, but I have heard a report that there were some taken from the North-West Company by some of our people, but I do not know by whose orders, or that it was under the Proclamation of Mr. M'Donell. I know nothing at all of two bateaux-loads of pemican being taken, nor of five hundred bags of pemican, though I have heard it reported that there were, but I *know* nothing of it, of my own knowledge.

Mr. Sherwood.—Are you acquainted with the taking of Fort Gibraltar?

Mr. Bourke.—Unless I am obliged to answer that question, I shall not.

Mr. Sherwood.—Why not, Sir? was you at the taking it? Was you one of the party in that daring outrage?

Mr. Bourke.—That is no matter; unless I am ordered by the Court to answer that question, I shall not.

(The Court informed Mr. Bourke, that he need not answer any question which might involve him in a criminal prosecution, but all other questions he must answer.)

Mr. Sherwood.—Well, Sir, I do not ask you, if *you* helped to raze Fort Gibraltar; but did you *hear* any thing about its being razed by any persons?

Mr. Bourke.—I decline answering that question.

Mr. Sherwood.—Well, Sir, you shall answer it then in another way. Did you know if Michael Heden was at the taking of that fort? That is a question you must answer.

Mr. Bourke.—I believe Michael Heden was at the taking of Fort Gibraltar. I saw a raft of materials come to Fort Douglas, some time afterwards, but I do not know that they were the materials of Fort Gibraltar. I have heard, and I believe, they were the materials of Fort Gibraltar. The Red River usually opens, or breaks up, about April; and it was about the latter end of May that I saw those materials, which I was informed, and believe, were those of Fort Gibraltar, but I do not know that they were. It being the latter end of May, it could not therefore be long before the battle. I saw Governor Semple go out to protect the settlers. I went out with him, and had a gun and some balls loose, but I had no cartridges. Some of the guns had bayonets to them; we did not go out to fight this party, though some of the guns had bayonets.

Mr. Sherwood.—What could you want with bayonets to your guns, if you did not go to fight? Do you use bayonets in hunting? Is it usual to shoot buffalo with bayonets? How came you to take bayonets, if not to fight?

Mr. Bourke.—I do not know how it was, but we did not go out to fight. We went out to protect the settlers, and get them to the fort. If they had been in the fort, we should not have gone out at all. We had long expected the attack. Our apprehensions arose from information given us, and from repeated threats; also from our having been fired on in 1815, when they drove us away.

Mr. Sherwood.—Do you mean to say *now*, that your party did not fire first? I know you have said it before, but I ask you again?

Mr. Bourke.—I do mean to say *now*, as I always have said, we did not fire first. When we met the settlers, who were running to the fort, and said they had carts and cannon, Mr. Semple sent me back to the fort for a small piece of ordnance which was there. It was from the settlers, and not from the sentinel, that we received information they were coming with cannon.

Mr. Sherwood.—You have spoken of Mr. Holte, Sir; pray what sort of man was he?—a mild man, not given to passion?

Mr. Bourke.—I do not know that I have said any thing about him during my examination. I do not recollect that I have.

Mr. Sherwood.—Well, Sir, if you do not decline, (as you did about Fort Gibraltar,) answering my question, we *will*

speak of him. What countryman, in the first place, was Mr. Holte?

Mr. Bourke.—Mr. Holte was a Norwegian, or a Swede, I believe. I never heard him say that he would destroy the North-West Company. *(A Letter was produced, which the witness slightly examined.)* I can not say whether this Letter is in his hand-writing or not.

Mr. Sherwood.—You had better, Sir, examine it more closely; perhaps, by its contents, you recollect the writing. I'll hand it you again to look at.

Mr. Bourke.—I do not wish to see it. I do not know, from looking at it just now, whether it is his hand-writing or not. The Half-breeds and North-West people drove away the settlers the day after, when they had them completely in their power. I heard that if Allen M'Donald had come, there would have been some killed, but none were killed, though wholly in the power of the Half-breed party, after the 19th June.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General.—Were your party on horseback?

Mr. Bourke.—I was the only person belonging to our party who was on horseback at all, during the whole massacre, and I sent my horse back, when I went on to look for Governor Semple.

Attorney-General.—Their party, then, being on horseback, and you on foot, could, I imagine, have avoided you, had they been so minded?

Mr. Bourke.—Certainly, I should think they, being on horseback, might have avoided us if they had wished.

Attorney-General.—Did they avoid you, or endeavour to do so?

Mr. Bourke.—No; they came riding up to meet us; they gallopped up to us.

Mr. Sherwood.—Yes; they might have avoided you, by leaving their carts with the provisions, and gallopping away?

Mr. Bourke.—They need not have left their carts; they might have taken them with them.

Mr. Sherwood.—Is it usual in that country to gallop loaded waggons through woods? I fancy not.

Mr. Bourke.—There are no woods there to gallop through, it is an open plain for miles; and it is not likely we should have followed a party so strong as they were.

HUGH M'LEAN, sworn.

Examined by the ATTORNEY-GENERAL.

M'Lean.—In June, 1816, I was at Fort Douglas; there were reports which led us to expect we should be attacked. The reports were, that the North-West people were coming to strike the Colony and fort. This report came from Qui Appelle, by those who had been taken there with the pemican. M'Coy was one that came from there, and among them they brought the reports. On the 19th June, 1816, I was at a short distance from the fort, and I saw a great number of persons coming down on horseback. They had not passed the fort when I saw them first, but were about opposite to it, at a distance of perhaps a mile and a half; there appeared to be about fifty or sixty of them, and they had two or three carts with them, and were going towards Lord Selkirk's houses. They went at about a small trot, and were coming at that pace towards the woods which are between the fort and the Settlement. I then went to the fort, and Governor Semple, with the party who went with him, were out before I came. I saw them going along, but I did not join them; I went on to the fort. I had been about a quarter of an hour at the fort, when Mr. Bourke, who was one of the party who went with Governor Semple, came for a piece of cannon, and I went to drive the cart with the cannon. We went on for about a mile, (in answer to a question from the *Attorney-General*, as to where *Governor Semple* was at this time, by which the narrative of witness was broken in upon, he said, that he was on before), and at about half a mile farther on, we saw them; they were mixed together, so that we could not distinguish one from another. Mr. Bourke observing this, sent me back with the cannon to the fort, which I reached with it safe. I saw Mr. Bourke afterwards, for after leaving the cannon I was returning to the same place, and then I saw him lying in a bush of wood wounded. Some men had advised him to go back, calling to him that the Governor wanted him, and then fired upon him. I then returned, and did not go any farther, as I found Governor Semple and others were dead. The Half-breeds were close to us at this time, but I did not know Grant or any of them. When I first went to the fort, after seeing the men on horseback, I met Mr. Semple coming out with the party that went with him, but I did not speak to them. The Frog Plains are about three miles

from Fort Douglas. I do not know if Mr. Semple or his party could have overtaken them, they were on a slow trot, but going faster certainly than people walk. Next day a large party of them came to the fort, they were armed, and about eighteen in number, and Grant was amongst them. I knew it to be Cuthbert Grant; I did not hear him say any thing about what took place the day before. I heard one Vickers say they fired first. I saw the carts come with nine dead bodies, and amongst them was the body of Governor Semple; one of his arms and thighs were broken, and a musket-ball had gone in at his throat, and out of his head. The first time I saw Cuthbert Grant after the 19th June, I did not say any thing to him about the affair of that day. I had no conversation with him at all. I saw Boucher at the fort; he appeared to act under Grant's orders. As I was going along with the cart, I met some settlers coming to the fort, they appeared in a great fright, and were crying.

Cross-Examination, conducted by Mr. SHERWOOD.

M'Lean.—I did not see Brown and Boucher the day after the battle. I do not know what was in the carts that the Half-breed party had with them; I do not know whether it was pemican. Mr. M'Donell ordered me to go with Mr. Bourke with the cannon which was mounted, but we did not fire it; we had no orders to fire it, nor no ammunition. The Half-breeds took away some of the settlers' goods, but I did not hear, though they were wholly in their power, that any were killed after the 19th, nor do I think any were killed. They were all sent away in a day or two afterwards.

PATRICK CORCORAN, sworn.

Examined by the SOLICITOR-GENERAL.

Corcoran.—In the spring of 1816, I was at Fort Douglas, and about the month of April, I was sent to Qui Appelle River. I went there with a party, and on our return, we were attacked and taken back to the North-West Fort at Qui Appelle. I do not know if Boucher was there, but Cuthbert Grant, I think, was. It was a general talk at the fort, that they would go down and take Fort Douglas, and break up the Settlement. There were not many Indians, but a good many Half-breeds, and they talked generally of the intended attack; some whose names I do not recollect, told me of it particularly, and when I returned to Fort

Douglas, I told it to our people. Peter Pangman, alias Bostonnois, was there; he is a Half-breed. Cuthbert Grant was there, for I heard him say, that he and others would come down and pay a visit to Mr. Robertson, and he should see what they could do. I understood by their coming to visit Mr. Robertson, (and they did not scruple to say), that it was to attack him—I was there, (at Fort Douglas), on the 19th June. It had been, and was, a common report, that we were to be attacked about that time. I was not in the battle, I was in the fort. I have nothing particular to say about what took place on the 19th June. Towards evening, I saw Mr. Semple and some of his people coming out of the fort as I was going in, but I did not see the Half-breeds till next day. I saw some of the women from the Settlement come crying to the fort, saying the Half-breeds were come. On the next day I saw a number of Half-breeds enter the fort, and I believe that both the prisoners were amongst them, but I had no conversation with them, nor did I hear what passed between them and others of our people. I saw Governor Semple next day dead; at the time I saw his corpse, Cuthbert Grant was there.

Cross-Examination, conducted by Mr. SHERWOOD.

Corcoran.—All I know about the battle, I have told. It was not two months before, that I was at Qui Appelle; it was in May that I was there. The fort on River Qui Appelle is about four hundred miles from Fort Douglas. I am a servant to the Hudson's Bay Company, and am now in my seventh year. I was not at Fort Gibraltar when it was taken, but I know that it was taken. I saw the materials of it at our fort; they were rafted down to it.

Mr. Sherwood.—When Cuthbert Grant said at Qui Appelle, that he was going, or would go, and visit Mr. Robertson, did he not say what he was going for, that they were going to try and get their fort?

Corcoran.—I did not hear him say what he was going for.

Mr. Sherwood.—Did you not understand at the fort at Qui Appelle, that it was for that purpose they were going to visit Mr. Robertson, though Grant did not in your hearing say so?

Corcoran.—I did not hear Grant say more than that he would visit Mr. Robertson; and some of the Half-Breeds

told me that they were going down to destroy the Settlement; indeed that was the general talk.

Mr. Sherwood.—That you told us before, but I want you now to answer my questions. You have told your own story to the Gentleman who examined you just now, and you answered all his questions very readily; now, though mine may not be so pleasant, yet you *must* answer them, and we want nothing else from you. Now I ask you again, when Grant spoke of going to visit Mr. Robertson, though he did not in your hearing *say* that it was about Fort Gibraltar that he was going, had you not good reason to believe that he *meant* he was going about that? Now, answer that question, just you had, or you had not, yes, or no?

Corcoran.—When Grant said that he was going from River Qui Appelle to visit Mr. Robertson, I suppose he had some allusion to Fort Gibraltar.

Mr. Sherwood.—Very well, why could you not have said so at first; you must answer my questions, however unwilling you may be.

Corcoran.—I am not unwilling at all, I only want to speak the truth, and I can not tell what he meant. It was the common talk that Fort Douglas was to be taken, and the Settlement broke up, but I don't know why.

Mr. Sherwood.—But you know that Fort Gibraltar was taken, and razed to the ground by orders of your Governor, as you call him, by a party under the command of this Mr. Robertson?

Corcoran.—No, I do not. I did not see it taken, I heard that it was taken, but I do not know by whose orders.

Mr. Sherwood.—Do you not know that Mr. Semple sent Mr. Robertson to take Fort Gibraltar, and that Mr. Robertson went and took it?

Corcoran.—I do not. I was not there, and do not know that Mr. Robertson went and took it, nor do I know any thing about any orders being given by any body to take it. I only heard that it was taken, and I saw some materials at our fort, which they said were those of Fort Gibraltar. Mr. Robertson is in the service of the Hudson's Bay Company. I do not know if he was under Mr. Semple's orders. We always considered him as our head, and obeyed him; we were under his particular orders. When I went to River Qui Appelle, it was under his orders. Mr. Robertson, as well as Mr. Semple, was always willing that any merchant should pass and repass, if they did not

molest *him*. I never heard that cannon were planted on the banks of the river opposite the fort, to prevent the North-West people from going up and down the river. When I was at the fort at Qui Appelle, I told them that they might pass and repass if they went quietly. I have heard that this party of Half-breeds came to about a day's march from Fort Douglas in canoes and boats. There were cannon at Fort Douglas, and they were mounted on bits of carriages, but there were none on the other side of the river. I know nothing of two trains of pemican being taken from the North-West fort near Brandon-house. I know some was taken, and carried to Fort Douglas. I know there was a good parcel, but I do not know how much. I do not know if there were five or six hundred bags. There was enough to last some hundred people some time; there was a good quantity.

PIERRE CHRISOLOGUE PAMBRUN, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Pambrun.—I had been for some time under the orders of Mr. Semple, and on the 12th April, 1816, I left Fort Douglas under his directions, to go to the Hudson's Bay Company's house on River Qui Appelle. I set out with as much provision as would last us six days, when we would get to Brandon-house, where, according to my instructions, I was to go first, and from thence, if prudent, to the Hudson's Bay post, (where I afterwards did go), at Qui Appelle. On the 1st of May, I left Qui Appelle, with five boat-loads of pemican and furs. As we were going down the river, on the 5th May, near the Grand Rapids, I made the shore in a boat, and a party of armed Half-breeds immediately came and surrounded me, and forced me to give up the boats, and the furs, and pemican. The pemican was landed, and the boats taken across the river. I was kept a prisoner for five days. Cuthbert Grant, Peter Pangman, Thomas M'Kay, were of the party who made me a prisoner. Boucher was not, and I do not know whether Paul Brown was or was not. I was taken back to River Qui Appelle, to the North-West Company's post, and there I saw the prisoner, Paul Brown, but not Boucher. I was kept there five days. Mr. Alexander M'Donell was in command at this station, and I asked him why I had been made

a prisoner, or by whose orders I had been arrested, and he said it was by his own. There were about forty or fifty Half-breeds at this fort. Cuthbert Grant frequently said they were going to destroy the Settlement, and I was told Mr. M'Donell said, the business of the year before was a trifle to what this should be. Cuthbert Grant frequently talked with the Half-breeds about going, and they sung war-songs, as if they were going to battle. On the 12th I left Qui Appelle. We drifted down to the place where I had before been stopped, and the pemican, which had been landed from our boats, was re-embarked by the North-West people. When we got to the Forks of the River Qui Appelle, we encamped. The people who were taken with me had been liberated some time before, and had gone away, but I had been kept a prisoner. The next morning after we had encamped, that is, the people in the two boats which went with Mr. M'Donell, a number of Indians, who were in camp at some distance, were sent for, and they came, and went into Mr. M'Donell's tent, who made a speech to them; a party went also on horseback from Fort Qui Appelle armed, but I was in one of the boats with Mr. M'Donell. In going down the river, they talked freely of breaking up the Settlement, and taking Fort Douglas, and the people frequently told me that Mr. M'Donell had said, the business of the year before had been nothing to what this would be. Mr. M'Donell's speech to the Indians was to this effect: "My friends and relations, "I address you bashfully, for I have not a pipe of tobacco "to give you. All our goods have been taken by the "English, but we are now upon a party to drive them away. "Those people have been spoiling your lands, which be- "long to you, and the Half-breeds, and to which they "have no right. They have been driving away the buffalo, "and that they (the Indians) would soon be poor and "miserable, if they (the English) staid; but that they "(this party) would drive them away if the Indians did "not, for that the North-West and the Half-breeds were "one; that if he and some of his young men would "join——"

Chief Justice.—If *who* would join with his young men?

Mr. Pambrun.—A Chief who was present, belonging to the Saulteux tribe. He said, that if "some of the young "men would join, he should be glad." Pangman and one Primeau acted as interpreters. Mr. M'Donell spoke in

French. The Chief said, " that he knew nothing about it, " and should not go himself; if some of the young men " went, it was nothing to him." Mr. M'Donell then said, " well, it is no matter, we are determined to drive them " away, and if they make any resistance, your lands shall be " drenched with their blood." This harangue was made on the 13th or 14th May, and was delivered by Mr. M'Donell in French. I know that the prisoner Paul Brown was of the party. The next morning the Indians went away, and the party drifted down the Assiniboin River to the Grand Rapids. From there, about thirty started, among whom were Mr. M'Donell, Cuthbert Grant, and a number of Half-breeds. I did not see Seraphim Lamarre among them. I was left behind and still a prisoner, but in the evening a spare horse was brought by Mr. Fraser and one Taupier, for me, and I accompanied them on horseback to the North-West Fort, near Brandon-house. When I approached, I saw a crowd assembled about the gate. I suppose there were from forty to fifty persons assembled. Their arms were down by the gate, and as I entered it, a number of them presented their guns at me, making use of insulting language. I complained to Mr. M'Donell of this treatment, and asked him if it was by his orders, and he said he would speak to them about it, but I do not think he ever did. In the course of the night I saw some property that was brought away from our fort at Brandon-house. I saw tobacco and carpenters' tools, and other things. I wished very much to go over to see a Mr. Peter Fidler, who had charge at Brandon-house. I found that he was not at the fort, but having been turned out, was encamped in a tent completely without the fort. Besides tobacco, carpenters' tools, &c. there were some furs also brought from Brandon-house. The tobacco which had been brought was divided the next day amongst these men, the Half-breeds. About the 24th or 25th May, the party was separated into smaller divisions, and chiefs appointed. The property was embarked, and the whole set off to go to Portage des Prairies; a part went by water, but the Half-breeds generally went by land, on horseback. Having arrived at Portage des Prairies, the whole of the pemican and packs was landed, and formed into a sort of breastwork or fortification, having two small brass swivels there, which the year before had been taken from the stores of the Settlement. On the morning of the 17th June, being at Portage des Prairies still, which is about

sixty miles from the Settlement, the Half-breeds mounted their horses, and set off for it; they were armed with guns, pistols, lances, and bows and arrows. Cuthbert Grant was with them, Antoine Hoole, Thomas M'Kay, the prisoner Brown, and I also saw Boucher. I remained behind; so did Mr. Alexander M'Donell, Allen M'Donell, John Siveright, Seraphim Lamarre, and I also saw Fraser there, and about thirty to forty men staid to help to guard the pemican. The object of this expedition was to take Fort Douglas, and break up the Settlement. If the settlers took to the fort for protection, then the whole were to be starved out. The fort was to be watched strictly at all times, and if any of them went out to fish, or to get water, they were to be shot, if they could not be taken prisoners. I certainly had, from all I heard, very serious apprehensions for my friends. I do not remember that Cuthbert Grant said any thing particular on the morning he went away. On the 20th, a messenger arrived from Cuthbert Grant. When Mr. M'Donell saw him approach, he went out and spoke with him, and presently gave three cheers. Upon this the other Gentlemen asked what was the news. Mr. M'Donell said, in French, it was good; twenty-two English are killed, and among them Semple and five of his officers. He then announced it to the people, and said in French, "*Sacré nom* "*de Dieu, bonnes nouvelles, vingt-deux Anglois de tués.*" The Gentlemen present all shouted with joy, especially Lamarre, M'Donell, and Siveright. Pangman, commonly called Bostonnois, enquired whether there were any killed upon their side? it was answered, that one had been, and on hearing who it was, he said it was his cousin, and then exclaimed, "my cousin is killed, and I will be revenged; the affair shall "not end here, they shall all be killed, for so long as these "English are let go out of the river, they always will be "coming back, as they had done last year;" and he also said, that "there should not be one of them allowed to go "out of the river, for so long as they were permitted to go "out, they would always cause a disturbance and mischief." Upon this, two men, named Latour and Montour, were ordered to get horses, and immediately dispatched on horseback to the Red River, with directions to detain all the settlers till Alexander M'Donell should arrive. We then pursued our journey by land towards the fort, to within about thirty miles of it, and the remainder of the way I went by water. When I arrived at Fort Douglas,

I found all our people were gone. I met none of them there at all; the fort and property were in the possession of the Half-breeds, the same Half-breeds as I had before seen start for Fort Douglas. Grant was there, and a number of those I have before mentioned; they were in fact the party who had gone down on horseback with the carts from Portage des Prairies. Brown and Boucher, the two prisoners at the bar, were there; they were altogether about forty-five in the fort, and not at the Settlement. Mr. M'Donell had arrived fifteen hours before me. The day after, I asked Mr. M'Donell to let me go to the spot where the accident had occurred, which he did, and I went by myself.

Attorney-General.—Were Mr. M'Kenzie and Mr. M'Leod at Fort Douglas at this time?

Mr. Pambrun.—No, they did not arrive till the 24th of June. I heard Cuthbert Grant, Antoine Hoole, and others, speak together of what they had done; they spoke it among themselves, boasting of it; one said that he had killed one, and some that they had killed two, and so on, but they generally boasted of their feats. I heard Cuthbert Grant say, that he had fired upon Mr. Semple, and upon M'Lean. The general account of the Half-breeds was, that Grant was a brave man, and had conducted himself well in the engagement. They did not seem to be sorry for, or hide, what they had done.

Attorney-General.—Did you see the place where any of these persons were buried?

Mr. Pambrun.—Yes, I did; the limbs of the persons who had been killed, were out of the ground, and many of their bodies in a mangled condition. I was afterwards sent to Fort William; I was not there considered as a prisoner; I was allowed to go in three or four days.

Chief Justice.—Before he goes any farther, will you let him relate the names of those whom he found at Fort Douglas, upon his arrival there; I mean those whom he saw start from Portage des Prairies.

Mr. Pambrun.—There were of the Half-breeds, Cuthbert Grant, Antoine Hoole, Thomas M'Kay, Louis Lacerte, Alexander Fraser, François Deschamps, Le Gros Tête, André Traquen, Alexander Tookey, Tookey his brother, Moustouche, Mauellet, and several I do not recollect; of Canadians there were François Deschamps the elder, who went by water, Boucher Lavigne, and Louis Morain. Bou-

cher went down to Fort William in the same canoe that I did. He freely admitted that he had been in the battle. He told me that he had acted *comme ambassadeur*, and was the first man who had spoke to Governor Semple. In the canoes that went with us to Fort William, were the furs which had been taken from me when I was taken to the North-West post on River Qui Appelle.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Pambrun.—The Bois-brulés are the bastard children, either of French or English fathers, by Indian women; they are the offspring of white men by Indian women; some of them I know have been sent to Lower Canada, and received their education at Montreal and Quebec. I do not think they consider themselves as white men, or that they are so considered by white men, nor do they consider themselves as only on a footing with the Indians; they are employed in all capacities, as clerks, interpreters, and engagés. I know that Assiniboin, a Half-breed, was one who went down on horseback. I know a person named Hamelin who was there, but I do not know that they are now in the service of the Hudson's Bay Company. They call the people engaged in the service of the Hudson's Bay Company, the English, and they call me an Englishman, but I am a Canadian; they call me so from opposition to the English settlers. Mr. Alexander M'Donell is one of the Partners of the North-West Company, as I have always understood. I never took Bostonnois Pangman prisoner, but he was taken by some of the Hudson's Bay people before I was taken. I do know that Fort Gibraltar was once in possession of the North-West Company. As I was going to Fort des Prairies, I saw it in their possession, and in going up again, I saw it in possession of the Hudson's Bay people. The fort was taken, but not taken away, for I found some of the Hudson's Bay people there. I do not know that the Hudson's Bay people have an exclusive right to that country, and to erect trading posts therein. I knew the late Governor Semple and his hand-writing; this Letter of the 23d March, addressed to Alexander M'Donell, and this of the 14th May, also addressed to him, are Mr. Semple's hand-writing.

Mr. Sherwood.—I move they be read.

The two following Letters were then read.

A. M'DONELL, Esquire,
Qui Appelle.

Brandon, 23d March, 1816.

SIR,

I enclose to you a letter from Mr. Robertson, which I have perused, and which happily requires no comment. I suspect that your associates have mistaken my character. Remember what I now say to you: Should you, or your Indian or Black-breed allies, attempt any violence against the Hudson's Bay Company at Qui Appelle or elsewhere, the consequences to yourselves will be terrible.

I am, Sir,
Yours, &c.
(Signed) ROBERT SEMPLE.

A. M'DONELL, Esquire,

Fort Douglas, 14th May, 1816.

SIR,

I take the opportunity of Mr. Seraphim Lamarre's return towards Qui Appelle, to acknowledge receipt of your letter of the 5th instant.

The idea of Mr. Robertson making a journey of 120 miles, for the purpose of a conversation with you, appears to me wholly inadmissible, when the same purpose may be just as effectually answered at the first point, or at either of the Forks. Still less can I think of delegating full powers to any man to form definitive arrangements, when I myself am on the spot, and must alone be answerable for them, both to friends and enemies.

In the mean time, my wish for general tranquillity will ever remain unchanged. I am satisfied with the proofs which remain in our hands, and seek no more. Should you be unwilling to meet me here, I leave it to yourself to appoint a spot at a moderate distance from the Forks for a conference. Whatever place you may adopt, I repeat, that your person and property shall be considered sacred, unless you commence acts of hostility. Should you, however, have occasion again to write to me, it will be perfectly unnecessary to talk of your means of retaliation. I also, should I be compelled to it, have my schemes of farther and still farther retaliation, the shock of which, if I mistake not, should be felt from Athabasca to Montreal.

I am, Sir,
Yours, &c.
(Signed) ROBERT SEMPLE.

Mr. Pambrun.—I do not know where Athabasca is. I have been informed that it is far north, and that trade is carried on there by both Companies. It is far north, I believe, of Red River. The party that went down to Red River set off to go, a part by land, and a part by water, and each party had pemican with them; those that went by land took it in carts, and those that went by water, took it in canoes. Portage des Prairies is about sixty miles from Fort Douglas. I do not consider that it would have been unsafe for this party to have gone by water, and have passed Fort Douglas, if they had not committed depredations.

Mr. Sherwood.—Do you not know, Sir, that they had been robbed before; if not by you, do you not know that their pemican had been taken from them by some of your people?

Mr. Pambrun.—I was never the robber of the North-West Company, nor do I know that they were robbed. I know that they robbed me.

Mr. Sherwood.—Did they not, at that very time, tell you, that what *they* did to *you*, was in retaliation for similar conduct on the part of Colin Robertson to *them?* Don't be angry; I did not charge *you* with being a robber.

Mr. Pambrun.—Alexander M'Donell told me, when I asked by whose authority I was taken, that it was by his, and that it was in retaliation for what Colin Robertson had done that I was robbed, and that he would starve the Colonists and the Hudson's Bay Company's servants, and force them to surrender.

Mr. Sherwood.—Do you think that the Hudson's Bay Company would have done the same, if such a daring outrage had been committed on them, as these people had perpetrated at Fort Gibraltar? If Fort Douglas had been razed to the ground, all the property of my Lord Selkirk and the Company sent away, do you not think they would retaliate in the same way?

Mr. Pambrun.—No, I do not; for it never was their disposition to kill any body.

Mr. Sherwood.—Indeed! did you never hear of any body being killed by them in affrays that have taken place?

Mr. Pambrun.—No, I have not; nor do I believe they would.

Mr. Sherwood.—May I ask you, Sir, on what you found your opinion of their humanity?

Mr. Pambrun.—I found my opinion on this, that if they had wished to kill, they might; but they never have, and that is why I believe they never will.

Mr. Sherwood.—That is your opinion. I happen to have a different one, and so have many other people. Have you any other reason, Sir, than because you do not happen to know of their taking the life——

Chief Justice.—What has this to do with the case before us? Either examine the witness to the case, or be silent.

Mr. Sherwood.—Whenever your Lordship pleases, it is my duty to bow, and I certainly shall; but if permitted to pursue my own course, I shall put that question to Mr. Pambrun.

Chief Justice.—Well, then, silence now.

Mr. Sherwood sat down.

Mr. Sherwood, (rising.)—Does your Lordship prohibit my cross-examining this witness farther?

Chief Justice.—I have no wish to stop your cross-examination, if you conduct it regularly; none at all.

Mr. Sherwood.—What did you say to Mr. M'Donell, upon first seeing him at the fort at Qui Appelle River? Tell what passed at that time—the whole that passed.

Mr. Pambrun.—I asked him by whose authority Cuthbert Grant had taken me prisoner, and took my property, or the property I was in charge of, from me, and he said it was by his orders, and that it was done by way of retaliation for Fort Gibraltar having being taken by Mr. Robertson, and that he would make the settlers and servants of the Company surrender, or he would starve them out: this is all I recollect to have passed.

Mr. Sherwood.—What, Sir, did Cuthbert Grant say to you relative to his own share in the affair of the 19th June? You have told us that the general report was, that he was a brave man, and conducted himself well on that day, and you also told us of something that he himself said; tell us that again, will you?

Mr. Pambrun.—Mr. Grant told me that he had fired upon Mr. Semple, and had shot him. It was not in confidence that he said this to me; it was in a general conversation. He said that he had shot Mr. Semple, and had fired on Mr. M'Lean. I never received any orders from Mr. Semple, or Mr. M'Lean, to molest or interfere with the North-West Company's people, but, on the contrary, our orders at all times were to do them no violence, and not to interfere with them at all.

Mr. Sherwood.—It is a great pity they were not more generally obeyed by his servants, if those were his orders.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General.—What were your orders, Sir, (for I believe you received particular ones,) from Mr. Semple, when you started from Fort Douglas to go to Brandon-house, and thence, according to information you might obtain there, to the Hudson's Bay post on River Qui Appelle?

Mr. Pambrun.—I went under orders from Governor Semple to be peaceable, and to avoid every thing like hostility, unless I was attacked. My instructions were contained in a letter in these words: "Mr. Pambrun. Sir, Having" (*Mr. Pambrun's repeating the letter was objected to by Mr. Sherwood, and Mr. Pambrun was directed by the Court not to repeat it.*) That was the general nature of my instructions; I was to go to Brandon-house, and thence to Qui Appelle, peaceably, if they would let me go, and I went peaceably, till I was stopped and robbed of the property.

Attorney-General.—I will not ask you, Sir, whether you know of the Hudson's Bay Company *ever* having taken the lives of one-and-twenty persons at one time; but I will ask you, Sir, do you know, or did you ever hear, of a *single* life having been taken by them?

Mr. Pambrun.—I do not know of any life having been taken, nor did I ever hear of any one losing his life by them.

Mr. Sherwood.—I must ask you, Sir, before this unhappy affair, (in which we are now endeavouring to see who are the murderers, or who are to blame,) do you know of the North-West Company having taken the lives of one-and-twenty, or of *one* person? Do you, before this time, know of any case?

Mr. Pambrun.—I know of none before this, on the part of the North-West Company. I have been told that there—

Mr. Sherwood.—We do not want what you *was told.* I have been told very different to what you have been, but that is of no consequence here.

FREDERICK DAMIEN HEURTER, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Heurter.—I was not present at Fort Douglas on the 19th June, in the year 1816. I came down there about eight days after with a Partner of the North-West Company, a Mr. Archibald Norman M'Leod, and we found it in pos-

session of Mr. Alexander M'Donell, and some Half-breeds. Mr. Alexander M'Donell is a Partner also in the North-West Company. I was at that time in their service as a clerk. Cuthbert Grant was there, and I also saw François Firmin Boucher, one of the prisoners, there. I heard of what had passed on the 19th June, and I visited the field of battle, in company with the persons who were there.—Cuthbert Grant, Alexander Fraser, Deschamps the father, and two sons, Joseph called Gros Tête, were of the party who went, and Joseph Deschamps related the particulars of how they shot the people. The observations were not made to me, but to some of the Partners of the North-West Company who went with us. He related particularly how they shot the people who came with Mr. Semple. I did not hear Cuthbert Grant say any thing; it was young Deschamps that I heard relate the particulars. I was present when the speech was made to the Half-breeds by a Partner of the North-West Company, Mr. Archibald Norman M'Leod; but I do not know that any thing was answered by Grant, or by Boucher.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Heurter.—I am not in the service of the Hudson's Bay Company, nor of the Earl of Selkirk, nor have I been.

JOHN PRITCHARD, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Pritchard.—In May, 1816, I was living at Red River, and in that month and long before, from the Indians and freemen who lived in our neighbourhood, I heard of its being intended to attack us. I heard this as early as March, and in May and June the report became general. In consequence of this information, we were constantly upon the look-out; day and night, a watch was kept for the express purpose of giving the earliest notice of their approach. On the evening of the 19th June, I had been up stairs in my own room, and about six o'clock, I heard the boy at the watch-house give the alarm that the Half-breeds were coming. A few of us, among whom was the Governor, there were perhaps six altogether, looked through a spy-glass, from a place that had been used as a stable, and we distinctly saw some armed persons going along the Plains. Shortly after, I heard the same boy call out, "that the party

" on horseback were marching to the settlers." About twenty of us, in obedience to the Governor, who said, " we " must go and see what these people are," took our arms. He would only let about twenty go, at least he told about twenty to follow him—to come with him; there was, however, some confusion at the time, and I believe a few more than twenty accompanied us. Having proceeded about half a mile towards the Settlement, we saw, behind a point of wood which goes down to the river, that the party increased very much. Mr. Semple, therefore, sent one of the people (Mr. Bourke) to the fort, for a piece of cannon, and as many men as Mr. M'Donell could spare. Mr. Bourke, however, not returning soon, Mr. Semple said, " Gentlemen, " we had better go on," and we accordingly proceeded. We had not gone far before the Half-breeds returned towards us, and they divided into two parties, and surrounded us in the shape of a half-moon or half-circle.

Attorney-General.—Did you meet any people in your way?

Mr. Pritchard.—Yes, we met a number of the settlers, crying and speaking in the Gaelic language, which I do not understand, and they went on to the fort. The party on horseback had got pretty near to us, so that we could discover that they were painted and disguised in the most hideous manner; upon this, as we were retreating, Boucher advanced, waving his hand, riding up to us, and calling out in broken English, " What do you want, what do you want?" Governor Semple said, " What do *you* want?"

Chief Justice.—Do not go on quite so fast. It appears to me that this evidence about the settlers, and their retreating, is in direct contradiction to what we have before heard from Michael Heden and others.

Attorney-General.—Mr. Pritchard, my Lord, will relate that part again, and I believe, your Lordship will not find any variance. It is, I think, nothing more than that Mr. Pritchard does not use exactly the same words as the other witnesses.

Mr. Pritchard.—Mr. Bourke not coming on with the cannon as soon as he was expected, Mr. Semple directed the party to proceed onwards; we had not gone far before we saw the Half-breeds returning upon us. Upon observing that they were so numerous, we had extended our line, and got more into the open plain; as they advanced we retreated; but they divided themselves into two parties, and surrounded us in the shape of a half-moon. Boucher then came out of

the rank of his party, and advanced towards us, (he was on horseback), calling out in broken English, " What do you " want? what do you want?" Mr. Semple answered, " What do *you* want? to which Boucher replied, " We want " our fort." Governor Semple said, " Well, go to your fort." After that I did not hear any thing that passed, as they were close together. I saw Mr. Semple put his hand on Boucher's gun. Expecting an attack to be made instantly, I had not been looking at Governor Semple and Boucher for some time; but just then I happened to turn my head that way, and immediately I heard a shot, and directly after, a general firing. I turned round upon hearing the shot, and saw Mr. Holte struggling as if he was shot. He was on the ground. On seeing their approach, we had extended our line on the open plains; this was done by Mr. Semple's, or some other person's directions. By extending our line, I mean we each took a place at a greater distance from each other; we took places as best suited our individual safety. From not seeing the firing begin, I can not say from whom it first came, but immediately upon hearing the first shot, I turned round and saw Lieutenant Holte struggling. A fire was kept up for several minutes and I saw several wounded; indeed, in a few minutes almost all our people were either killed or wounded. I saw Sinclair and Bruce fall, either wounded or killed, and Mr. M'Lean, a little in front, defending himself, but by a second shot I saw him fall. At this time I saw Captain Rogers getting up again, but not observing any of our people standing, I called out to him, " Rogers, for God's sake give yourself up, give yourself up." Captain Rogers ran towards them, calling out that he surrendered, and that he gave himself up, and praying them to save his life. Thomas M'Kay, a Half-breed, shot him through the head, and another Half-breed ripped his belly open with a knife, using the most horrid imprecations to him. I did not see Mr. Semple fall. I saw his corpse the next day at the fort. When I saw Mr. Rogers fall, I expected to share his fate. As there was a Canadian among those who surrounded me, and who had just made an end of my friend, I said, " Lavigne, you are a Frenchman, you are a man, you are a Christian, for God's sake, save my life, for God's sake, " try and save it. I give myself up. I am your prisoner." M'Kay, who was among this party, and who knew me, said, " you little toad, what do you do here?" He spoke in French, and called me, *un petit crapaud*, and asked what I did here? and I fully expected then that I should lose my

life. I again appealed to Lavigne, and he joined in entreating them to spare me. I told them over and over that I was their prisoner, that I had got something to tell them; they, however, seemed determined to take my life. They struck at me with their guns, and Lavigne caught some of the blows, and joined me in entreating for my safety. He told them of my kindness on different occasions. I remonstrated that I had thrown down my arms, and was their prisoner, at their mercy. One Primeau wished to shoot me; he said I had formerly killed his brother; I begged him to recollect my former kindness to him at Qui Appelle. At length they spared me, telling me, I was a little dog, and that I had not long to live, that he would find me when he came back. I then went to Frog Plains in charge of Boucher. I do not know of any conversation taking place on the way between us. In going to the Plains, I was again threatened by one of the party, and saved by Boucher, who conducted me safe to the Frog Plains. I there met Cuthbert Grant, who told me that they did not expect to have met us on the Plain, but that their intention was to have surprised the Colony, and they would have hunted the colonists like buffalo. He also told me they expected to have got round unperceived, and at night would have surrounded the fort, and have shot every one who left it; but being seen, their scheme had been destroyed or frustrated. Paul Brown appeared to be one of this party: I do not think he was armed. They were all painted and disfigured, so that I did not know many. I should not have known that Cuthbert Grant was there, though I knew him well, had he not spoken to me. Grant told me that Mr. Semple was not mortally wounded by the shot he received, but that his thigh was broke. He said that he spoke to Mr. Semple after he was wounded; that Mr. Semple asked him to get him taken to the fort, and as he was not mortally wounded, he thought he perhaps might live. Grant said that he could not take him himself, as he had something else to do, but that he would send some person to convey him there on whom he might depend, and that he left him in the care of a Canadian, and went away; but that almost directly after he had left him, an Indian, who, he said, was the only rascal they had, came up and shot him in the breast, and killed him upon the spot.

Attorney-General.—Is it usual for the Half-breeds to paint themselves?

Mr. Pritchard.—Very far from it, it is very unusual;

they are accustomed to dress like Canadians. I have lived thirteen years in the Indian country, and I never saw the Half-breeds paint; they imitate the white people, and dress like them at all times, except when engaged in sporting as Indians. They were painted as I have been accustomed to see the Indians at their war dance; they were very much painted, and disguised in a hideous manner. They gave the war-whoop when they met Governor Semple and his party, as I was told; they made a hideous noise and shouting. I know from Grant, as well as from other Half-breeds and the settlers, that some of the colonists had been taken prisoners. Grant told me that they were taken to weaken the Colony, and prevent its being known that they were there, they having supposed they had passed the fort unobserved. Their intention clearly was to pass the fort. I saw no carts, though I heard they had carts with them. I saw about five of the settlers prisoners in the camp at Frog Plains. Grant told me they intended to have encamped below the Plains, and have prevented the settlers going to the river for water, or if they did go, to have shot them. He also said to me in the same conversation, "You see we have had but one of our people killed, and "how little quarter we have given you; now, if that fort is "not given up, with all the public property instantly, with-"out resistance, man, woman and child shall be put to "death." He said the attack would be made upon it that night, and, if a single shot were fired, that would be the signal for the indiscriminate destruction of every soul, man, woman and child. I was completely satisfied myself that the whole would be destroyed, and I besought Grant, whom I knew, to suggest, or let them try and devise, some means to save the women and children. I represented to him, that they could have done no harm to any body, whatever he or his party might think the men had. I entreated them to take compassion on them. I reminded him that they were his father's country-women, and in his deceased father's name, I begged him to take pity and compassion upon them.

Attorney-General.—Before you proceed with that part of the melancholy history, I wish to ask you, Mr. Pritchard, whether there was any proposition on your side, or any disposition in your party, to attack the Half-breeds, or when they were coming up to you, was there any disposition to fire, or any proposal that you should fire upon them?

Mr. Pritchard.—At the time the Half-breeds divided

into two parties, just before surrounding us, one of our people, (Bruce I believe,) did propose that we should keep them off, and Mr. Semple turned round, and asked them who could be such a rascal as to make such a proposition, and not to let him hear such a word again. Mr. Semple was very much displeased indeed. I begged Cuthbert Grant, in his deceased father's name, to have compassion on the helpless women and children, and spare them, whatever they might do with the men. I tried to soften down things with him, and succeeded at least so far with him, that he said, if all the arms and public property were given up, we should be allowed to go away; and he would give us an escort to protect us against other parties that were expected. I said they were hard terms that we must all go away, but he said they were the only terms that he could grant. I then wished to go to Mr. M'Donell at the fort with this proposition, for I was afraid lest they should retract: but another difficulty presented itself; the Half-breeds were unwilling that I should be permitted to go, lest I should remain at the fort. I spoke to them, and endeavoured to persuade them to acquiesce, but I did not seem likely to succeed; at last I appealed to Cuthbert Grant: "Mr. Grant, you know me, you know I will return; "if I say I will, I *will* return, and I am sure you will "answer for me that I will"—to this he agreed, and I went to the fort, Grant accompanying me a good part of the way as a protector, it being now late at night. Arrived at the fort, I communicated to Mr. M'Donell the terms upon which they had agreed to let us depart, and that they must be complied with by morning, when I was to return, according to the agreement I had made with Grant. First, the settlers were assembled at the fort, and when the proposal was made to them, they said they would not accept them, and would not surrender on such terms. Mr. M'Donell therefore, though convinced in his own mind that resistance would be fruitless, said that he could not accept them; that he could not give up the fort if the people were determined to defend it. In the morning, however, they concluded that it would be better to comply with the terms than risk more blood being shed. I accordingly went to Frog Plains, and after some time, an agreement was made between Mr. M'Donell and the Half-breeds, upon the terms I have stated, and an inventory being taken, the fort was delivered over to Cuthbert Grant, who gave receipts on each sheet of the Inventory, signed Cuthbert Grant, clerk

for the North-West Company, acting for the North-West Company. I remained at Fort Douglas till the evening of the twenty-second, when we proceeded down the river, on our way to Hudson's Bay. On the following day, or the twenty-fourth, I am not quite certain which, we met a number of canoes, in which were Mr. Archibald Norman M'Leod, and a number of Partners of the North-West Company, perhaps eight or ten.

Attorney-General.—Were either of the prisoners with you then?

Mr. Pritchard.—No, Boucher had gone with us no farther than the Forks. At the time of the capitulation, Grant had promised us an escort to protect us against two other parties of Half-breeds whom he said we should meet, the one headed by William Shaw, and the other by Simon M'Gillivray. I had thought Boucher was to go with us. I argued with Grant upon the danger we should be again exposed to, but it was no use; we went without an escort. After meeting with Mr. M'Leod we were ordered ashore, and I was sent to Fort William with some others. I did not see Brown at the time of the horrid affair on the Plains. I saw him the day after, at Fort Douglas; he came with the party; they were, I believe, all armed, and I did not see Brown afterwards. I know Cuthbert Grant very well, and his hand-writing, having frequently seen him write. *(A Letter being here produced.)* This Letter is in Cuthbert Grant's hand-writing.

The following Letter was then read, upon motion of the Attorney-General.

River Qui Appelle, 13th March, 1816.

MY DEAR SIR,

I received your generous and kind letter last fall by the last canoe. I should certainly be an ungrateful being, should I not return you my sincerest thanks. Although a very bad hand at writing letters, I trust to your generosity. I am yet safe and sound, thank God, for I believe it is more than Robertson or any of his suite dare to offer the least insult to any of the Bois-brulés, although Robertson made use of some expressions which I hope he shall swallow in the spring; he shall see that it is neither fifteen, thirty, nor fifty, of his best horsemen that can make

the Bois-brulés bow down to him. The Half-breeds of Fort des Prairies and English River, are all to be here in the spring; it is hoped we shall come off with flying colours, and never to see any of them again in the colonizing way in Red River; in fact, the traders shall pack off with themselves also, for having disobeyed our orders last spring, according to our arrangements. We are all to remain at the Forks to pass the summer, for fear they should play us the same trick as last summer, of coming back; but they shall receive a warm reception. I am loth to enter into any particulars, as I am well assured that you will receive a more satisfactory information (than I have had,) from your other correspondents; therefore I shall not pretend to give you any; at the same time begging you will excuse my short letter. I shall conclude, wishing you health and happiness.

I shall ever remain,

My dear Sir,

Your most obedient humble servant,

(Signed) CUTHBERT GRANT.*

My sister and Betsy return their most respectful compliments to you.

J. D. CAMERSON, Esquire.

---

* To understand the allusion in this Letter, it is necessary to revert to the occurences of the preceding year. In June, 1815, the Half-breeds, who had been exasperated by the prohibition attempted to be enforced against their hunting the buffalo, by the imprisonment of some of their Chiefs that spring, by having been attacked and fired upon without any provocation, by the colonists, as well as by other outrages, determined that their oppressors should leave the Red River. Upon that occasion, the following Capitulation was interchanged between the Chiefs of the Half-breeds, and the heads of the Colonists.

" Articles of Agreement entered into between the Half-breed Indians, of the Indian Territory, on one part, and the Honourable Hudson's Bay Company on the other, viz.:

" 1. All settlers to retire immediately from this river, and no appearance of a Colony to remain.

" 2. Peace and amity to subsist between all parties, traders, Indians, and freemen, in future, throughout these two rivers, and on no account any person to be molested in his lawful pursuits.

" 3. The Honourable Hudson's Bay Company, will, as customary, enter this river with, if they think proper, from three to four of their former trading boats, and from four to five men per boat, as usual.

" 4. Whatever former disturbance has taken place between both parties, that is to say, the Honourable Hudson's Bay Company and the Half-breeds of the Indian Territory, to be totally forgot, and not to be recalled by either party.

" 5. Every person retiring peaceably from the river immediately, shall not be molested in their passage out.

" 6. No people passing the summer for the Honourable Hudson's Bay

Mr. Pritchard.—The settlers were generally occupied in agricultural pursuits, in attending to their farms; the servants of the Hudson's Bay Company in their ordinary avocations. They lived in tents generally and huts. In 1816, at Red River there was but one house, the Governor's, which had been called Fort Douglas by the settlers after their return to the Settlement in 1815. There were houses before that time, but they were burned down in the attack that was then made on the Colony. The settlers were employed during the day-time on their lands, and used to come up to the fort to sleep. The Red River runs into Lake Winnipic, and the Settlement is at the Forks which are formed by the junction of the great Red River with the lesser one, or the River Assiniboin. Fort Douglas is about eighty miles from Lake Winnipic, and it must be, I think, in a south-west course; I think that must be its bearing.

Attorney-General.—Will you now, Sir, tell us whom you saw at this lamentable battle that you knew personally, and whom you saw fire?

Mr. Pritchard.—I saw the two M'Kays, Hoole, and Cuthbert Grant, but I can not say positively whom I saw fire, except Thomas M'Kay, whom I saw kill Captain Rogers; I can not speak to any one else. I saw Boucher

---

Company, shall remain in the buildings of the Colony, but shall retire to some other spot, where they will establish for the purpose of trade.

CUTHBERT GRANT,
BOSTONNOIS PANGMAN,
WM. SHAW,
BONHOMME MONTOUR,
THE FOUR CHIEFS OF THE HALF-BREEDS,
by the mutual consent of their fellows,
JAMES SUTHERLAND,
JAMES WHITE.

Red River, Indian Territory, Forks, Red River, 25th June, 1815."

This Capitulation was signed on the part of the Half-breeds by their four above-named acknowledged Chiefs, and on the part of the Hudson's Bay Company, by James Sutherland their chief factor, and a justice of the peace, and James White, surgeon to the Settlement, who had been left in charge by Miles M'Donell, upon his being arrested and sent to Canada. Notwithstanding the stipulations thus made, the Colonists returned in force in October following, under the command of Colin Robertson, and began the Settlement afresh; yet this breach of engagement was not resented by the Half-breed tribe, till obnoxious proceedings were again resorted to, and Bostonnois Pangman, and others of the nation, were made prisoners. These circumstances will explain and illustrate the expressions made use of in the Letter produced and read in evidence.

afterwards at Fort William, and I enquired of him what passed between him and Governor Semple after the questions and answers about the fort; and he said that he told the Governor that, unless they laid down their arms and surrendered themselves prisoners, they were all dead men. The party of Half-breeds came out of their way. I think, if they had not had hostile designs against the Settlement, had they wanted to carry provisions to meet canoes, they need not have gone to the Settlement; they could have passed by it. At Frog Plains I saw some carts empty. Cuthbert Grant had promised us provisions for the voyage to the Hudson's Bay coast, and when I spoke to him about it, he said he could not let us have more than he had given us, as it was all at the forts above; but if we would wait till he sent to Bas de la Rivière, which would take about a fortnight, we should have it; we were, however, glad to get away at any rate, and therefore went with the little we had.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—If I understand you, Mr. Pritchard, you have distinctly said that you do not know which party fired first?

Mr. Pritchard.—I have said so. I can not say who did. I think Mr. Holte must have fallen by the first shot, because I turned round instantly, and saw him struggling on the ground. I have a knowledge of Mr. Miles M'Donell's Proclamation, but I do not know of two sleigh-loads of pemican being taken under it. Of some boat-loads being taken I do know, from having received a letter informing me of it.

Mr. Sherwood.—Before we go into that, I will ask you, Sir, in what capacity you was at the battle of the 19th June?

Mr. Pritchard.—I was there in the capacity of a settler at Red River.

Mr. Sherwood.—You was not in the service of the Hudson's Bay Company?

Mr. Pritchard.—I was not; I was a settler on Red River.

Mr. Sherwood.—You was not then, nor are now, in the pay of that Company?

Mr. Pritchard.—I was not; I am not, nor have I ever been, in the pay of the Hudson's Bay Company.

Mr. Sherwood.—I will now ask you, Sir, do you know of any pemican *ever* having been taken under this famous

Proclamation of Mr. Miles M'Donell, and where, and how much?

Mr. Pritchard.—Yes, I do; a quantity was taken from under my care at the post on the River Souris, or Mouse River. Four persons, I believe, came to Brandon-house; but in the first instance, Mr. Spencer came, and wanted entrance into the fort; I asked in what quality he came, and he said, as a private gentleman, and I admitted him. He stated he came to me on the subject of Governor M'Donell's Proclamation prohibiting the exportation of pemican, and that he had orders to detain it. After some conversation, I made a proposition, which Mr. Spencer sent down to Captain M'Donell. A few days after Mr. Spencer and some people came and demanded entrance in the King's name, to search for provisions which were intended to evade the Proclamation. I wrote an answer to this demand, and put it through the pickets to Mr. Spencer. He looked at it, and said it would not satisfy him. I did not choose to open the gates, and I said that he must use force if he wanted to come in. Accordingly they set to work, and cut down the pickets and entered the fort, having broken down the outer gate. When they entered, Mr. Spencer asked where the pemican was, or Mr. House, who was with him, did. I said that he had a good nose, and might find it out.

Mr. Sherwood.—Let me ask you now, Sir, was you an eye-witness to this transaction from first to last?

Mr. Pritchard.—I was. I saw the whole of it. It was an armed force that accompanied Mr. Spencer. They had guns with bayonets. They found the pemican after searching some time, and took it away. There was about four hundred bags of it; there might be more; my memory is not very accurate, but I think there were about four hundred bags, each bag weighing about eighty-four pounds. I have only hearsay knowledge of Fort Gibraltar being taken by the Hudson's Bay Company, but when I went to it, I found it in possession of Colin Robertson. I also know of Fort Pembina, but not of its being taken. I know of prisoners being taken from there and sent down. There were Bostonnois Pangman and others sent, upon my application for burning my crops. I know that Mr. Holte was one that accompanied Governor Semple on the 19th June, to go and see what the party on horseback wanted. I do not know that he was there fighting; he had not much time to fight; he had a gun; the party generally had guns, and some of them guns with bayonets, but not all. I know the handwriting of the late Mr. Holte. (*A Letter produced.*) This

Letter, addressed to myself, is the hand-writing of the late Mr. Holte.

The following Letter was then, upon motion of Mr. Sherwood, put in and read.

Fort Douglas, April 14th, 1816.

Mr. John Pritchard,

MY DEAR SIR,

I received your kind Letter, but what you mean by the explanations you therein mention, may I be damned if I know, as I do not recollect having mentioned any thing of the kind; however, my passions often bring me into errors, which I afterwards wish were at the Devil—so no more about it. Mr. Lofty once in my presence injured your character, but this I would not admit of, and you of course must submit to be tried by a court martial, where you, no doubt, will be honourably acquitted, and Mr. Lofty replaced to answer for himself. Some days ago, I got the command of the schooner which is to be fitted out in man-of-war style, to be moored at the bottom of this river to intercept the North-West Company's canoes. So you see now that I will be in my proper glory, and I shall not fail to do my best to give the North-West scoundrels a drubbing if I can.

A party of veterans are lately gone to Qui Appelle to take M'Donell, if possible—but I fear they will be disappointed in their views—they are under the command of Mr. Lofty's olio of perfection, (Mr. Pambrun.) I should send you some few of my private property, were I not informed that you have received a supply. You'll, no doubt, soon be here, when we shall, over a good cup of tea, settle every thing—in the mean time I beg you'll be kind to present my compliments to Mrs. Pritchard, and the gentlemen of your mess. Tell Dr. White that I should have sent him a letter long ago if I had but had paper; but as that has not been the case, he will, I know, readily excuse me.

I am, my dear Sir,

Your sincere

(Signed) O. HOLTE.

Mr. Sherwood.—Pray, Sir, who is meant by Mr. Lofty in this Letter?

Mr. Pritchard.—Mr. Lofty means Colin Robertson. I did not see Mr. Holte fire; I think it impossible, he was shot so soon. The prisoner Boucher certainly did all he could to save my life; when I was attacked I ran round him, and by that means, avoided being shot.

Mr. Sherwood.—You was brought, I think you say,

to Fort William. Where is Fort William, Sir, and how far off?

Mr. Pritchard.—Fort William is on Lake Superior, and is about a thousand miles off. It belongs to the North-West Company, and is in their possession at present.

Mr. Sherwood.—Do you know, Sir, if that Fort was ever taken? I do not know, my Lord, that it is necessary that I should go into evidence upon that subject; I was going to shew the state of enmity existing against us in that instance, but——

Chief Justice.—There is enough shewn to prove the malevolence that existed on both sides.

The Honourable WILLIAM BACHELOR COLTMAN, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Coltman.—I went up into the Indian country in the year 1817, and to the place where the Settlement at the Red River was established. I never made any survey of the distance which it was from Lake Winnipic, but I should think that it was about sixty miles, and having about a south bearing from the nearest point; but, as to distance, I can not speak so positively. It was situated at the Forks of the Red and Assiniboin Rivers, which I have generally understood to be in about 49° 30′ north latitude, and the Red River Settlement commenced at a short distance below the Forks. Its longitude I do not recollect, so as to speak with any degree of certainty, but I should judge it to be in between 90° to 100° of west longitude; my recollection, however, is very imperfect, but I should think it had something more than 90 degrees; it certainly had more than 80, and, according to my recollection and own idea, rather more than 90. The Red River Settlement was to the west of the River Winnipic, to the south-east of the Lake Manitoboh, and between that Lake and the River, and Lake Winnipic. Upon consideration, I should think, according to the best of my recollection, that its longitude must have been nearly 100° west. I have seen the Great Seal of Lower Canada, and should know its impressions.

Chief Justice.—There is no occasion to examine Mr. Coltman on that, they prove themselves; it has been so decided.

Two Great Seal Instruments put in and read.—(*Appendix* K *and* L.)

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Coltman.—I have been at Fort Douglas, and also at the spot where it was represented to me, that the affair of the 19th June took place. I did not go farther north into the Indian country, than into the Red River country, through the River Winnipic, and part of the lake of that name. It is certainly a matter of notoriety, that the Red River country was formerly frequented by the French traders, that is, before the conquest by the English; but I do not know whether Nouvelle France was considered as taking in this part of the Indian Territory.

Chief Justice.—I am tolerably conversant with maps myself, but not sufficiently so, as to say whether this part of the country was, or was not a part of Canada. I never understood, extensive as were the limits of what the French called Louisiana, that they spread so far north as this, nor can I say distinctly that it formed a part of Canada. Relative to Nouvelle France, it was never, I believe, defined with sufficient accuracy to enable us to say what were its limits. If they have been, it is beyond my knowledge.

Attorney-General.—There is one more question, Mr. Coltman, which I will trouble you with—whether, as a Magistrate of the Indian Territory, you acted at Red River in virtue of your Commission under the Act of the 43d Geo. III.?

Mr. Coltman.—Yes, it was in prosecution of my duties under the Commission, that I went into that country, and proceeded to the investigation of the difficulties which had occurred there.

CHARLES BELLEGARDE, sworn.

Examined by the ATTORNEY-GENERAL, *through the medium of an Interpreter.*

Bellegarde.—I was at the Frog Plains on the 19th June, and had been there some time before. I have a knowledge that Governor Semple was killed, but do not know on what day. I saw him the same day that he was killed. I heard the firing the day he was killed, and I saw him four or five hours before. I had no conversation with him about an at-

tack. I never heard any rumour about an attack. Governor Semple was at my house. I said, perhaps the Bois-brulés might come; he said, they may come if they please, I shall go and meet them. Governor Semple did not, nor did I, say any thing about their firing. He said, if the Bois-brulés come, that he was not afraid; so far from it, he said, "should they come, I shall go and meet "them with one man and a paper." I did not see any coming while Governor Semple was with me, but four or five hours after, I did see about sixty coming down on horseback. I have a knowledge that they took three prisoners, a woman and two men; I did not see them taken, but they were brought to my house. I do not know that they were brought to my house to be prisoners, but the Half-breeds brought them. Cuthbert Grant was there, but I do not know whether he took them or not. I saw Boucher there, and Brown too, but he did not come with the sixty; he came afterwards. Grant and Boucher said they had taken these persons to prevent them from giving information to the fort. About fifteen to twenty of the Half-breeds came first, and the remainder afterwards. When the first party came, they unsaddled their horses. The latter party came when the sun was low; it was late in the afternoon. The party conducted themselves quietly, and seemed peaceable. The first thing I heard after they came, was two men of this party say, the English were coming down after them, and they went immediately to meet them. When they brought the prisoners to my house, they said they would send them the next day to the fort, but they did not say what was then to be done with them. They assigned no reason why they would send them.

Mr. Sherwood.—We do not wish to ask Bellegarde any questions.

JEAN MARIE MONDELET, Esquire, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Mondelet.—I have seen Boucher before. I am a Magistrate of Lower Canada, and in that capacity I saw François Firmin Boucher, who made a declaration before me, but not under oath. There was no threat made use of, nor any promise of benefit held out to Boucher, to induce him to make it. *(The Attorney-General was about presenting a paper to Mr. Mondelet)*—

Mr. Sherwood.—I object to any evidence being gone into relative to this paper, as it was a declaration made by the prisoner when in a state of illegal duress.

Attorney-General.—He was in confinement under the warrant of a Magistrate, which I should consider to be a legal restraint.

Mr. Sherwood.—In ordinary cases occurring in the district of that Magistrate, it would undoubtedly be a legal restraint that was imposed, but that under which Boucher was placed was illegal. Mr. Mondelet we know is a Magistrate, but though a Magistrate, he had no right to issue a warrant to apprehend Boucher for an offence committed in the Indian Territory. We contend thus upon *general* principles; relative to this *particular* warrant a great deal might be said——

Chief Justice.—Whatever warrant Mr. Mondelet may have issued, there can be no question, he thought at the time he was justified in issuing; how far in doing so against a person for an offence committed in the Indian Territory, he was correct in so thinking, may, and doubtless will, occasion a diversity of opinion, according to the particular construction given to the Act of the 43d. Mr. Mondelet's conduct is not to be called in question here. It is not necessary at all to the case that it should be. If, Mr. Attorney-General, you offer this paper as evidence, let us know what it is to prove? What is the object of it?

Attorney-General.—It is, my Lords, a voluntary declaration of the prisoner Boucher, made before Mr. Mondelet, whom I produce to prove the paper. Its contents, I imagine, can not operate on the question of admissibility, if I prove that it was obtained in a legal and satisfactory manner, which I believe I have done, as Mr. Mondelet has answered the usual questions relative to inducements or threats.

Chief Justice.—Then it is as a confession you offer it.

Attorney-General.—I offer it, my Lord, as the prisoner's own statement of what he knew of, and what part he took in, this melancholy catastrophe of the 19th June.

Mr. Sherwood.—And I oppose its being received, my Lords, on the ground that, at the time of making this *voluntary* declaration, as it was called, the prisoner was in a state of illegal duress, a state of duress the most extraordinary. Boucher was sent down to Montreal for the purpose of being a witness, but by this warrant was most dexterously taken out of the hands of those who had legally brought him, and made a prisoner, and so has most illegally remained

to this day; whilst in this state of illegal duress, he made this declaration, most singularly called a *voluntary* declaration. I would ask why was a Magistrate applied to upon this occasion? Why were not the Judges of the Court of King's Bench applied to, who coould have exercised the plenary powers which the law places in their hands? A legal warrant to commit Boucher must come from some person who was commissioned for the purpose of hearing crimes and offences committed in the Indian Territory. Mr. Mondelet was not so commissioned; his warrant was therefore a piece of waste paper; but though so completely unauthorized, by it was this man committed to gaol, and whilst under confinement by virtue of this very warrant, he makes this voluntary declaration, which Mr. Attorney-General offers as evidence in the shape of a confession. Nothing can be more explicit, in my humble opinion, than this Act of the 43d is, as to who has power to deal with offenders in the Indian Territory. The second section of the Act provides for the appointment of Magistrates to take cognizance of offences committed in the Indian Territories, in these words.—*(Which section Mr. Sherwood read,* vide *the Act, Appendix* P.) We here see that it is only the Magistrates appointed under this Act, especially and solely for the purpose of hearing crimes and offences committed in the Indian Territory, who have power to commit offenders to safe custody; and they have the power of doing so, but not the ordinary Magistrates of either Province. To the bringing to justice an offender, or person committing an offence, in the Indian Territories, it is indispensable that he be arrested by the warrant of a Magistrate duly commissioned to act in the Indian Territories, as well as within the limits of either of the two Provinces, or that he be taken into custody in the Indian Territories, and conveyed to the Province of Lower Canada; but there is no power vested in the local Magistracy of either Province to issue a warrant to take any man into custody for an offence committed in the Indian Territory. I therefore object to the paper being read, upon the ground that, at the time of the examination in which he made his *voluntary* declaration, Boucher was in a state of illegal duress.

Chief Justice.—There certainly is a difficulty in this case. It strikes my mind, that the ordinary Magistracy have not power to take cognizance of offenders in the Indian Territories, but that it is the Magistrates specially appointed by the Governor under the second section of this Act, who

alone are authorized to hear crimes and offences committed there. As there is a difficulty in it, I could wish, if not indispensable to the case of the Crown, that the admission of this paper was not pressed; but of that necessity you, Gentlemen, are the sole judges.

Mr. Sherwood.—The Officers of the Crown appearing still to wish this paper to be made evidence, I may, I presume, offer additional reasons against it. If not produced against us, we had no intention to have shewn how illegally we have been dealt with. We have no intention of shewing how the King's counsel had been divulged by informations and voluntary declarations being given by Magistrates to the world, to the high prejudice of strict and impartial justice. Let us examine the Act extending the jurisdiction of the two Courts of the two Provinces, and the illegality of the duress under which Boucher was placed, appears in a moment. Was Mr. Mondelet a Magistrate, appointed by commission under the hand and seal of the Governor, Lieutenant-Governor, or person administering the Government for the time being, of the Province of Lower Canada, to act as a civil Magistrate and Justice of the Peace for the Indian Territories? Was Boucher ever taken before one of these persons so appointed by the Governor, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence to safe custody, in order to his being conveyed to the Province of Lower Canada, to be dealt with according to law? Was Boucher apprehended and sent to the Province of Lower Canada, as a person guilty of a crime or offence in the Indian Territory, and there delivered into safe custody, for the purpose of being dealt with according to law? In neither of these ways, which I contend are the only legal ones, was Boucher in confinement; and therefore, I submit, nothing can be heard of this voluntary declaration, because, although a Magistrate of Lower Canada, Mr. Mondelet was not a Magistrate for the Indian Territory, and had therefore no right to issue a warrant against Boucher any more than I have.

Attorney-General.—The construction given by the Learned Gentleman to the Act of 1803, may be correct; but I do not think, when Boucher was within the district of Mr. Mondelet, that it was illegal, upon information made before him, to issue a warrant against an offender, though his offence was committed in the Indian Territory; but putting that point out of our consideration, we can certainly ask

Mr. Mondelet to relate whatever he may have heard the prisoner say upon the subject of this melancholy affair.

Mr. Sherwood.—I beg to differ with the Learned Attorney-General, and to say that as all Mr. Mondelet's knowledge upon the subject was obtained by means of this illegal warrant, it is not competent to him to examine Mr. Mondelet as to what Boucher did or said before him. It was an illegal duress under which he was placed at the time Mr. Mondelet obtained any knowledge or information from Boucher. A justice of the peace in England, by force of a statute of Henry VIII. might arrest for a particular crime committed *without the realm of England:* but that did not apply to Canada; and even in that case, the Justice could not take an examination under the statutes of Philip and Mary.

Solicitor-General.—I do not think that so apparent; by this Act there are two ways in which a person having committed a crime or offence may be brought down to Lower Canada, to be dealt with according to law; and *non constat*, at the present moment, how the prisoner was brought before Mr. Mondelet, for the question has not been put.

Chief Justice.—This Act makes it the duty of the person administering the government of the sister province, "to "appoint persons, wheresoever resident or being at the "time, to act as civil magistrates and justices of the peace "in the Indian Territories, or parts of America not within the "limits of either of the Provinces of Canada, or of any civil "government of the United States of America," and authorizes such persons so appointed, "to act for any of the "Indian Territories, as well as within the limits of either of "the said Provinces, either upon information taken or "given within the said Provinces of Lower or Upper Ca-"nada, or out of the said Provinces in any part of the "Indian Territories, or parts of America aforesaid, for the "purpose only of hearing crimes and offences, and commit-"ting any person or persons guilty of any crime or offence "to safe custody, in order to his or their being conveyed to "the said Province of Lower Canada, to be dealt with ac-"cording to law; and it shall be lawful for any person or "persons whatsoever, to apprehend and convey, or cause to "be safely conveyed, with all convenient speed, to the Pro-"vince of Lower Canada, any person or persons guilty of "any crime or offence there, to be delivered into safe cus-"tody for the purpose of being dealt with according to law." The construction we are disposed to give to this clause op-

poses the reception of the examination of the prisoner before Mr. Mondelet: relative to the proving it in any other way, I could wish, as very considerable delicacy hangs over it, that, after so much evidence has been produced, the Crown would not introduce a doubtful confession. There is difficulty about it, and, unless considered as essential to the case on the part of the Crown, I could wish that it should not be pressed upon us. A Magistrate of this, or the Lower Province, I think, cannot act in cases of offences committed in the Indian Territory. It should, according to our idea, have been by the Commissioner, and not by the Magistrate, that the examination should have been taken, to enable you to prove it on the trial of the prisoner. There is no occasion to ask Mr. Mondelet any questions as to how he obtained his information, and I do hope that it will not be considered necessary to attempt to prove this very doubtful confession.

(The Attorney-General here intimated, that the Crown would not urge the proof of the confession. The Chief Justice added, that he had always taken the construction of the Act to be, that the local magistracy of the two Provinces had not power to act under this statute any more than a magistrate had to commit for offences out of his own district. Whether the Judges below held the same opinion, he did not know. Mr. Mondelet requested permission to mention, that in the course he had adopted, he had been sanctioned by the written opinion of the Judges of the Court of King's Bench for the District of Montreal, contained in a letter addressed to him).

It being past ten o'clock at night, the Court was adjourned till to-morrow morning, the Jury being placed under the care of Mr. Sheriff Ridout.

Tuesday, 27th October, 1818.

PRESENT AS BEFORE.

Attorney-General.—Before I call the witness I propose to examine first this morning, I wish to beg your Lordships' attention for a moment.—Something dropped on a former day from his Lordship, the Chief Justice, relative to the terms in which the Great Seal Instruments from the Lower Province were worded, as well as your Lordships' construc-

tion of that part of the Act of 1803, which provides for the delegation of authority to the Upper Province, in relation to such cases in which the Governor of Lower Canada shall think, and declare, justice may be more conveniently administered in this than in the sister Province. If I correctly appreciated your Lordships' opinion, it was that you had no jurisdiction excepting over offences particularly specified in the Great Seal Instruments from Lower Canada, and that the general transmission thence of the offenders, (under the general expression introduced into those documents,) for trial in the Court of this Province, for *all crimes and offences by them heretofore committed in the Indian Territories*, was not sufficient to enable you to take cognizance of offences not particularly set forth in them. Not wishing to take the persons by surprise against whom I had received informations, although I had given a similar interpretation in my own mind to the statute, to that which your Lordships' opinion has sanctioned, I had, under the general words of the instruments, prepared indictments for offences not particularly specified, against a number of persons, some of which have been returned by the Grand Jury true bills. I wish, therefore, to enquire of the Court, whether I understood its decision correctly, when I consider it to be, that, except for offences particularly specified in the Great Seal Instruments against any offender, your Lordships cannot take cognizance, although those documents may transmit the offender here for trial generally for all offences heretofore by him committed in the Indian Territory?

Chief Justice.—The decision of the Court was a decision intimated to the bar, that this statute ought to receive from us a rigid construction, and that, in so construing it, we felt that it was only over the particular offence specified in the Great Seal Instrument of the Lower Province, that our right of taking cognizance was extended. On looking at the Act, it will in a moment be manifest, that only a special extraordinary jurisdiction is extended to us, the original, or general extraordinary jurisdiction, being given to the Lower Province; and it is only through the sister Province that we are empowered to exercise any authority under this Act. It is a delegated power which we have to exercise; and, according to our view, it extends no farther than to the particular offence specified in the Great Seal Instruments. We do not consider that the Instrument can give us a general power over the offender charged to have committed any particular offence, though it clothes us with every requisite

authority to take cognizance of the offence specially set forth therein. We consider that the crime which it is intended we are to try, must, in conformity to the Act of the 43d Geo. III. be precisely set forth in the Instruments, which, by virtue of the Great Seal of the Lower Province, give us the special extra-jurisdiction; and as it is only a special jurisdiction that is conferred, we consider it is necessary, that the Instrument delegating it be rigidly construed; and under that impression, we intimated it to be our unanimous opinion, that we can only take cognizance of the offender under a Great Seal Instrument transmitting an offence for trial here, in relation to the particular offence so set forth. According to our construction, we have to do with the *offender* no farther than he stands connected with the particular *offence* which the Great Seal Instrument transmits here for trial. In the Lower Province the same view does not appear to have dictated the drawing up of the various documents; however, with that we have nothing to do.

Attorney-General.—I thought, my Lords, that it would be proper for me to mention the subject to the Court, that I might be confident I did not misapprehend your Lordships. The Act appears to have been understood in the Lower Province differently, and under the authority of the Instruments transmitted to me, with the informations against the offenders, I had prepared, and handed to the Grand Jury, a variety of indictments, some of which have been returned true bills. No farther step can of course be taken relative to them, after I so clearly comprehend your Lordships' unanimous decision, nor will any farther indictments be prepared, except in cases over which your Lordships feel you have cognizance, according to the right construction you have been pleased to declare the Great Seal Instruments ought to receive. I may, perhaps, be permitted to add, that the views of your Lordships are precisely those which I had myself taken of the Act; but, under the general clause of the Great Seal Instruments, I thought it my duty rather to forego my own opinions than incur, by possibility, the censure of causing any delay in the proceedings of the Court, which, had your Lordships' views been different, would have occurred. Had I deferred acting upon the informations till becoming acquainted with the construction you would give to the Act, I should be able, as I am now, to judge to what extent your Lordships consider the Great Seal Instruments to delegate the power of putting upon their trials the various

persons accused in the informations transmitted from Lower Canada.

Chief Justice.—There appears to have been a great deal of inattention in drawing up these documents, for which it is not we who are to account. As far as we feel that authority is delegated to us by them, we will exercise it, by taking cognizance of offenders whose offences are particularly specified therein, but beyond that we do not feel justified in going——

Solicitor-General.—The words relative to the transmission of power or jurisdiction to this Province, are in the parenthesis in the Act. Just before the parenthesis commences, the Act recites, that every offender may and shall be prosecuted and tried in the Courts of the Province of Lower Canada; and the parenthesis gives, under the conditions or circumstances therein stated, similar power to the Province of Upper Canada; and I imagine it must be from this circumstance that, in the Lower Province, they have considered, in transmitting the *offender*, that they have delegated an authority to try all offences which he may be accused of committing in the Indian Territory. I think it is the wording of the third clause which has occasioned the Great Seal Instruments to be drawn up as they are, the law advisers there considering that, in transmitting the offender generally, the Court may proceed to try him for all offences.

Chief Justice.—It certainly appears to have been so, but it is manifest, from the third section, that to give us power to take cognizance of the offender, the offence must be transmitted, because it is of the *offence* that the Governor is to declare, by any instrument under the Great Seal of the Province of Lower Canada, that justice may be more conveniently administered in the Province of Upper Canada. The words of the Act are, to my mind, so clear, that I am at a loss to account how any other construction than that which we have given could have been put upon them. The words of the section, under which the manner of giving jurisdiction to us is set forth, satisfactorily state of what it is we have to take cognizance; the declaration of the Governor, Lieutenant-Governor, or person administering the government, is to be, that, from some circumstance connected with the *crime* or *offence*, or the local situation of some of the witnesses for the prosecution or defence, justice may be more conveniently administered, in relation to such *crime* or *offence*, in Upper than in Lower Canada; and he having done so, then that every such offender may and shall be tried in the Court of

Upper Canada, in the same Court and in the same manner, and be subject to the same punishment, as if *such crime or offence* had been committed within the Province. It is in relation to the *crime or offence*, that the Governor of Lower Canada, by an Instrument under the Great Seal of the Province, may transmit here for trial, that we have a right to take cognizance of the offender, and in relation to that only. That is the unanimous view which we have from the beginning taken of our power under this Act.

LOUIS NOLIN, sworn,

And examined by the ATTORNEY-GENERAL, *through the medium of Mr.* SMITH, *as Interpreter.*

Mr. Nolin.—On the 19th day of June, 1816, I was at Red River at the Forks, at Fort Douglas. I saw a number of persons on horseback and armed pass the fort. Those that were in advance I did not see pass, but the last part of them I did. There were perhaps about thirty or forty of them. I can not say exactly, but they appeared to be about that number, looking at them from Fort Douglas. They were a part of the same band who were in advance, and they went by two or three minutes after the others. I know that Mr. Semple went out with about twenty-six or twenty-eight persons. I did not go, I was not asked to go, and there were from fifteen to twenty others left in the fort. I do not know that these refused to go, or that they were asked to go, nor can I say whether Mr. Semple forbid them to go. We heard shortly after some firing, but it blew so hard we could not hear it very distinctly at the fort. I did not hear Governor Semple say why he went out with the men. I had been out that day with Mr. Semple a distance of three leagues, and he told me, whilst we were together on the road, that if the Métifs should come, as we had been told they would, and they went by the fort quietly, and did no mischief, they should not be interrupted. I did not see Mr. Semple and his party immediately on their going out, but I saw them at a distance of two or three arpents* from the fort; they appeared to me to go as they pleased, without being in any particular order, they were dispersed about. I staid in the fort on the night of the 19th June, and on the next morning, I saw a number of dead bodies brought to

* An arpent is one hundred and eighty French feet.

the fort, and amongst them that of Governor Semple; it was wounded in three places with balls, but there were no marks of lance or spear wounds. Cuthbert Grant came the next day to the fort, with a number of persons, and amongst them the prisoners, Brown and Boucher. I had no great conversation with Grant. He appeared to wish to make it appear like an engagement, and that Mr. Semple's party had commenced it. I can not, of my own knowledge, say whether Paul Brown was in the engagement or not, but I was told by several persons that he was not. Some of the persons who came the next day to the fort with Grant, were dressed in clothes which had been worn by some of the people who went out with Mr. Semple. One Lacerte was dressed in the clothes of one of Governor Semple's people. Cuthbert Grant did not tell me that they had any plans for taking the fort, but the next day he told me he must have the fort, and that the people there must go away. I did not see Mr. M'Leod there, that is at the fort; but two days after I saw Mr. M'Kenzie there, and Cuthbert Grant met him, and they conversed together; but as I understood very little English, it was only here and there a few words that I made out. Mr. K'Kenzie told the Métifs that Lord Selkirk was coming with soldiers, and that he had no right to their lands; that they were theirs. I asked Cuthbert Grant to let me go and help to bury the dead, and he told me I might, that there would be no danger then, but that he must have the fort the next morning, as his young men would wait no longer. I do not recollect the exact words, but that was nearly what he said.

Attorney-General.—Did Cuthbert Grant, Paul Brown, or François Firmin Boucher, say any thing to you that they had come to Fort Douglas, or to the Red River country, with an intention to attack it?

Mr. Nolin.—No, neither of them told me that it was for the purpose of attacking it that they had come down. Before this time I know we were in fear of an attack. I know that some Indians came to the fort, and told us that we were to be attacked; some of the Indians offered assistance; they told us that from the appearances at Portage des Prairies, they were apprehensive we should be attacked, and they feared Mr. Semple might be killed, and that they would give us their assistance to protect him. Mr. Semple, however, refused their assistance, not thinking that they would attack us. When Mr. Semple and his party went out, I heard no orders given by him, or any body else, about at-

tacking this party. When they went out, I can not think they had any intention of attacking the armed party at all events, but I should believe he merely went to see what they wanted, and who they were.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Nolin.—I did not see Mr. Semple's party at the moment they went out, but I saw them at a distance of about three arpents from the fort. They were armed with guns, of which some had bayonets. I have been three years in the service of the Hudson's Bay Company. I have heard talk of Mr. Miles M'Donell's Proclamation.

Mr. Sherwood.—Do you know of the taking and razing of Fort Gibraltar, and the seizing of the North-West Company's pemican by the orders of the late Robert Semple?

Mr. Nolin.—I have heard of pemican being taken, but do not myself know of it. I do know that Fort Gibraltar was taken, but I can not say that it was by the orders of Mr. Semple, or that it was not.

Mr. Sherwood.—Do you know that it was razed down to the ground, the pickets torn up, and the whole floated down in rafts to Fort Douglas, which was Mr. Semple's residence?

Mr. Nolin.—I know that it was floated down to Fort Douglas.

Mr. Sherwood.—Were there pickets in the raft with it?

Mr. Nolin.—Yes, there were pickets in the raft. I heard that Fort Pembina was taken, but I do not know that it was, for I was not there, but I did hear that it was taken. There were some pieces of cannon in Fort Douglas on the 19th June, but I do not know of any on the other side of the river, nor do I believe there were any. Lacerte passes for a Half-breed, and he was, when he came next day to the fort, in the clothes of some of the party who went with Mr. Semple on the 19th, but I did not see either of the prisoners wearing their clothes. I went during the next year with Colonel Coltman to shew him the locality of the battle ground.

DEFENCE.

Mr. Sherwood.—Before we commence our Defence, I would remind the Court, that there had been a desultory argument, relative to which was the actual state of this country, or rather, as it was in a state of private war, as to what the effect of this state of warfare would be upon this affair of the 19th June, supposing for a moment, that it should be clearly proved that the prisoners participated in the quarrel, to the full extent which the Indictment charges them to have done; and I had then the honour of submitting that, under this state of warfare, that which would be murder here, was not murder there. In arguing from the 43d of the King, I was rather taken by surprise. It was urged that the Act made some change in the law; that, however, is not the case. It makes no change whatever; I am aware that, in construing Acts of Parliament, the intent of the framers is always to be taken into consideration, but we must invariably refer to the *words* of an Act for its intention, and where they are clear, there is no occasion for any other assistance. It is only where ambiguity attends the Act, that it is necessary to call in the aid of explanatory rules, and about this statute there is none, its title is exceedingly clear; its preamble also, and its enacting clauses, equally so. It is simply entitled, "An Act for "extending the jurisdiction of the Courts of Justice of the "Provinces of Lower and Upper Canada, to the trial and "punishment of persons guilty of crimes and offences "within certain parts of North America, adjoining to the "said Provinces." Upon referring to the body of the Act, we shall find that these "certain places," are places which, besides being without the limits of these Provinces, or of the jurisdiction of any of their Courts, are also not within the limits of any civil government of the United States of America. So much for the places; now for the description of, or what is to be understood by, crimes and offences committed in these places. The Act declares that, from and after the passing thereof, "all offences committed "within any of the Indian Territories, or parts of America, "&c. shall be, and be deemed to be, offences of the "same nature, and shall be tried in the same manner, "and shall be subject to the same punishment, as if "the same had been committed within the Provinces of "Lower or Upper Canada." What then, I ask, was the

state of that country? It was in a state of war; if it was not a private war, it must be treason that has been committed; but we say, and without apprehension of being contradicted, that it was a private war, and had nothing of a treasonable nature in it. As these offences committed in the Indian Territory are, by this Act, declared to be of the same nature as if they were actually committed in the Province where they are to be tried, I would ask, what, (if by possibility we can contemplate our happy state of tranquillity being changed into a similar state of conflict to that which has desolated this Indian country), I would ask, what in that case would be the offence committed? The answer is immediate; it would be a great riot or contempt; it would, it must, be this, and nothing more; for it has been so decided by the highest authority in the case of the Barons of England: it was the decision of the highest authority, for it was the decision of the Parliament itself. If all crimes and offences committed in the Indian Territory are declared to be offences of the same nature with similar offences committed in the Province where the offence is tried, we say the law of England is the law of Upper Canada, and in the cases of the Lords Marchers, and the great Barons of England, Gloucester and Hereford, which are precisely similar, for it is expressly set forth in Hale, that they "killed many," and "burnt houses," and committed "divers outrages on "both sides," yet it was only a great riot and contempt; and so again the decision upon the Earls of Northumberland and Westmoreland's case, which I read from my Lord Hale in Norman French, is precisely the same, and so I contend it must be here. I again repeat, that the law of England is no way altered by this Act of the 43d Geo. III. It is merely an Act to extend the jurisdiction of the Courts of the two Provinces of Canada, and the duty of the Judges under its provisions is to administer the laws in the same manner in relation to offences committed in the Indian country, as if they were committed in their ordinary jurisdiction. Following up the authorities I have produced, even here, where we have a representative of the Sovereign, commissioned by himself, the offence charged in this Indictment could not be murder; it could only, supposing a similar state of the country, be a great trespass, a great misdemeanour, such as a riot. But in the Indian country, against this mock Sovereign, this self-dubbed Governor, this Sancho Panza tragedy-king, (who, however, is given up by the Crown Officers), it was nothing but the legiti-

mate exercise of the right of self-protection and defence against an audacious assumption of lawless power. In that country, in brief, I say, it could not be murder, if the Crown ever sustained its Indictment.

Attorney-General.—I beg, my Lords, to say, that if that is the opinion generally held in that country, the sooner it is corrected the better. The sooner the better that, by the decision of the law it is made known, that killing a man in cool blood is murder, in any part of His Majesty's dominions, however remotely situated. But it does, my Lords, appear to me a most singular line of defence which the Gentleman proposes to adopt, to justify one aggression by another, and to assume that, from the frequency of illegal acts, therefore there is no law to which the culprits are amenable, or that the crime is different there to what it would be if committed here. With great submission, my Lords, I do conceive it to be a most unusual and irregular defence, and one that ought not to be allowed by the Court.

Chief Justice.—We shall not allow the Defence to be taken farther back than the circumstances completely connect themselves with this case, by shewing a continued state of aggravated feeling, which at any moment was likely to lead to such fatal results as the termination of this melancholy affray of the 19th June. The situation of the parties, and local circumstances, must in every case, be taken into consideration, and these, being in no two alike, can not therefore be governed by any absolute rule. As the concomitant circumstances, so must be the mode of conducting cases; what then is proposed at the present moment?—The Defence of these prisoners is (say their Counsel), that the unfortunate state of the Indian country, from the two great hostile parties carrying on trade with the natives being involved in constant quarrels, had worked up the servants of each party to the highest pitch of exasperation, which shewed itself in acts of aggression upon the persons and property of each other whenever they met. That, under this state of mind, these two parties met on the 19th June, and that, from the private war which existed between the rival traders, the unfortunate loss of lives does not, though even proved, constitute a charge of murder, but of riot and contempt. I think they are entitled to prove this state of things, if they can, from any particular period without any interruption; but, as I have before pointed out, it will be for the Jury to say, whether it does diminish the crime in that way. They say this would be the case in

England under similar circumstances, and that, *a fortiori*, in a country where there is no administration of the law, they are the more entitled to shew those circumstances which evince that a private war did exist, and therefore that, though lives were lost, yet the taking them was not murder; and as it is of murder they are accused, they must be acquitted. The argument they found upon general principles of law, which are not altered by the Act of 1803, but extended in their administration by an extra-jurisdiction being given to the Courts of the two Provinces of Canada.

Attorney-General.—I beg leave, with respect to the state of private war which has been drawn into this case, to say, that although it should even be proved to have existed, I consider it as no defence. The charge against the prisoners is a charge of murder, and is to be tried here, though committed in the Indian Territory, in the very same way that a charge of murder in the Home District would be tried. As to any alteration in the law being introduced by the Act of 1803, my argument was mistaken, if it was supposed that I considered that statute as doing so. I never did consider that it was the statute of 1803, which declared the opinion, that in that country there was no law but the law of the strongest, was an erroneous opinion. I never did think that before this Act it was competent to any person to say, that there was no Court having power to try for offences of the blackest dye, which were committed in that Territory, or that its population were amenable to no law but that of uncontrolled passion. My idea of this Act was, that it was necessary to enable offences committed in the Indian country to be removed to the Provinces of Canada for trial, and having, under its authority, put upon their trial persons charged with offences at which human nature revolts, I did not expect that we should be told that what is murder here is not murder at Red River, or that a justification was to be set up, founded upon the frequency or extent of the practice. I differ with the Learned Gentleman, and assert that murder in the Indian Territory is the same crime that it is here, and we are not destitute of instances where, under this very Act, the murderer has been tried, convicted, and has received the sentence of death, though it is not yet executed. In that case we did not hear that the country being in a state of private war, presented any palliation of the crime. I am, it is true, very ignorant of the nature of this quarrel, but there can be no circumstances connected with it that can justify the taking of the lives of fifteen or twenty persons.

Or, admit as a ground of defence, that the country was in a state of private war, what if, in these quarrels, the property, or even the lives, of individuals attached to the North-West Company had been taken, (though I know no instance of either on the part of the Hudson's Bay Company, and certainly not of taking lives), is that to justify the taking revenge into their own hands, and exterminating a peaceful Colony? This very argument demonstrates the actual necessity of acting upon directly contrary principles, and shewing to the persons trading into those countries, that crime is of equal turpitude in the Indian Territories, and subject to the same punishment, as if committed in a more civilized part of British America. Admit the principle contended for by the Learned Gentleman, and, if aggressions have been committed by the colonists, they may defend themselves by saying, that a year or two before this fatal destruction, they had been driven away. But it is a defence that cannot be allowed to either party. It is not possible that it shall be permitted to plead, as a justification for crime, that acts of aggression have been committed against you, or that a robbery having been committed on your property, you may therefore, when in sufficient strength, take the lives of the depredators, and justify it by alleging that a private war existed. No, certainly not. We have put these persons upon their trial for murder. The character of murder is well known. It is wilfully, and of malice aforethought, taking the life of another, and life being taken, the law always implies that it was of malice aforethought, and leaves it to the accused to justify the act, by convincing the Jury that it was in defence of his own life, or of his property, and not from malice. But did we ever hear of this principle being carried the length of saying that, as a defence for taking the life of an individual, I will prove that one, two, or three years before I had my property taken, or one, two, or three months, for the time does not at all change the argument, and that I was apprehensive I might have it taken again? Certainly not; nor can it in the present case. Admit this principle, and it is of no use that the Parliament of Great Britain have wisely and humanely passed the Act which enables the Provinces of Canada to prosecute and try in their Courts, offences committed in the Indian Territories, in the same manner as if they were committed within the Province where the same is tried. It is in vain that the offender is subject to the same punishment, or that offences committed in the Indian Territories are de-

clared to be offences of the same nature as if committed here; for once admit this reasoning, and private war must exist for ever, as there is no power capable of controlling its fury, or of awing, by the dread of the vengeance of the law, those feelings of hostility and malice which are the legal characteristics of murder.

Mr. Sherwood.—I shall trespass but a few moments on your Lordships' time, in reply to the Learned Attorney-General, who has very unfortunately mistaken my argument, or rather been answering one of his own. It was not a position of mine, that the crime of murder could not be committed in the Indian Territories by life being taken from malice aforethought; but my position, founded upon the high authorities of my Lord Hale and Sir William Blackstone, was, that if the state of the Indian country was similar to that I referred to in the annals of English history, in the reign of Edward the First, when a private war existed between the Lords Marchers, then, although lives were lost, it was not murder, but a great trespass. That was my position; a position which I repeat, and one in answer to which, instead of a brilliant display of elocution upon the nature of murder, and the power to try individuals perpetrating it in the Indian Territories in the Courts of the Provinces of Canada, which has never been questioned by me, I should have been gratified in hearing something like argument supported by law. No doubt but murder can be committed in the Indian Territories. No doubt but a Boisbrulé may commit murder, and be tried under the Act of the 43d of the King. No doubt but Charles de Reinhard has been tried in the Lower Province, and has been convicted, and received sentence of death under this very Act. But, I ask, is that the case of these persons? or, is there any analogy between the case of the Barons of England, who, with their adherents, killed many, and committed divers outrages, burning houses on both sides, and which, being done in a private quarrel, was adjudged to be only a great riot and contempt, and the commission of a solitary murder, by De Reinhard, after travelling fifteen miles with the individual? Is there any analogy between the case of De Reinhard and that of two parties, belonging to great rival commercial establishments, meeting, and in the heat of ill blood, a battle taking place, and lives being lost? Is the solitary murder of an individual, by those who were armed when he was not, to be compared to this meeting of two armed parties belonging to Companies, the extent of

whose resources are second only to the East India Company, which may be called a nation, or more properly nations, of itself, having armies at command, consisting of hundreds and thousands to support its interests when they come in collision; whose passions were exasperated against each other, so that, like the Barons of England, wherever and whenever their adherents met, they, with the consent of their respective heads, proceeded to outrage and aggression? My argument, I am confident your Lordships will recollect, was directed solely to this point, that, owing to the circumstances of this country, arising from the private war carried on between the great commercial rivalries, the prisoners, even if a participation in the affray was brought home to them, had not committed murder; and I founded this argument upon the analogy between the case of the prisoners and those decided in the time of Edward the First. Against this principle of law, supported by the high authorities I produced, not a single authority of law has been urged. The Learned Attorney-General, contenting himself with exercising an adroitness of elocution, has not, in laying his case before your Lordships and the Jury, exhibited a single evidence that this, which I call a private war, did not exist in reality. It will be my duty fully to establish this point by testimony, and I can have no doubt of the application of the solid legal distinction I have taken. I shall first call Mr. John Pritchard, a gentleman who has been examined on the part of the Crown.

(Mr. Pritchard was sent for, but was not found in attendance.

The Attorney-General then stated, that there was another witness that he was desirous of examining before the Defence was gone into, and probably by that time Mr. Pritchard would be in attendance.)

LOUIS BLONDEAU, sworn.

Examined by the ATTORNEY-GENERAL, *by Interpreter.*

Blondeau.—In 1815 I was at Fort Cumberland. I was there during the winter, and also in April of that year. Duncan Campbell commanded at that station at that time. I do not know if it was John Duncan Campbell, but it was Duncan Campbell.

Mr. Sherwood.—I should, before the examinaion of this witness is pursued, like to ask him a question or two

touching his religious impressions, whether he is a Christian or an infidel, for I have strong doubts of his having any idea of the nature of an oath. What religion are you of, Blondeau? Have you been baptized?

Blondeau.—Yes, I have; I am a Christian.

(Mr. Sherwood said, that, after that answer, he should not oppose the witness being examined, he would not put any additional questions upon the subject of the religious belief of the witness).

Examination resumed by the ATTORNEY-GENERAL.

Blondeau.—In April, 1816, I was at Fort Cumberland, and Campbell did invite us to fight the people of Red River. It was about the 10th or 15th of April. The invitation was to drive away the English. I refused to go, for I had no interest in going, and so I told Mr. Campbell. It was said that it was to defend our lands we were to go, but I said I had no interest more than others in the lands, and did not wish to go. I know that a party of Half-breeds did go; among them was one Vasseur, Vassal, Deschamps, the brother-in-law of Bruce, one Boucher, not the prisoner, and one Morrison. I believe Morrison was English, but he was one of our people, and they were all that went, as I recollect, except one M'Kay, son of Alexander M'Kay, I do not know his Christian name. I remember that he went. Before they went away, Mr. Campbell told them to take great care when they got to Red River, that they were not taken by the English, and if they were attacked by them, to mind and begin with the heads or the principals, because he said they must have the principals or their heads. It was in French that it was spoken, and the words made use of were—"*Il faut absolument que vous commencez par "les principaux, et que nous ayons les chefs, ou leurs têtes.*" Mr. Campbell particularly mentioned Governor Semple and Mr. Robertson, as the persons whom he must have, or their heads. He owed them a grudge, as he was formerly a clerk of theirs, or under them. This party set out armed with guns, pistols, and dirks, or short hangers, *(couteaux de chasse)*. They set out in April from our fort. Six or seven of our people went, and they went away upon the ice. I have not seen M'Kay since. I have seen another person who has. I did not afterwards see any of those who left Fort Cumberland, but some of our people belonging to other departments saw them, or some of them. I have not heard the prisoners speak of what they did at the battle.

I have not seen Cuthbert Grant since the 19th June, 1816. I saw two people at Fort Cumberland who spoke of the affair——

Mr. Sherwood.—You must not tell us what they said to you.

Blondeau.—The general conversation at that time was, that our people were going to assist in the destruction of the English.

Attorney-General.—That is the case on the part of the Crown.

Mr. Sherwood.—I have no questions to put to Blondeau. The course we shall take in the Defence will be to read the Proclamation of Mr. Miles M'Donell, and from that period up to the moment of Mr. Semple's going out to meet the party on the 19th June, we will prove a continued series of aggressions committed by the party to which these persons who lost their lives belonged. The Proclamation we wish to have read, as it is our first piece of evidence. (*It was accordingly read: see Brown and Boucher's Trial, p.* 98.)

HENRY FORREST, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Do you know Louis Blondeau, and is he, to your knowledge, in the service of the Hudson's Bay Company?

Mr. Forrest.—I know Louis Blondeau, and I should presume that he was in the service of the Hudson's Bay Company; but I do not know, or am not possitive, that he is under an engagement at present.

Mr. Sherwood.—Do you know, Sir, that he was lately in gaol at Montreal, and why he was taken out of gaol?

Mr. Forrest.—I know he was in gaol, and that he was taken out to be brought up here.

Mr. Sherwood.—But you do not know whether he is actually in the service of the Hudson's Bay Company at present?

Mr. Forrest.—I have no possitive knowledge that he is, but I suppose he is, because the Hudson's Bay Company advance money from time to time for his support. He was taken out of gaol, as I have said before, to be brought up here as a witness. He was put into gaol for debt, by the agents of the Hudson's Bay Company. Their reason for imprisoning him was, that he was going to desert, or to leave the Province; they had reason to apprehend that he was. I have

every reason to believe that he is a very honest man; his only fault I believe to be, that he is too much given to liquor; but, except that, I consider him to be a very honest man. The reason for putting him into gaol was, an apprehension that he was going away without settling his accounts. I know of no other reason.

Mr. Sherwood.—And does that conduct correspond with your idea of a very honest man? Do you think it is very honest to be a drunkard, and an absconding, fraudulent debtor?

Mr. Forrest.—I certainly do not call it an honourable trait of character; but except for his being given to liquor, and not paying his debts, I consider Blondeau to be a very good and an honest servant.

JOHN M'DONELL, Esquire, sworn.

Examined by Mr. SHERWOOD.

Mr. M'Donell.—I know Louis Blondeau well. I have known him for upwards of ten years. He was formerly in my service. I was then belonging to the North-West Company, but do not now. Blondeau has not the best of characters; he was very much addicted to liquor, and a man in whom implicit confidence could not be put. I would not give him implicit belief on his oath; he was altogether such a man as I would not have in my service if I could do without him. I certainly would not have him in my service if I could dispense with him. From my residence in the interior for a number of years, I am well acquainted with the manners and customs of the Half-breeds, and they do occasionally paint themselves; their habits are very like those of the Indians. They mingle constantly with the Savages, and hunt and fish like them; they are not accustomed to cultivate the ground, but live generally by the chase. Some of the greatest chiefs are among the Half-breeds.

Mr. Sherwood.—I would ask you, Sir, is their painting themselves an uncommon thing, or does it indicate an hostile disposition—a manifestation of going to war?

Mr. M'Donell.—By no means uncommon. I have seen them very generally painted. It is not at all uncommon to see them painted, and is no proof of hostilities being intended. I have seen them constantly painting and decorating themselves at their toilets.

Chief Justice.—The object of this testimony is evident; it is to counteract the effect that their going disguised and

painted might have, if it was not an usual practice in that country to do so. Mr. M'Donell says it is a common practice, and not an indication of any hostile intention. Are these Half-breeds like Indians in their manners and customs? or do they attach themselves to the white population? Are they, Sir, like Indians?

Mr. M'Donell.—The major part are like Indians, and they paint like the Indians. Some of the most powerful and greatest Chiefs are among the Half-breeds.

Mr. Sherwood.—We have heard a great deal about this party being armed, will you tell us whether that is a common practice in the Indian countries, or is it a necessary precaution?

Mr. M'Donell.—On any and every voyage and journey in that country, some of the servants carry arms, and sometimes even the whole of them do, and I consider it necessary that they should do so to defend themselves, and to obtain provisions.

Mr. Sherwood.—How long, Sir, did you reside in that country?

Mr. M'Donell.—I have resided there upwards of twenty years.

Mr. Sherwood.—And from your knowledge of that country, do you consider it necessary that the traders with the servants, should carry arms for their personal defence, and for their subsistence?

Mr. M'Donell.—I certainly do, both for their personal defence, and as a protection against wild beasts. As means of obtaining provisions it is absolutely indispensable that they carry arms. I have been frequently in danger from wild beasts, and found it absolutely indispensable to my personal safety to go armed.

Mr. Sherwood.—Is it, Sir, an unusual thing in that country, for the Indians and Half-breeds to give what is called "a whoop," or do they do it only when they are going to war? are there other sorts of whoops besides war-whoops?

Mr. M'Donell.—It is very common to the Indians and Half-breeds to give the whoop, and it is by no means confined to their going to battle. It is habitual to them to do so. The whoop they give on all occasions is like the war-whoop, and is so very common, that hardly two get on horseback without giving a little whoop.

Mr. Sherwood.—Then hearing this whoop given is not

an alarming circumstance, a sure presage of war and hostilities?

Mr. M'Donell.—No, quite the reverse. I have frequently given it myself, and if you go into an Indian village, you will hear every boy giving it.

Mr. Sherwood.—Will you, Sir, tell us if spears, and bows and arrows, are common arms when the Indians and Half-breeds go on horseback?

Mr. M'Donell.—Spears, and bows and arrows, are as familiar to the Half-breeds and Indians as fowling-pieces are to us.

Mr. Sherwood.—Did you, Sir, ever know the Half-breeds and Indians to go on horseback armed with muskets?

Mr. M'Donell.—I never did. I do not believe that muskets are ever carried by the Half-breeds on horseback, but spears constantly are, also bows and arrows. They are the customary arms they carry when riding.

Mr. Sherwood.—Did you ever *hear* of the Half-breeds carrying guns and bayonets? I do not ask you whether you ever saw such a thing, but did you ever hear of it?

Mr. M'Donell.—Certainly I never did hear a report of their riding armed with muskets and bayonets; indeed I consider it as next to an impossibility that they could do so, on the spirited horses that they ride in that country.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Did you, Sir, ever see Cuthbert Grant in that country, or was he accustomed to paint himself like an Indian?

Mr. M'Donell.—I never saw Cuthbert Grant in that country.

Attorney-General.—Mr. Grant, I believe, was the son of a Partner of the North-West Company. Did you, Sir, ever see the son of one of the Partners paint himself like a savage?

Mr. M'Donell.—Yes, I have known many sons of Partners paint themselves; it is by no means uncommon at their sports.

Attorney-General.—Did you ever see forty or fifty Half-breeds riding together and painted, with peaceable intentions?

Mr. M'Donell.—I never saw so large a party riding together painted. I never saw forty or fifty riding together.

Attorney-General.—In what manner do the Half-breeds generally live? are they not superior in their habits to the Indians?

Mr. M'Donell.—A great many live as the Savages do. A few men of them are employed as voyageurs. When the engagés are scarce, they are attached to the parties, and act as servants and canoe-men.

Attorney-General.—When they are so employed, do they paint, and preserve the habits of Indians?

Mr. M'Donell.—No, not when they are so employed.

Attorney-General.—How long is it, Sir, since you was in the interior?

Mr. M'Donell.—It was in the year 1814 that I was there.

Mr. JOHN PRITCHARD, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Do you, Sir, believe that the prisoner, Mr. Boucher, saved your life on the 19th June by his exertions?

Mr. Pritchard.—I do believe that the prisoner, Mr. Boucher, did save my life on that day; for had I been alone, I believe that one Deschamps would have taken my life. I think now that if Boucher had not interfered, Deschamps would have killed me. I have no doubt of it.

Mr. Sherwood.—You are acquainted with the hand-writing of the late Robert Semple, I presume; will you look at this letter, and say whether you believe it to be his writing?

Mr. Pritchard.—This letter is in the hand-writing of the late Governor Semple.

The following Letter was then read, upon motion of Mr. Sherwood.

Fort Douglas, 14th April, 1816.

DEAR SIR,

I have received your several letters; but as I trust we shall so shortly meet, I think it needless to enter upon their contents. There have been thoughts of removing Fort Daer, but that measure has been postponed. It may be well, however, to bring down the doors and windows, and whatever moveable parts our enemies might carry off. I wish all the stores of the

North-West Company brought down here. They have seized our goods in Peace River, and we must try to have a few things to balance the account.

Mr. M'Leod's services will be useful in coming down with the colonists and stores. You know his zeal. St. Germain can remain with a few men, until I determine what is to be done with Pembina. I shall order the bearer of this to go by the way of the two lower boats, to see in what situation they are. From his report you will judge of what is necessary to be done, and act accordingly. The upper boats, I understand, are in safety. In other points I trust to your judgment. Do what you think best for the general interest, and rely upon finding in me a man who judges from intentions.

I am, dear Sir,
Yours sincerely,
(Signed) ROBERT SEMPLE.

Mr. John Pritchard,
Pembina.

Mr. Sherwood.—The letter, I perceive, is addressed to you: pray, Sir, what was your situation with the Hudson's Bay Company at that time?

Mr. Pritchard.—I can not say that I held any situation with that Company. I was rendering them some services, but without pay or reward. I will, if required, tell how I went to that country.

Mr. Sherwood.—It is not necessary. You, I dare say, know Mr. Colin Robertson, and can prove his hand-writing. Look at this letter, and say if it is in his hand-writing.

Mr. Pritchard.—It is the hand-writing of Mr. Colin Robertson.

The following Letter was then read, upon motion of Mr. Sherwood.

Gibraltar, 20th May, 1816.

GENTLEMEN,

Having heard with pain, that the men under your command were surprised and taken by a superior force of the North-West Company's, I beg leave to inform you that every thing *here* goes on *well.*

We sent off Cameron on the 18th for Jack River; from thence he proceeds to York.

Take courage, and endeavour to inspire your men with the same sentiments.

I am in possession of the North-West Company's fort, and the Governor has put Fort Douglas in an excellent state of defence, and we are determined to dispute the ground by inches.

Inform me by the bearer the real situation the unfortunate event has placed you in; and take care, in delivering your despatch to this Indian, that you are not discovered by our opponents.

God bless you all.

Yours faithfully,

(Signed) COLIN ROBERTSON.

You may read the letter to your men, and tell them to give no credit to reports of any kind, until you hear from Governor Semple or myself.

(Signed) C. R.

Mr. Sherwood.—Colin Robertson was a very confidential servant of the Hudson's Bay Company; was not he a very active servant?

Mr. Pritchard.—He certainly was an active and confidential person, and so esteemed by his employers.

Mr. Sherwood.—I perceive Mr. Robertson observes, that he was in possession of the North-West fort. What fort did you understand by that? the fort from which the letter is dated, "Gibraltar?"

Mr. Pritchard.—Yes, I did.

Mr. Sherwood.—Who, Sir, was the Mr. Cameron that was sent off on the 18th to Jack River, and from thence to proceed to York?

Mr. Pritchard.—I suppose it was Mr. Duncan Cameron.

Mr. Sherwood.—Was he a Partner of the North-West Company, and what was he to go to *York* for? *York Fort*, I presume, on Hudson's Bay; not this town of *York*, I believe?

Mr. Pritchard.—Jack River is on the route to Hudson's Bay, and Mr. Cameron was sent there on his way to Europe as a prisoner.

Mr. Sherwood.—Do you know the hand-writing of Mr. Miles M'Donell, and is this letter, under date of the 24th January, 1817, addressed to Cuthbert Grant, in his hand-writing?

Mr. Pritchard.—It is the hand-writing of Mr. M'Donell.

Attorney-General.—It can not be read, it is no evidence, nor do I know that it would be in that of Cuthbert Grant even.

Mr. Sherwood.—We wish to read it, as shewing the opinion of certain persons relative to this affair of the 19th June, and the Jury might, from the idea of Cuthbert Grant's innocence, make such inferences as they think proper,

relative to the other persons charged. If, however, the Court is against me, I do not press the letter.

The Court intimated that the letter was not evidence*.

Mr. Pritchard.—I would wish to explain, that in the part of the letter of Mr. Semple, in which he alludes to the North-West Company's stores being brought down to Fort Douglas, and speaks of our goods having been seized, it related to a quantity of furs which had been taken from the Hudson's Bay Company, and conveyed to a North-West fort.

JAMES TOOMEY, *sworn.*

Examined by Mr. SHERWOOD.

Toomey.—In the year 1814, I was in the Indian Territory, in the Red River country, but not at Fort Douglas. I know of the Proclamation of Mr. Miles M'Donell; I saw it stuck up at the gate of Fort Daer. I do not know that it was an

---

* The Letter produced was the following:—

Fort Douglas, 24th January, 1817.

SIR,

Having found here the Governor-in-Chief's Proclamation of the 16th July, 1816, sent you by Mr. Johnston, one of His Majesty's Justices of the Peace, for the purpose of taking up and sending to justice all persons who have committed acts of violence in the country, I consider it my duty to send you now the said Proclamation, being persuaded that you will, as a loyal subject, exert yourself to restore order and tranquillity in the country.

Your humane conduct towards the people of the Colony, after the unfortunate events of the 19th June last, confirms me in the good opinion I always entertained of you.

The Earl of Selkirk, who has a perfect knowledge of all that took place here this last year, harbours no enmity towards you; and I feel confident that he has no intention of commencing a legal prosecution against you.

The Partners of the North-West Company, in their discomfiture, endeavour, by the circulation of falsehood, to conceal the truth; it is therefore your interest, as well as that of all those under your orders, to withdraw yourselves immediately from those who are certainly driving you to your ruin; if you will come here, I shall give you a clear insight into all that has taken place till the present time, and I pledge myself you shall be well received, and freely permitted to return in safety when you shall think proper.

Your most obedient servant,

(Signed) MILES MACDONELL, Governor.

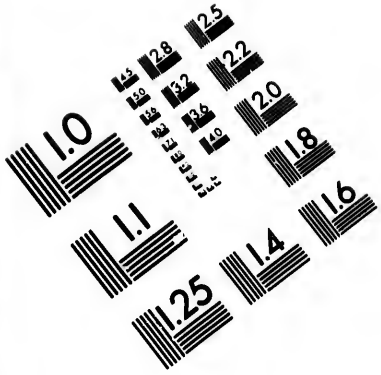
Mr. Cuthbert Grant.

I have a parcel containing some articles of clothing, sent by Mr. Daniel M'Kenzie for his son Roderick; I would the young man himself to come here for them; he has nothing to fear.

(Signed) MILES MACDONELL.

authority to seize the provisions of the North-West Company, but it was to prevent them being taken out of that country. I do know of two trains of pemican being seized from the North-West people. I was then in the service of the Hudson's Bay Company, and I know that the freemen who supplied the North-West Company with pemican had it just ready to start with, and were compelled to put it back upon the stages from which they had loaded the trains. This was done with the approbation of the Hudson's Bay people, and the freemen were forbid to move it, and afterwards it was taken out of their possession by the Hudson's Bay servants. I know also of some boat-loads of pemican being taken between Fort Douglas and Brandon-house by the Hudson's Bay people, who were armed with guns which had bayonets, except perhaps about two or three. There were about twelve or thirteen persons engaged in seizing this quantity of pemican, and they took possession of it by force. The North-West Company had been accustomed to be supplied at this place by the freemen as well as the Hudson's Bay people.

Attorney-General.—My L[illegible]s, the Learned Gentleman, in conducting his Defence, so as to avail himself of the permission given him by your Lordships, should, I think, begin at the other end, and shew, at the moment when this melancholy occurrence took place, that the state of exasperated feeling existed, which he is to trace without interruption to any date he may go back to. If this case is allowed to be pursued, I shall deem it necessary to produce evidence to rebut these statements, and exhibit a serious, a most serious, aggravation of this outrage. I shall deem it my duty to shew, though very reluctantly, as unnecessarily extending our enquiries, which I contend ought to be confined to the transaction connected with the Indictment; but I shall, if this course is pursued, deem it my imperative duty to shew, that a deliberate resolution to destroy this Colony existed as far back 1812, indeed from the very moment of its commencement, and that, in continuance from that time down to the 19th June, when, for a second time, it was destroyed, hostilities were directed against it. That this armed force was not sent for the purpose of their own defence, but manifestly to commit outrages upon the Settlement, we can not, I think, have a stronger proof of, nor of the determined hostility exhibited, than by the Gentleman beginning his Defence by reference to a measure rendered necessary for the protection of this infant Settlement, against the acts of hostility which constantly



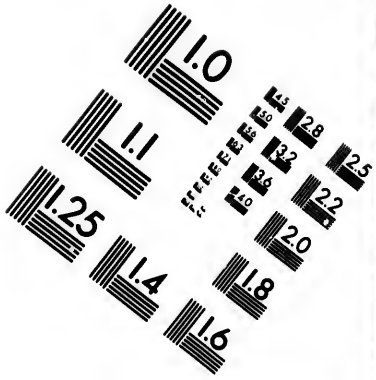
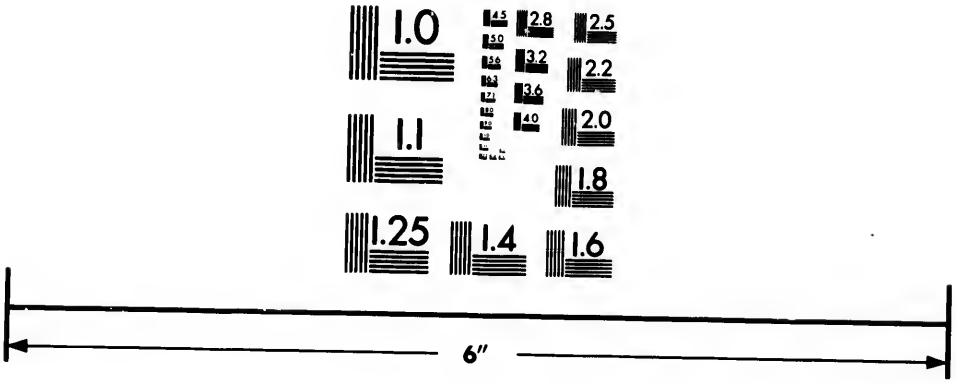
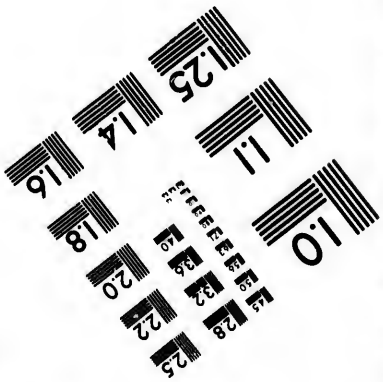


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

threatened them. I have confined my examination of witnesses completely to this armed party, and have never left them for one moment. If the Learned Gentleman is permitted to pursue the course he has commenced, I must rebut it with testimony that will most seriously aggravate this most afflicting catastrophe.

Mr. Sherwood.—I most distinctly stated to your Lordships the line of Defence I proposed to take up, and, till stopped by the Court, I intend to pursue it. I stated that I intended to begin with Mr. M'Donell's Proclamation, and I have done so; and I shall go on, proving aggression upon aggression, down to this flagrant one of the 19th June. I have the greatest respect for the abilities of Mr. Attorney-General, but, I humbly conceive, if I began at the other end, I should begin at the wrong end. As to the necessity under which he will be to rebut this testimony by proving earlier aggressions, he may begin as soon as he pleases, and we will go back to very early periods, when the sturdy use of the shillela to these "messieurs voyageurs" was recommended, if they did not quietly submit to the robberies which were meditated upon their property. We will shew the spirit by which they have been constantly actuated, namely, that of awing us into submission by the free use of the cudgel and shillela upon those "messieurs voyageurs," as we are contemptuously termed by them on all occasions when they obstruct our progress; and that, if we were more strongly armed, and for once went in a party sufficiently powerful to repeal aggressions, it was forced upon us by those persons who had constantly recommended the free use of the shillela, and not only recommended, but practised it too.*

---

* Allusion is here made to a letter in Lord Selkirk's own hand-writing, dated Sligo, in Ireland, 18th June, 1812, in which, in the course of the instructions he gives one of his agents, he strongly recommends, in order "to teach the messieurs voyageurs to keep a respectful distance, that the "*shillela*, the proper weapon of the natives of Ireland, should be made a free "use of." This letter also directs his agents as follows: "you must give "them solemn warning, that the land belongs to the Hudson's Bay Company, "and that they must remove from it; after this warning they should not "be allowed to cut any timber, either for building or fuel; what they have "cut should be *openly and forcibly seized, and their houses destroyed.* In "like manner they should be warned not to fish in your waters, and if "they put down nets, *seize them as you would in England those of a poacher.* "We are so fully advised of the unimpeachable validity of these rights of "property, that there can be no scruple of enforcing them, *wherever you* "*have the physical means.*"—Thus early were instructions given, which, as so evidently appears in the course of these trials, have been acted upon, *wherever they had the physical means*, and to the spirit of which every measure of the Hudson's Bay people, and of Lord Selkirk's agents, may be traced.

Mr. Livius Sherwood.—The course, my Lords, that we have taken, is precisely that which we had the honour of submitting to your Lordships, and received your permission to pursue. We say that the object of the Proclamation of Miles M'Donell was to deprive us of the means of subsistence, and that, not being disposed voluntarily to acquiesce in so arbitrary a course, and one as unwarrantable as arbitrary, we were continually attacked, and robbed of our provisions, after we had bought them; as well as deprived of the means of obtaining them, by the freemen and hunters being prohibited to trade with us. We shall go and prove that there was no other place but up this river that we could obtain the necessary supplies for our trade, and that we had always been accustomed to receive them here, and supply the traders who came from below. We shall prove that, in numerous instances, we were exposed to starvation by the robberies committed upon us, and that it became indispensable to our subsistence, that we should send with our provisions a force capable of protecting them; that the usual channel of communication by the river being closed against us, we were compelled to go by land, thus accounting at once for our being armed on horseback, and in such numbers. We shall then go farther, and shew all these circumstances forced upon us by the conduct of the servants of the Hudson's Bay Company, and the settlers of the Colony: that we were, whilst anxiously avoiding all approach to them, attacked by them on the 19th June again; and they came to us after we had passed by them; and we contend, that although lives were lost in the affray, those who took them were not murderers. We consider that we have begun at the right end of our case. We trust also that the Court will permit us to prosecute it in the manner we have chalked out, and till stopped by your Lordships, we shall not hesitate in our course, from an apprehension of the Attorney-General's rebutting our testimony.

Chief Justice.—It certainly never was the intention of the Court to allow, on the one side or the other, former aggression to be brought forward as justifying aggression subsequently committed. We thought it right, under the circumstances of the case, to allow to be shewn, that from the determined hostility existing between those parties, in a country uncontrolled by any law, there was reasonable cause for either to apprehend, that wherever they met, the weaker would have to give way to the stronger party, and that therefore measures of unusual precaution were resorted

to. It appeared to me and my Brothers, that the object of the Defence was to shew, that when this horrible event took effect, it resulted from one armed party, perhaps armed under unusual circumstances, being followed by another, who having arms at their command took them, and went out, (as they say,) merely to watch the movements of the mounted party, being apprehensive, from accounts which they had received, that this party came to act in a hostile manner to the Settlement. In the state of mutual exasperation existing between them, murder ensued. It appeared to us to be fair to let it be shewn to the Jury by the Crown, that riding armed in numbers was not an usual practice, and that therefore they might be afraid for the Colony's safety, after the information they had received. On the other hand, as it was allowed to the Crown to shew what they could to sustain the setting out of this party with an hostile intention, it was thought to be fair to admit evidence that, owing to the constant aggressions which were committed in the attacks upon the property and persons of the traders belonging to these rival Companies, it was necessary to protect their provisions by an armed escort. There was also another reason for allowing the Defence to go back, and prove, or rather trace, the irritations which existed, under the limitation of shewing a continued and unabated state of exasperated feeling, without cessation, for that time which the law or a Jury would consider necessary for the passions to cool, because, unless they were permitted to do so, the prisoners had not a fair opportunity of proving that which might, in the minds of the Jury, soften the crime whereof they are accused, to manslaughter. If a continued irritation is attempted to be sustained, it must be kept up without interruption, and if at any moment it was perhaps diminished, yet that fresh aggression and outrage not only prevented it from completely cooling, but rekindled all the angry passions, and again brought into play all the hateful feelings by which both parties appear to have been actuated towards each other.

Solicitor-General.—There is one observation made by your Lordship, which I would solicit permission to advert to. I before understood it to be the opinion of the Court, that it was not only necessary to prove that irritation had existed and was kept up, (which it might be so unjustifiably as to form the very spirit of the crime of which the prisoners are accused,) but that there was no opportunity for it to cool. I think that they ought not to be permitted to

shew that, owing to a number of slight circumstances, it was probable that irritation might exist, but that the force of them should be so powerful that it was impossible to control the passions.

Chief Justice.—And a slight circumstance of aggression in itself, if often repeated, might have that effect I believe the judgment of the Court is perfectly understood; therefore let the trial go on.

HUGH SWORDS, sworn.

Examined by Mr. LIVIUS SHERWOOD.

Swords.—I was formerly, and in the year 1814, in the service of the Hudson's Bay Company, at the Red River country, being sent out there from Ireland by the Earl of Selkirk's agent. I can not say that I read, but I heard of a Proclamation issued by Miles M'Donell. I do not know that it forbade the sale of pemican by the hunters to the North-West Company, for I was not able to read the Proclamation. I know of a boat-load of pemican being seized by the Hudson's Bay people. It contained a quantity of ninety-six or ninety-seven sacks of pemican, of about ninety pounds each. I was one of the party sent to seize it by Mr. Miles M'Donell, and the party who went were all armed, with military guns, some with bayonets, and we had ammunition, consisting of ball-cartridge, served out to us before we went to seize it. I know that a camp was formed on the Assiniboin River, and cannon were planted to prevent the North-West canoes from going down, and that this was done by the orders of Mr. Miles M'Donell. On this river the trade of the country is carried on. Pemican is the meat of the buffalo mixed with grease, and forms the general food of the traders of the country; and if the North-West traders could not get provisions from here, (the Red River country), it was impossible they could carry on their trade, as they depended on a supply from here for other posts.

Cross-examined by the SOLICITOR-GENERAL.

Solicitor-General.—Do you not always take arms with you, when you go out in that country?

Swords.—No; sometimes I have been out in the Red River country without arms, but we generally take them.

Solicitor-General.—Was there any thing so particular in your taking arms when you went out at the time you have

been speaking of, that you should so particularly recollect it?

Swords.—I know that at that time we were served out with arms, and fixed ammunition; with muskets and bayonets, and ball-cartridge. I can not say that all had them, but I know that I had. I never was a settler. I was a servant to the Hudson's Bay Company, and was stationed at Red River. I left their service, because I did not think I was well treated by them, and that I could better my condition.

Solicitor-General.—Do you know any thing of the removal of guns from the Governor's house at the Colony, to the North-West post in that neighbourhood, or of other private property belonging to the residents?

Swords.—No, I do not. I heard afterwards that they were moved, but I did not see them moved.

Solicitor-General.—Did you never receive any money from Mr. Cameron, Mr. M'Leod, or persons belonging to their party, for your conduct?

Swords.—The Gentlemen were good enough to give me twenty pounds for *wroughting* in the canoes from Red River to Fort William, and to Montreal.

Re-examined by Mr. Livius Sherwood.

Swords.—It was in May, 1814, that the pemican was taken. It was taken from the lodge of one Poitras. The Hudson's Bay people were trained to the use of arms, but I do not know for what purpose. They had been exercised some months before the pemican was taken. It was not in a boat, but about a good cargo for a boat that we took, and delivered to Mr. Miles M'Donell. Before setting off, I and the others of the party were called up before the house of Mr. Miles M'Donell, and told we were going in search of provisions, which it was expected the North-West people were sending down the river; and if we found any, we were to take it by surprise if we could, and if not, by force, but we were to take it in any way. Not finding any, that day, we encamped, and Mr. M'Donell joined us the next day. Mr. M'Donell had a field-piece with him, and a number of men armed, and the cannon was placed so as to command the river. When before Mr. M'Donell's house, I was promised, that if we took provisions I should have four pounds, and others were promised two pounds, and some different sums.

Mr. L. Sherwood.—Well, go on with your story.

Chief Justice.—There is no occasion; we have the fact, that it was taken and delivered to Mr. Miles M'Donell. It can be of no consequence how it was taken. It is evident they went prepared to take it by force, if it was not given up quietly.

Mr. L. Sherwood.—I will then only put one more question. Had Mr. M'Donell any want of provisions at that time?

Swords.—Mr. M'Donell could not be in great want of provisions, for it was fishing season.

WILLIAM WALLACE, sworn.

Examined by Mr. SHERWOOD.

Wallace.—I have a knowledge of the Proclamation of 1814, by Mr. Miles M'Donell. I did not read it, but I heard it read. I was then a servant of the Hudson's Bay Company. I know of a boat-load of pemican being seized, about 96 or 97 bags, and that it was seized by our people, under the orders of Mr. Miles M'Donell. I know that it was brought to our fort, and stored there, for I helped to carry it into the store. I know that there was a camp formed on the Assiniboin River, and that cannon were planted on its banks. The general conversation was, that every thing was to be stopped that was going down the river.

JAMES PINKMAN, sworn.

Examined by Mr. SHERWOOD.

Pinkman.—I was at Fort Pembina in the year 1813, and then, or in 1814, I saw a Proclamation posted upon the gate of the fort.

Mr. Sherwood.—Should you know that Proclamation were you to see it again? or do you know what it was about?

Pinkman.—It mentions about the freemen and all the Canadians giving up their cattle to Mr. M'Donell.

Mr. Sherwood.—Were provisions forbid or prevented from going down the river, as they had usually done before that Proclamation?

Pinkman.—I know they were forbid, but I do not that they were stopped. I know of some being taken by the Hudson's Bay people, as I was at that time a servant of the Hudson's Bay Company.

Mr. Sherwood.—What did Wallace, Swords, yourself, and the other servants, call Mr. Miles M'Donell?

Pinkman.—We always called him Governor, all the servants did. In May 1814, I was sent from the Red River Forks to go, with some others, to Portage des Prairies, and from there we went to Brandon-house. Mr. Spencer, whose orders we were under, went to the North-West Fort near that place, and asked for their provisions, their pemican. I did not go myself with Mr. Spencer to the North-West Fort. A few days afterwards, an answer was brought to a letter which had been sent from Mr. Spencer to Mr. Miles M'Donell, and we went to their fort. It was shut, and the gates were locked. We cut down the pickets, and got in that way, and then took the pemican and grease, and dried meat. There were about five hundred bags of pemican, and twenty-six kegs of grease, and some dried meat. Some of the bags were larger than others, but I dare say they might weigh about ninety pounds a-piece.

Mr. Sherwood.—That would be something more than twenty tons, a pretty good prize, besides the grease and dried meat. Do you know of the Assiniboin River being blockaded, so as to prevent the North-West Company from bringing their provisions by the channel of this river?

Pinkman.—I do know that cannon were placed on the banks, to prevent the boats passing that belonged to the North-West Company. I know the North-West Company have a great number of forts and posts, and that there is no other way to go to a good many of them, than down the River Assiniboin.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Pray, who went with you? who was at the head of the party?

Pinkman.—Mr. Spencer was our master. A Mr. House also went, and three more, and I. There were only two and I, making altogether five.

Attorney-General.—You perhaps do not know that Mr. Spencer went with a warrant as a Sheriff, or to make some proposals about the provisions?

Pinkman.—I do not. I only know we went, and he was our master.

Mr. Sherwood.—If it is pretended there was any authority of that kind, we are prepared to resist its legality. I

thought, with the Governor all these mock Officers had been given up.

Attorney-General.—To any remarks of that kind I do not think it necessary to make any reply. I have neither given up or maintained the legality of the powers exercised by the Hudson's Bay Company. On the abstract charge of murder, at present before your Lordships, I do not conceive I have any thing to do with them or their Charter. It was only merely as to a fact I asked the witness; whether he knew in what capacity Mr. Spencer went; when he told me that he did not, I was satisfied. Do you know how many men were in the fort at the time you went there?

Pinkman.—I do not know positively; but I think about ten were in the fort, at the time we got in.

Attorney-General.—And you were five; did they make any resistance to you?

Pinkman.—No, except that they refused to open the gate, and we cut the pickets, and got in that way.

Attorney-General.—Did you serve out your time regularly and fully in the service of the Hudson's Bay Company?

Pinkman.—Yes, I did. I served my time quite out, and then left them.

Attorney-General.—Do you know William Wallace? did he serve his time out, or did he desert whilst under a contract of service?

Pinkman.—I know Wallace, and that he served his first contract out, for I saw it. He made another for a year, which I believe he did not serve out. I heard he did not, but that he left for bad treatment he received.

Attorney-General.—You know Hugh Swords, did he break his contract?

Pinkman.—I do not know whether he did or did not.

TOUSSAINT VAUDRIE, sworn.

Examined through the Intepreter, by Mr. BALDWIN.

Vaudrie.—I know the Indian Territory well. I have resided in it upwards of thirty years. I know that the North-West Company were trading there when I first went, and have continued to do so as long as I have been there. They traded there before I went, but I can not say for how long. On the Red River and Assiniboin, I know that they traded long before the Hudson's Bay people; the Hudson's Bay

traders have not been long in the habit of trading on those rivers; only a few years. I know by hearsay, and only in that way, of the Proclamation of Mr. Miles M'Donell. I know that in the year 1814, a quantity of pemican and dried meat was seized from the North-West Company's post on the River la Souris, because I was there at the time. It was taken by the Hudson's Bay people out of a large *hangard*, (store,) and amounted to full four hundred bags; there must have been between four and five hundred bags, perhaps full five hundred, taken away. Mr. Spencer came to the fort, and knocked at the gate, asking to be admitted into the fort in the name of the King, and that all the pemican, dried meat, and grease, should be given up to him. Mr. Pritchard, who had charge of the post, refused to admit him, and took me, as a witness, that he did so. He asked Mr. Spencer to wait a little while, which he did, and shortly Mr. Pritchard put a small billet through the pickets to Mr. Spencer, who took it, read it, (*witness being here asked if he knew the contents of the note, replied, I do not*), and answered, "that will not satisfy me," and again demanded to be let in, which Mr. Pritchard again refused. Upon this refusal the pickets were cut down with an axe, and the party, headed by Mr. Spencer, entered. They asked where the provisions were kept, and Mr. Pritchard told them they might find them. They then went to the store, of which they broke off the lock, for it was locked up, and they opened it by drawing the staples and breaking the lock; they took possession of the provisions, consisting of upwards of four hundred bags of pemican, a number of barrels of grease, and a quantity of dried meat, which afterwards was all taken away by them. I was then in the service of the North-West Company, and at the fort on River la Souris at the time, and saw it taken away to the Hudson's Bay fort on the other side of the river.

Mr. Baldwin.—How long have you lived in the Indian country?

Vaudrie.—I have lived there upwards of thirty years.

Mr. Baldwin.—Did you ever see any vestiges or remains of old French forts in that country?

Vaudrie.—I have seen several very old ones.

Mr. Baldwin.—Do you know that they were frequented by the traders in the time of the French government?

Vaudrie.—I have heard a very old man, who lives there, say that the Red River country was traded to in the time of the French government.

Mr. Baldwin.—Do you know of similar remains of forts on the Swan River, which is farther north than Red River?

Vaudrie.—I do not. I never was at Swan River.

Mr. Baldwin.—Do you know which is the most northern post which the French traders had?

Vaudrie.—I can not say any thing about it, for I have lived, the whole thirty years I have been in the Indian Territory, in the Red River country. I was never out of it, but to come below. I never went higher up than Red River.

Mr. Baldwin.—And when you first went to Red River, the Hudson's Bay people did not trade there, but the North-West Company did?

Vaudrie.—Yes, the North-West people did frequent there, but the Hudson's Bay people have only come these few years back.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Vaudrie.—I do not know if Cuthbert Grant can read, or if the Half-breeds generally do read. I know one Half-breed who can read.

DONALD M'DONALD, sworn.

Examined by Mr. SHERWOOD.

M'Donald.—I was formerly a servant to the Hudson's Bay Company, but was not in 1816, at the time of the battle. We have no occasion for great guns in the chase. I do not know if our people learned the use of great guns. I did not act as a cannonier. Michael Heden acted as such; but I have helped to carry cannon from Red River to different places. I know they were, in 1814, placed on the banks of River la Souris, to prevent the people belonging to the North-West Company from going down the river. I also know that cannon were planted at the Forks of Red and Assiniboin Rivers, for the same purpose; and at the time they were placed there, Mr. M'Donell said they were to prevent the North-West from going down. I know that some of the people were taken at Turtle Lake, and I saw two chests of fire-arms brought to the fort, which it was said had been taken from the North-West Company. In the year 1814, Mr. M'Donell did not want provisions, he had plenty. I believe the Proclamation of Mr. M'Donell forbade the hunting of buffalo. The Half-breeds were very

much dissatisfied with this, as their only means of living is by hunting and fishing. Indeed, some time they have nothing to live on but what they hunt, as you cannot always fish. The winters in that country are much longer and colder than they are in Lower Canada. The buffalo are consequently very poor, and not fit to eat in the spring. I do not know exactly what the order of Mr. M'Donell was, but I know the Bois-brulés were very much offended at it.

MARTIN JORDAN, sworn.

Examined by Mr. LIVIUS SHERWOOD.

Jordan.—In the year 1814 I was in the service of the Hudson's Bay Company, and came out by way of Hudson's Bay. I was stationed at the Forks of the Red River, which are formed by the River Assiniboin falling into the Red River. The place was in possession of Mr. Miles M'Donell. I know that cannon were placed there by his orders, for I assisted in placing them. I know also of the Proclamation issued by Mr. M'Donell, and the cannon were placed for the purpose of enforcing the Proclamation, and preventing the North-West Company from taking provisions down the river in their canoes and boats. I was ordered by the Governor from Hudson's Bay, Governor Auld, to obey Mr. M'Donell, and he directed me to help to put the cannon there, and to assist in stopping the boats. I was present when provisions taken from the North-West Company were put into the store at our fort. I was to have been one to have taken it, but the party that set out afterwards divided into several, and the provisions did not happen to come my way, so it was taken by another party. I was at Fort Gibraltar when a quantity of small arms were taken by our people from the North-West Company, and carried to our fort. I know of Mr. M'Donell's order for preventing the hunting of the buffalo, and that the Half-breeds, Indians, and North-West people were very dissatisfied with it. I understood that the Hudson's Bay people were not very well pleased with it. I was present at the taking of Fort Gibraltar. Before we went to take it, I was called in by Mr. Robertson to his house, and asked if I would like to know a secret, and I said I did not know but I would. He then told me he was going that night to seize on the Fort belonging to the North-West, called Gibraltar, and asked me if I would like to go. I

said yes, I would have no objection. Shortly after we fell in, and marched up to the fort, and took it. This happened in March. We kept possession of it for three months, and then it was destroyed. We, who had taken it, stood in defence of it, not wishing it to be pulled down, but Governor Semple insisted upon its being destroyed, and took Mr. Robertson and me prisoners, because we opposed it. All the materials that could be, were floated down to the Hudson's Bay Fort, and those that could not, were burned, as I understand, a few days before the battle. I can not positively say that it was just before the battle, because I was not at it; but it was the beginning of June that the fort was destroyed, as I believe. I was never but once before under arms myself, and then it was to way-lay the North-West people at Portage des Prairies, a few days before Fort Gibraltar was taken. I was on that occasion with Mr. Semple, but the provisions that were stopped were taken by Mr. Robertson. Cannon were prepared, and horses were kept ready to tackle, if there should be occasion. The settlers, as well as the servants, were exercised and trained to the use of arms; and on the day we went to take Fort Gibraltar, we fell into the ranks like soldiers.

Mr. L. Sherwood.—It appears by your statement, that Governor Semple always kept you prepared to receive the North-West people, any time they might happen to be passing?

Jordan.—Yes, we were always in a state of readiness to receive them any time they came.

Mr. L. Sherwood.—What did you understand to be the object of your, or the people generally, being trained to the use of arms?

Jordan.—I understood that it was to stop the North-West trade by force of arms. I heard the Governor and Mr. Robertson say, that he would stop their boats by force of men and arms. I never heard any orders that we were to fire upon them, but that the trade should be stopped, and the navigation, and that the men should be taken prisoners. I did not, very soon after the battle, see any of the Hudson's Bay people. I did some time afterwards, but I did not enquire who fired first. I heard them talk generally of the battle, but not as to who fired first; but in flying reports, I heard that the Hudson's Bay people did.

Mr. L. Sherwood.—Pray, was Mr. Holte in charge at any place?

Jordan.—No, Mr. Holte was not in charge any where.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—You mentioned that you was once under arms to way-lay the people belonging to the North-West Company; will you tell us what orders were given you on that occasion, or why you think that was the object of your learning the use of arms?

Jordan.—We set out determined not to come back without satisfaction. Our orders were, to get all the North-West property we could, and if we got it, that it should never be let return again.

Attorney-General.—Did you happen to have heard of the destruction of property at Brandon-house, and that the property belonging to a Mr. Fidler (his own private property), had been just before destroyed, and taken by the people you were expected to meet?

Jordan.—I had certainly heard that Brandon-house had been pillaged, and that a little property belonging to Mr. Fidler had been destroyed.

Attorney-General.—Do you happen to know whether Mr. Fidler had been in charge, or lived at Brandon-house, some time before Fort Gibraltar was destroyed?

Jordan.—I believe that before the fort was destroyed, Mr. Fidler had lived at Brandon-house.

Mr. L. Sherwood.—Do you not know that the Colonists fired upon the Half-breeds in the year 1815?

Attorney-General.—If, my Lord, the witness is permitted by the Court to answer that question, I shall have to shew that in 1815, and long before that period, there had been firing upon the Colonists.

Chief Justice.—It appears to me to be not only irregular, but idle, to desire to go into evidence upon the subject. Enough has been shewn on either side, to prove that the object with each party was to harass the other, and in so doing, that they were in such bad blood as to be disposed almost to exterminate each other.

Here the Grand Jury entered the Court, and returned a true Bill of Indictment (Appendix J.) *against*

GEORGE CAMPBELL,
JOHN COOPER, and
HUGH BENNERMAN,

} as Principals, for stealing nine pieces of cannon belonging to the Earl of Selkirk, at Red River, on the 3d April, 1815;

AND

DUNCAN CAMERON,
JOHN DOUGALD CAMERON,
CUTHBERT GRANT,
WILLIAM SHAW, and
PETER PANGMAN,

} as Accessaries before and after the Fact.

The return being made, the Trial proceeded.

ANTOINE LA POINTE, sworn.

Examined by Mr. SHERWOOD, *through the Interpreter.*

La Pointe.—I have resided fifteen years in the Indian Territory. I know that Fort Gibraltar was taken by the Hudson's Bay people, for I was in it when it was taken; being then, as I am now, and have been for fifteen years, in the service of the North-West Company. It was a party headed by Mr. Colin Robertson who came to take it, and he is, as I believe, a servant of the Hudson's Bay Company. I take him to be a servant of that Company, because he always staid at their fort. I was not at Fort Gibraltar when it was pulled down, and sent to the Hudson's Bay Fort. I know that before Fort Gibraltar was taken, cannon had been placed at the Forks to prevent our people from passing up and down the river. I know also that Mr. Miles M'Donell gave orders to prevent the Half-breeds and others from hunting buffalo.

Mr. Sherwood.—Ask him, Mr. Smith, if he knows whether the Indians and Bois-brulés were contented or satisfied that they might not hunt on their own ground. *(The question being put in French by the Interpreter, was answered by the witness,* " Ils n'étoient pas trop contens," *which Mr. Smith translated,)* they were not overpleased: they were dissatisfied.

Mr. Sherwood.—That is not near so forcible an expres-

sion as the one made use of by the witness. Your Lordships will, I doubt not, notice the answers of La Pointe to my question. "*Ils n'étoient pas trop contens,*" a very strong and forcible expression in the French language, remarkably forcible; at least going the length of absolute aversion. But I have no doubt your Lordships will remember the expression, as shewing that the order was never assented to, but, on the reverse, created great discontent.

Chief Justice.—We have been told so twenty times.

La Pointe.—I was not at the Frog Plains on the 19th June, but I was at Portage des Prairies when the Half-breeds set off to go to Frog Plains. I heard their orders given; they were to go to Frog Plains with a quantity of provisions to meet the canoes that were expected daily from Montreal and Fort William. This was the only object of their going, and I know of no other orders being given when they started. They took two carts loaded with provisions. They were ordered to keep very far away from Fort Douglas. They came to Portage des Prairies in boats and canoes, but did not keep on in them, because they knew the Colonists would stop them at the fort, and take their provisions from them, and the directions they received was, to go as far from the fort as possible, to avoid being seen by the Colonists.

Mr. Sherwood.—We have heard a great deal about this party being painted and disfigured, and their going in a warlike array. I wish to know how Cuthbert Grant, who is represented to have been their leader, was dressed?

La Pointe.—Cuthbert Grant was dressed quite in the ordinary way, much as I am at present.

Mr. Sherwood.—Was he painted or disguised at all?

La Pointe.—No, he was not.

Mr. Sherwood.—Was there any preparation of a warlike kind, or any more than is ordinary to a party going through the country?

La Pointe.—I saw nothing of any preparation, beyond what is usual to a party riding through the country.

Mr. Sherwood.—Do *you* believe they intended to go quietly past Fort Douglas, if they were allowed to do so?

La Pointe.—I do think they would have passed it peaceably.

Mr. Sherwood.—Why do you believe so?

La Pointe.—It was their intention, and they told their employers *(bourgeois)* that they would, when directed to pass at a distance.

Mr. Sherwood.—Do the Indians and Half-breeds only paint when they are going to war, or on other occasions, or is it a sign of war?

La Pointe.—It is their custom to paint on different occasions. It is not a sign of war at all.

Mr. Sherwood.—You have told us that you saw carts at the starting of the party from Portage des Prairies: did you see any cannon in them, or what did you see in them?

La Pointe.—I am quite sure that there were no cannon in them, nor any thing except provisions,(*taureaux**.)

Mr. Sherwood.—Was there any way by water from Portage des Prairies to the Frog Plains, except that by Fort Douglas?

La Pointe.—There was not, and they could not go that way for fear of being stopped.

Mr. Sherwood.—And witness, on his oath, believes they intended to pass Fort Douglas peaceably, if they had been permitted?

La Pointe.—*Assurément, je le crois. Sur mon serment, je le crois.* Certainly, I believe it. Upon my oath, I believe it.

Mr. Sherwood.—Why do you believe it?

La Pointe.—*Parcequ'ils l'ont promis à leurs Bourgeois.* Because they promised their masters they would.

Mr. Sherwood.—A better ground for believing it could not be had, as is well known to those acquainted with the respect these people pay to their employers.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—What quantity of provisions were taken, and how many carts were sent to carry them?

La Pointe.—There were thirty bags put into the carts. Three carts went with it.

Attorney-General.—Do you know whether any, and what part, of these provisions was brought from Qui Appelle?

La Pointe.—I do not know whether any was brought or not.

Attorney-General.—Do you know, or do you not know, that the greater part of the pemican at Portage des Prairies, had been taken a short time before by the North-West people from Mr. Pambrun?

---

* *Taureaux* is the name given to the bags of pemican, which are made of buffalo hides.

La Pointe.—No, I do not know that it had.

Attorney-General.—Who was it that, at Portage des Prairies, told the people to take the provisions, and gave them no other directions than to avoid the fort?

La Pointe.—It was our employers that said so. I staid at Portage des Prairies. I staid there about seven or eight days, and then all the things went down to the Grand Portage. The Bois-brulés were not generally painted when they set out. I did not hear of an attack being intended to be made on the fort, or that it was proposed to starve out the Settlement.

JEAN BAPTISTE ROY, sworn.

Examined by Mr. SHERWOOD, *by Interpreter.*

Roy.—I was not upon the battle ground upon the 19th June, but at my own place, which is about a league distant. I have lived there about twelve years. In the month of March, I was at Fort Gibraltar, when it was taken by the Hudson's Bay people. I was there upon a visit, and not as a servant, for I am a freeman. They came about eight or nine o'clock at night, and made prisoners of a number of the residents. I do not know how the prisoners were treated, for I went away directly. I had not far to go to my own place, only just across the river. I went to Fort Gibraltar afterwards, and was present when the people belonging to the North-West Company were sent away. They were sent off by the Hudson's Bay people.

J. B. BRANCONIER, sworn.

Examined by Mr. SHERWOOD, *by Interpreter.*

Branconier.—I know that Fort Gibraltar, situated near the Forks of Red River, was taken by the Hudson's Bay people. I was there at the time, in the service of the North-West Company, and was wounded by one of the party who took the fort, but I am not sure by whom. The conduct of this party, who took possession of the fort, and wounded me, was violent and outrageous, beyond any thing I ever witnessed; so much so, that I was afraid we should be all murdered by them; they put pistols to our heads, and threatened to blow our brains out; indeed all manner of violence and outrage was committed. I was taken to Hudson's Bay, but not as a prisoner, and from there, after

stopping a long time, I was sent to England by Mr. Robertson.

Mr. Sherwood.—Do you know for what reason you was sent to England?

Branconier.—No, I do not; I understood it was something about Mr. Cameron, but I do not know. I did not go willingly. I was liberated the moment I got to England. I never heard any thing there of any prosecution.

Mr. Sherwood.—Do you know any thing about Fort Douglas having afterwards been taken?

Branconier.—No; I was gone before that happened.

The Hon. Wm. B. COLTMAN, sworn.

Examined by Mr. SHERWOOD.

Mr. Coltman.—I last year proceeded into the Indian country as far back as Red River. I left Montreal in the month of May, at the time the traders generally proceed to the interior. The authority under which, as well as the objects for which, our journey was undertaken, (for I was accompanied by my colleague,) are pretty fully set forth in the Proclamation of His Royal Highness the Prince Regent, notifying the appointment of myself and Mr. Fletcher as Commissioners, (*see Appendix Q.*)

Mr. Sherwood.—In the course of your official duties, I presume, Sir, you must have had communication with the class of persons known in the Indian Territories by the appellation of Bois-brulés or Half-breeds. Will you, Sir, be so good as to tell us what character and rank they hold in society; whether they are considered as Indians, or as white people; what is their disposition generally, or what station do they fill?

Mr. Coltman.—I have certainly had occasion to see the Half-breeds or Bois-brulés, as they are generally called in that country; but it is a question rather difficult to answer, to what class they particularly belong. The Half-breeds are of various kinds, but all the progeny of Indian women, living with their mothers, but varying in character, information, and manners, according to the peculiar circumstances in which they may have been placed with reference to education, and numerous particulars. Some have been sent to Montreal for education, and some even to England. I believe these are not very far removed from white men; but the advantages they have enjoyed are so various, that they

may be considered as filling every link, from the character of pure Indians to that of cultivated men; and I had occasion to communicate with Half-breeds of very different classes, in the performance of my official duties. I was accompanied to the battle-ground of the 19th June by some of the Half-breeds. I should wish, however, to be permitted to relate my design in going. An investigation into that melancholy occurrence certainly formed a leading object of my enquiries. Upon my arrival at Red River it appeared, from the representations made by numerous persons, that great doubt existed as to who were the assailants, whilst, from every representation, the degree of culpability attaching itself to different individuals, impressed my mind very differently. The information generally corresponded, though from various persons, in the accounts of the numbers that were engaged, as also of those that fell in the conflict on both sides, viz. that of the Half-breed party there were about sixty or seventy on the Plains, and that one servant only was killed, whilst the party of Mr. Semple had consisted of about twenty-five or six, of whom nearly the whole lost their lives. I wished very much to obtain correct information as to who were the assailants, that the degree of culpability in this unfortunate occurrence might be ascertained. Considering it my first duty to get information on that point, I did go with a party of Half-breeds to visit the scene of this melancholy affray. I saw at that time the impression of carriage-wheels; the impressions were faint, but I did see them, and they were pointed out to me as marking the route of the party on the 19th June.

Mr. Sherwood.—Did any of the Hudson's Bay people accompany you to the Plains?

Mr. Coltman.—Mr. Nolin and Captain De Lorimier, I believe, joined me from Fort Douglas.

(Mr. Sherwood produced a diagram of the scene of action, with its vicinity, and also shewing the route by which the Half-breed party passed, which was handed to Mr. Coltman, and his opinion being asked as to its correctness generally),

Mr. Coltman.—The diagram appears to me to be perfectly correct as to the ground where the battle was fought, and also of the vicinity; but I can not speak so positively as to the track marked as taken by the horsemen and carts. (During the time that Mr. Coltman was examining the plan presented by Mr. Sherwood, the Crown Officers had been

occupied at another, which had also been sketched on the spot, by a gentleman connected with the Hudson's Bay Company).

Mr. Sherwood.—Did the parties agree as to the route taken?

Mr. Coltman.—They did generally, but not entirely so.

(Mr. Sherwood intimated that he had no objection to Mr. Coltman's receiving the second diagram at the present moment, and comparing them, as, if there was any difference between them, he could point it out, and decide which was a correct one, so that it might go to the Jury for their information. Mr. Coltman declared that he considered the sketches, as far as the ground plans were concerned, correct. Relative to the track of the carts, and the route of the horsemen, in which the two plans did not precisely agree, Mr. Coltman declined speaking positively, stating his difficulty to arise from its being in very dry weather that he visited the spot, whereas he understood it to have been completely mire at the time of the party passing on the 19th June).

Mr. Coltman.—The Half-breeds told me when on the spot, that there was a swamp at the back of the road, in which their horses were up to their bellies, and that therefore they were obliged, on the 19th June, to take that route which is marked on this plan, (that of Mr. Sherwood). The other side told me very nearly the same, as far as I recollect; but if the Court will excuse me while I look for my Minutes of Mr. Nolin's observations, I may perhaps shew the difference. (Mr. Coltman, having looked among his papers for a short time, said he could not find his note of Mr. Nolin's remarks). But my impression is, that he told me that the Indians informed him shortly after, and that he, as I understood him, believed them, that they went as far from the fort as the road would allow.

(After some remarks, in the nature of a conversation, between the Gentlemen engaged in examining the diagrams *,

---

* For the more perfect elucidation of the important points connected with this part of the enquiry, the reader is referred to the following Affidavits, sworn before Mr. Coltman on the spot:

I. One of Mr. William Smith, Under-sheriff of the Western District of Upper Canada, recording the Commissioners' visit to the battle ground, &c.

II. One of Mr. Peter Fidler, the person employed on behalf of Lord Selkirk to survey it.

III. One by J. B. Fountaine and François Bono, who were with the Half-breeds' party, invalidating Mr. Fidler's statement.

the Court retired for a few minutes; upon resuming their seats, Mr. Coltman not having returned, it was under-

I.

PROVINCES OF LOWER AND UPPER CANADA, AND INDIAN TERRITORIES. } RECORD of a visit to the route whereby the Métifs or Half-breeds, and others, proceeded past Fort Douglas, near the Forks of the Red River, to the Grenouilliere, at the computed distance of five miles and a half from the said fort, on the nineteenth day of June, 1816, and of that by which a portion of the said parties returned from the said Grenouilliere to the spot where the fatal rencontre took place between them and the colonists living near Fort Douglas, under the command of Governor Semple, made this tenth day of July, 1817, by the Honourable WILLIAM BACHELOR COLTMAN, Esquire, one of His Majesty's Executive council for the Province of Lower Canada, Lieutenant-Colonel in His Majesty's Indian Department, one of His Majesty's Justices of the Peace for the Western District of Upper Canada, and one of the Special Commissioners for enquiring into the crimes and offences committed in the Indian Territories; and a deputation of the Métifs or Half-breeds, accompanied by Messieurs Simon M'Gillivray and Pierre de Rocheblave, Esquires, and Mr. William Smith, Under-sheriff of the Western District of Upper Canada, and joined on the route by Chevalier de Lorimier, Esquire, Captain in His Majesty's Indian Department, and Mr. Louis Nolin, Interpreter. The said parties proceeded from the Forks along the highway running S. S. W. three miles or thereabouts; the guide there halted, and declared that the Métifs or Half-breeds and others left the road here to pursue their route, in the rear of the fort, to the Grenouilliere, with horses and two carts laden with provisions, and that their orders were to keep as far back as the swamp would permit, Fort Douglas bearing N. E. distant about three miles, and the Grenouilliere N. N. E. distant about eight miles. The guide then proceeded in a N. by E. direction, along faint tracks of horses and cart-wheels one mile, where the guide said was a swamp on the said nineteenth day of June, 1816, although now dry, from the uncommon drought of the summer, then on one quarter of a mile to another swamp, then half a mile to another swamp, then one quarter of a mile to another swamp, then about two miles to the rear of Fort Douglas, bearing S. E. distance about two miles and a half, then half a mile to a swamp, then three quarters of a mile to a gully; this the guide said was belly-deep to the horses, and that one of the horses gave out here, and was left behind: then on one quarter of a mile, to where the party were, joined by Captain De Lorimier and Interpreter Nolin. Here Mr. Nolin said he first saw from Fort Douglas the Métifs or Half-breeds and others on their route, in rear of the fort towards the Grenouilliere, on the said nineteenth day of June, 1816; but that they had been previously seen by others with a spy-glass, Fort Douglas bearing from this S.S.E. distance, since accurately measured, two miles one furlong and forty yards; then on in a N.E. by E. direction, two miles or thereabouts, to a swamp; then one quarter of a mile to the highway near the Grenouilliere, Fort Douglas bearing S.W. distant about four miles and a half. Here the guide said the advanced party let loose their horses, which they had scarcely effected, when one Battoche, a Half-breed, on horseback, came up from the rear where the carts still were, and said that Governor Semple, with a party of armed men, had marched out of the fort, and were coming towards them; that the advanced party immediately returned up along the highway, about half a mile to a point of wood; here the guide said they saw Governor Semple and his party about half a mile distant behind a copse of underwood, when a shot was fired; but, if fired at them, the distance was too great to reach the said Half-breeds: that the said Half-breeds and others then ad-

stood the Crown Officers would cross-examine him afterwards.)

---

vanced within gun-shot of them, dividing into two parties, advancing one on each flank of Governor Semple and his party. From this position they sent one Boucher, on horseback, to demand what Governor Semple's intention was in pursuing them; after some conversation, Governor Semple seized hold of the bridle of the said Boucher's horse, and ordered his men to fire; Fort Douglas bearing S. distance, since accurately measured, one mile, seven furlongs, and one hundred and two yards. Here the conflict commenced, and continued to a point of wood where a field-piece was posted, and which had burnt priming several times, distant about half a mile. Here the guide said the conflict ended; Fort Douglas bearing S.E. over a point of wood which conceals it from view; distance, since accurately measured, one mile, one furlong, and eighteen yards. From this point the field-piece was taken back into the fort.

At the request of the Honourable William Bachelor Coltman, Esquire, one of the Special Commissioners, &c. &c. &c. I have signed this record, at the Forks of Red River, this 14th July, 1817.

(Signed) WM. SMITH.

Sworn, at the Forks of Red River, this fifteenth day of July, 1817, before me,

(Signed) W. B. COLTMAN.

II.

PROVINCES OF LOWER AND UPPER CANADA, AND INDIAN TERRITORIES. } DEPOSITION OF PETER FIDLER, before me, William Bachelor Coltman, one of the Special Commissioners for enquiring into crimes committed in the Indian Territories, and one of His Majesty's Justices of the Peace, for the Western District of Upper Canada.

Peter Fidler being duly sworn, deposeth, that on or about the twentieth day of July last, he went in company with one Antoine Ducharme and two other assistants, namely, one Antoine Payé and one La Branche, to survey the route by which the Half-breeds and other servants of the North-West Company proceeded towards Frog Plain, on the 19th day of June, 1816, which track was pointed out by the said Antoine Ducharme, who stated, that on that occasion he had conducted one of the two carts which were loaded with provisions, and accompanied the servants of the North-West Company. That the said Ducharme first conducted the deponent along the cart-road that leads from the Forks towards the passage of the Assiniboin River, to a spot a little beyond Catfish Creek, from which deponent observed that Sturgeon Creek or River was distant about two miles, the road bearing south 69° west. That the deponent was informed by the said Ducharme, that the Half-breeds had come along the said road from Sturgeon River, and at the place aforesaid, near Catfish Creek, had turned to the left across the Plain. That deponent accordingly commenced his survey at the place aforesaid, taking the bearings with a good surveyor's compass, and measured the distances with a line, of which deponent tried the length immediately before and after the survey, and thereby found the courses and distances along the said track, from Catfish Creek to Frog Plain, to be as follows:—

NICHOLAS DUCHARME, sworn.

Examined by Mr. SHERWOOD, *by Interpreter.*

Ducharme.—I know that the battle between the North-West people and Mr. Semple's, was fought upon the 19th

---

Courses. Distances.

N. 34° E.—32 chains. At 10 chains cross Catfish Creek. At 21 chains cross a cart-track, trending north-westerly. At 32 chains a bush of willows, from whence Fort Douglas bore N. 59° E.

N. 27° E.—194 chains. At 41 chains a grassy swale, (sometimes incorrectly called a swamp, but which may be passed, without difficulty, at any day, however wet,) two chains across. At 61 chains a low bottom, 50 yards wide. At 70 chains along a narrow swale, close on the left, about 50 yards wide, trending N. W. about half a mile long. At 102 chains, in which cross a swale, 300 yards wide. At 130 chains bushes of willows, extending about 100 yards on the left, and nearly to the Assiniboin River; on the right a low bottom. At 145 chains, and cross a cart-track going towards Brandon-house. At 180 chains low ground, perhaps at times rather wet. At 192 chains bushes of willows. At 194 chains a high bush of willows. From this spot observed Fort Douglas to bear S. 85° E. then

N. 37° E.—214 chains. At 80 chains Fort Douglas, at right angles with the road we go. At 130 chains low ground, 4 chains across, and perhaps 6 or 8 chains to the right and left. At 210 chains Seven-Oaks Creek, and cross it near the scene of the massacre.

N. 47° E.—75 chains. At 55 chains a swale of 1 chain across. At 75 chains a deep creek, and here join the great cart-road from the Forks to the Frog Plain.

N. 12° E.—75 chains. At 2 chains a creek. At 27 chains a small point of woods. At 75 chains arrive at the Frog Plains.

That this deponent hath drawn a Plan of the said route, and the ground about the same, which Plan he hath signed, and which accompanies this deposition. That the said Plan hath been drawn so as to exhibit the said route in exact conformity to the information of the said Ducharme, and hath a correct scale, whereby the bearings and distances of the said route, at its different points from Fort Douglas, may be seen with precision. That if the said Half-breeds, and other servants of the North-West Company, had thought fit to pass at a greater distance from Fort Douglas than the said route, there was no natural or other impediment to prevent it. That the ground was, and is, equally passable for horses and carriages at any distance, from half a league to half a dozen leagues back of the fort, as in the route chosen by the said Half-breeds and other servants of the North-West Company, and would have afforded, any where within the said distance, a road easy and without obstructions. That the said route passes at one place within less than a mile and a half of Fort Douglas, from whence there were no trees, nor other object, to interrupt the view, the ground being clear and level. That the place where Governor Semple was stated to have been killed, and whereon this deponent hath himself seen some remains of the slain several months ago, was within less than two miles of the fort, and was not

June, 1816. I know Paul Brown, (*he pointed him out at the bar*), and he was not in that battle. I was encamped

---

more than half the distance to which the habitations of the settlers extended down the river, but was, in fact, considerably above the centre of the Settlement, along the road followed by the said Governor Semple.

(Signed) PETER FIDLER.

Sworn, at Red River, this
4th day of August, 1817,
before me,
(Signed) W. B. COLTMAN.

III.

PROVINCES OF LOWER AND UPPER CANADA, AND INDIAN TERRITORIES. } ss. BAPTISTE LAFONTAINE and FRANÇOIS BONO, of Red River, in the Indian Territories, being duly sworn on the Holy Evangelists, depose and say, that on the 19th day of June, one thousand eight hundred and sixteen, the Half-breeds or Brulés, and others, in charge of provisions for the North-West Company, left the road usually travelled between the Forks of Red River and the River la Souris, at the usual crossing place at Sturgeon River, for the purpose of conveying the said provisions to Frog Plain through the meadows. That the said Half-breeds and others were induced to leave the main road by a desire to avoid any meeting with the persons in charge of Fort Douglas, having previously received orders to that effect; and that the said Half-breeds and others did not at any time, while crossing from Sturgeon River to the Grenouilliere, on the said nineteenth day of June, approach, to the best of their knowledge, nearer than three miles to the said fort. That the said Half-breeds and others did not on that day molest any settler or other person belonging to the Colony at Red River, till their arrival at the Grenouilliere, and afterwards returning, as Governor Semple was discovered approaching with an armed party, apparently in a hostile manner. And these deponents further say, that they are all well acquainted with the ground where the unhappy contest took place, between the said Governor Semple and party and the said Half-breeds, and that Fort Douglas is not visible from any part of the ground on which the same was fought, being distant therefrom, as deponents think, at least two miles, and concealed from view by a point of woods. That the persons who conducted the carts with the said provisions were Paul Brown and one Faignant, Half-breeds, and that a person of the name of Ducharme, represented to these deponents to have been guide to Mr. Peter Fidler, in taking a survey of the said route, was not with the said party of Half-breeds, having been left at Portage des Prairies, with other persons, in charge of Mr. Alexander M'Donell, as the said Lafontaine well knows, and the said François Bono verily believes; and that the route of the said Half-breeds, as laid down in a plan which deponents have seen of the said Mr. Fidler, is not correct. And these deponents further say, that previous to the said nineteenth day of June, they had heard of the North-West Company's fort or trading-post at the Forks of Red River aforesaid, having been taken by force of arms, and destroyed by the servants of the Hudson's Bay Company, or the Earl of Selkirk; and that the hostile disposition shewn by the colonists and persons in the employ of the said Earl of Selkirk, or of the Hudson's Bay Company, towards the said Half-breeds and persons employed generally by the North-West Company, was the cause of their having left the main road, on their route towards the Grenouilliere, in order to avoid them. And the said deponents further say, that the prisoners taken at at the Grenouilliere

below the Frog Plains, to meet the people who were to come there, and in going I met Paul Brown, who had just arrived with a cart and a load of provisions. The firing continued some time after I met Brown, and he was with me all the time till it was completely over, and I am therefore sure that he was not in the battle.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—How many Bois-brulés did you see arrive at first?

Ducharme.—There were only two Bois-brulés arrived at first. They came about sun-set. The large party came about dusk in the evening. It was after the battle, for I did not see the party of Bois-brulés till after the battle at the Plains.

Attorney-General.—Did you see any of the Colonists prisoners at the plains?

Ducharme.—I did see some of them at Frog Plains, but I do not know if they were prisoners or not. I did not see Cuthbert Grant, but I did see Boucher after the battle.

Attorney-General.—Had you any conversation with him about the battle at that time?

Ducharme.—No, I had not; I only saw him.

Chief Justice.—Where were you at the time of the firing?

Ducharme.—I was encamped below the Frog Plains.

Chief Justice.—How came you to meet Brown?

---

had been captured previous to their arrival, and that there were killed on their side one Batoche, and Joseph Trottier severely wounded, and that three horses were also killed. And the said Baptiste Lafontaine further saith, that the causes of the greater number of the English Colonists killed, were, that they kept together in a body, whilst the Half-breeds kept jumping about, throwing themselves down whilst loading, or the enemy pointing upon them, and were scattered over the ground to a much greater extent than the Colonists. That the deponent never heard quarter asked by any of the Colonists, but that, on the contrary, they continued firing as long as any of them were standing. And the said deponent, François Bono, further saith, that being fallen from his horse, he was not present at the battle. And the said deponents further declare, that they can not write, and having the above deposition read in the French language, persist therein as truth.

(Signed) JEAN BAPTISTE Sa × Marque. LAFONTAINE.

(Signed) FRANCOIS Sa × Marque. BONO.

Sworn, at the Forks of Red River, 30th August, 1817, *before me*,

(Signed) W. B. COLTMAN.

Ducharme.—I had heard before that the party were coming, and I had gone up along the river to meet them, and there I met Paul Brown, the prisoner, and we staid together till after the firing was over.

Mr. COLTMAN, *being in Court, was then cross-examined by the* ATTORNEY-GENERAL.

Attorney-General.—Was it common or ordinary for battles to take place in that country, Sir, and for twenty persons to lose their lives; or did you on any other occasion hear of a number of persons being killed?

Mr. Coltman.—I certainly on no other occasion heard of so great a number of persons losing their lives, though I did hear of affrays, and of their being carried on with considerable violence by both parties, but not at all equal in extent to this of the 19th June.

Attorney-General.—Did it approach to such a state of conflict, that war might be said to exist in that country?

Mr. Coltman.—From all that I heard in my official capacity, and in other ways, I certainly did consider that a state of hostility existed in that country very similar to a private war; and as I have before stated so officially, I cannot but at present repeat, that from all I heard and saw, I do consider the state of that country was almost equivalent to a state of war, though I certainly never heard of any thing that in extent could be compared to the affair of the 19th June.

Attorney-General.—Did you, Sir, *ever* hear of a number of persons losing their lives, except in that instance, or of any other like it?

Mr. Coltman.—I cannot say that I ever did hear of a *number* of persons losing their lives, nor did I, although I have heard of other violences being committed, ever hear of any at all equal in extent or degree to that of the 19th June.

Attorney-General.—Did you, Sir, ever hear of *any* lives being lost on the side of the North-West Company, or of any having been taken by the people belonging to the Hudson's Bay Company, or the Colonists, or of any affray in which *any* lives were lost, except that of the 19th June?

Mr. Coltman.—I understood that there had been a previous affray at a place called Isle à la Crosse, and that on each side a life had been lost in it.

Attorney-General.—Was that affray begun by the Hudson's Bay people, Sir?

Mr. Coltman.—I saw a letter relative to that affray, which was proved to be in the hand-writing of Mr. House, the person in charge for the Hudson's Bay Company at that post, in which Mr. House admitted that their party were to blame. This letter I returned with other documents; it may perhaps be produced, but it appeared to me that the fault, though perfectly unintentional on his part, was attached to their party*.

Attorney-General.—This probably, Sir, took place some years before; it could, at any rate, have no influence over, or connection with, this outrage of the 19th June.

Re-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—You, Sir, I take it, are that William Bachelor Coltman mentioned in the Prince Regent's Proclamation?

Mr. Coltman.—I am, Sir.

Mr. Sherwood.—And by that instrument yourself and colleague, Mr. Fletcher, were appointed Commissioners for enquiring into the difficulties existing in the Indian Territories. You then, Sir, I believe, became the only Magistrates having a right to act, with respect to offences committed in that country?

Mr. Coltman.—It would be rather difficult for me to answer that question, as it involves (as I conceive) a legal point which I may not be adequate correctly to decide.

Mr. Sherwood.—It is of no consequence, Sir. I will ask you, Sir, do you know Mr. Cuthbert Grant, of whom we have heard so much? Did you meet with him in the Indian Territory?

Mr. Coltman.—I did meet with Cuthbert Grant whilst I was in the Indian Territory; he surrendered himself to me, to be brought to Lower Canada, to answer any charges which might be brought against him.

Mr. Sherwood.—What was the character of Grant, Sir,

---

* The transaction alluded to by Mr. Coltman, took place in the year 1815, and originated in a dispute about beaver-traps and fishing-nets, which following up the letter of Lord Selkirk's instructions, before quoted, the Hudson's Bay people thought they had a right to "*seize, as they would in England those of a poacher.*" As it is not impossible that the affair may at a future period be subjected to legal investigation, Lord Selkirk's disgraceful practice of publishing affidavits and letters beforehand, in order to prejudice the public mind, will not be imitated here.

generally in that country? had he a good or a bad character?

Mr. Coltman.—Mr. Grant was certainly a zealous partizan on one side, and, from his situation, it was perhaps inevitable but he should be so. Relative to the unfortunate disputes which existed in that country, he was very prejudiced. In other respects, according to general report, he had a very good character, as far as I ever heard.

Mr. Sherwood.—Did you ever have occasion to know any thing of his conduct on the 19th June, as to whether he killed a number of persons, or was desirous of saving the lives of those who survived the battle?

Mr. Coltman.—I heard his humanity in preventing deaths after the battle, generally spoken to. It was, as I think, spoken of in terms of praise by both parties.

MICHEL MARTIN, sworn.

Examined by Mr. SHERWOOD, *through the Interpreter.*

Martin.—I was present at the battle on the 19th June, between Governor Semple and the Half-breeds. I was one that came down from Portage des Prairies, having first joined Mr. M'Donell at Qui Appelle Fort.

Mr. Sherwood.—Did you hear any speech made by Mr. M'Donell to the Indians or Half-breeds, or both together, at Qui Appelle?

Martin.—No, I did not. I never heard any, or of any being made.

Mr. Sherwood.—Do you think that if any had been made, you would have heard it, or of it?

Martin.—Yes, certainly, I think I should.

Mr. Sherwood.—Do you know if there was a Mr. Pambrun at Fort Qui Appelle, and would not you be as likely, and have as good a chance to hear one as he would?

Martin.—I know that Mr. Pambrun was there, and think I should have been as likely to hear it as he could have been; but I did not hear any, nor do I believe that any was made. On our way we met another party of Indians, and a speech was made to them, as is usual when parties meet.

Mr. Sherwood.—Was it to advise them to go to war, or to join you in going to Portage des Prairies in a war party?

Martin.—I heard nothing about war. In going to Portage des Prairies I do not know what the intentions of

the others were; but I was going with provisions to carry them down to meet other canoes. I have heard, and I understood, that we could not pass by water, because cannon were placed on the banks of the river to prevent us, and for that reason we went by land from Portage des Prairies.

Mr. Sherwood.—At what distance did you pass Fort Douglas?

Martin.—We were a good way from the fort; so far, though we could see it, we could not distinguish people coming out of it.

Mr. Sherwood.—After you had passed the fort, what occurred?

Martin.—As we were going down we were near the river, and being thirsty, some of us stopped, perhaps about five or six, to get a drink. I was one that went to the river, and while there, I was asked by a colonist what I wanted.

Mr. Sherwood.—What, might not you *drink* at the river any more than *fish?* what was said to this person?

Martin.—The man was asked if he would go with us to Frog Plains; he was at work in his garden, and I took him to be a settler or colonist.

Mr. Sherwood.—Had you any disposition to hurt the Settlement?

Martin.—There was not any, not the least.

Mr. Sherwood.—When did you first see the armed party?

Martin.—We were about a mile and a half, or half a league, from them when I first saw them, and they gave a shout of joy directly, and immediately after I heard a report of a gun from their party. Those of us who had been down to the river to drink, continued on their route towards Frog Plains, and the English Governor Semple and his party pursued us. When we found ourselves pursued by Mr. Semple's party, we sent one or two that were with us forward to the Frog Plains, to inform the others that we were pursued, and the Bois-brulés returned, and I saw one of my party going to speak to Governor Semple's party. I was not quite close to where he was, so that I did not then know who he was. I presently heard a report of a gun, and immediately after they (the English) fired another. As soon as the second gun was fired, I saw Boucher, the prisoner, fall from his horse. I thought that he was killed. At the third gun all the guns fired; after the volley I heard that one of our people was killed. I did not see him then,

but afterwards I saw his body. It was one Batoche, a Half-breed; the battle continued for about half an hour afterwards, and then stopped. I saw an Indian kill Governor Semple, known by the name of Fils de la Corneille, (son of the Crow).

Mr. Sherwood.—Was he esteemed a bad Indian?

Martin.—I do not know that he was thought a bad Indian.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General.—You think it impossible that a speech should have been made at the party starting, because you did not hear it?

Martin.—I think, if one had been made, I must have heard it.

Attorney-General.—When Mr. M'Donell set off with you, did you hear any speech made to the Half-breeds and Indians?

Martin.—Mr. M'Donell did make a speech to some Indians we met, but I do not think any was made to the Bois-brulés. I did not hear any, I am sure.

Attorney-General.—Do you know if any were killed after the battle, that were only wounded in it, Governor Semple or any other?

Martin.—I do not know if any wounded were killed after the battle. Mr. Semple was wounded and killed in the beginning of the battle. (*The question being repeated, the witness gave the same answer.*)

Attorney-General.—Did you have any share of the plunder?

Martin.—I did not take any.

Attorney-General.—You know plunder was taken, I suppose, and that the people were sent away?

Martin.—I saw an inventory making of the things at the fort, and I know the people went away, but I do not know that they were *sent* away.

Attorney-General.—Do you know they were not sent?

Martin.—I was at the Forks, where I went after the battle, and remained there two days; and when I returned to the fort, I found they were gone.

Attorney-General.—How many did your party consist of?

Martin.—There were forty, more or less, of the Bois-brulés.

Attorney-General.—Where were Governor Semple's people at the commencement of the battle? were they together or dispersed?

Martin.—At the beginning of the battle, Mr. Semple's people were collected together; when I first saw them, they were in ranks marching.

Attorney-General.—Can you say what passed between Governor Semple and Boucher at the time of the challenge?

Martin.—From the distance at which I was, I can not.

Attorney-General.—How did the firing begin?

Martin.—A little moment after hearing the second gun, I saw Boucher fall from his horse; it was just after the second gun, and I am positive they both came from the ranks of the English.

Attorney-General.—How do you know that?

Martin.—The smoke and the report came from the English, I am sure.

Attorney-General.—Did you see Paul Brown at the battle?

Martin.—No, I did not.

Attorney-General.—Do you know of any more than Batoche being killed?

Martin.—No, I know but of him on our side.

JOSEPH LORAIN, sworn.

Examined by Mr. SHERWOOD, *by the Interpreter.*

Lorain.—I went down with the people from Portage des Prairies to Frog Plains before the battle. Our instructions were to conduct provisions, and I drove a cart loaded with provisions.

Mr. Sherwood.—Was it your intention to pass Fort Douglas, and avoid difficulty?

Lorain.—It was from the first, and we did pass as far from it as we could; the swamps would not allow us to go farther.

Mr. Sherwood.—Was there any intention to injure the Colonists?

Lorain.—There was not any; we passed the fort without any hindrance.

Mr. Sherwood.—Did you see Mr. Semple and his party come out of the fort?

Lorain.—We had got too far by, to see them come out, but I saw them afterwards.

Mr. Sherwood.—Do you know which party fired first?

Lorain.—I do not, for I was not in the battle myself.

Mr. Sherwood.—Do you know, or believe, of any injury being done to them before the battle?

Lorain.—I do not, nor do I believe any injury was done to them before the battle.

Mr. Sherwood.—Why did you not go by water?

Lorain.—I understood before parting, that if we went by water, our party were to be fired upon from Fort Douglas, and we were afraid to go by water for that reason.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General.—Where was you during the battle?

Lorain.—I was at Frog Plains, and did not go away from there till after the battle.

Attorney-General.—Did you never hear Cuthbert Grant speak of an intended attack upon Fort Douglas or the Settlement?

Lorain.—I never did hear Grant speak of it.

Solicitor-General.—Where was you when the firing began?

Lorain.—I was at the Frog Plains when the firing began?

Solicitor-General.—Who was there with you?

Lorain.—Bellegarde was there, and Paul Brown, but I was not with Paul Brown, I was under my cart. Brown and Bellegarde were together. Bellegarde came there before Brown.

ALEXIS BERCIER, sworn.

Examined by Mr. SHERWOOD, *by the Interpreter.*

Bercier.—I was below the Frog Plains on the day of the battle; when I heard the firing, I came to the Frog Plains, and on coming there I saw Paul Brown. He was not in the battle; he was engaged with his horse when I came. Ducharme was with me; we continued there till the firing had ceased.

Mr. Sherwood.—And it is from these circumstances you undertake to say Paul Brown was not in the battle?

Bercier.—It is; he was not there.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General.—Did you see any armed men at the Frog Plains before the battle?

Bercier.—I did not. I do not know of any person being made prisoner before the battle. I saw one person lying down. I do not know that he was a prisoner; there were no Bois-brulés with him.

Attorney-General.—How many Bois-brulés did you see?

Bercier.—I saw only two, and them I saw at the Frog Plains. When I heard the rest were coming, I got on my horse and went away.

Attorney-General.—Had you any conversation with Cuthbert Grant or Paul Brown?

Bercier.—I had not with either of them there; next day I was at the fort with fish, and I gave Brown some.

Attorney-General.—How did Brown come to Frog Plains?

Bercier.—Brown came there in a cart, and it was the only one I saw there.

WINIFRED M'NOLTY, sworn.

Examined by Mr. SHERWOOD.

Mrs. M'Nolty.—I was near the fort on the day of the battle. My husband was a servant to the Hudson's Bay Company for a year, for his passage, and then a settler at the Colony. I saw Governor Semple go out of the fort armed with guns. I guess there were fifteen to twenty of them. The guns had bayonets. I had occasion to speak with Holte before they came, and after with Heden. Mr. Holte said, if the Half-breeds came, who were hourly expected, they would have their pemican or their lives. He said, if they did not give up their pemican, they would take their lives. The party went out, as if they were going to battle. Michael Heden and Michael Kilkenny said, on their return from the field of battle, that they could not blame the Half-breeds. They said, "we can not blame the Half-breeds, we fired "first, and if we had got the better, we would have served "the Half-breeds the same." They both said so.

Mr. Sherwood.—Is Michael Heden, whom you speak of, the man who has been examined here as a witness?

Mrs. M'Nolty.—It is the same person.

Cross-Examination by the ATTORNEY-GENERAL.

Attorney-General.—Did you hear the Half-breeds say why they drove away the settlers?

Mrs. M'Nolty.—I have heard some of the Half-breeds say, they did not want to drive away any who would live peaceably, and not take arms against them.

HUGH BENNERMAN, sworn.

Examined by Mr. LIVIUS SHERWOOD.

Bennerman.—I know Michael Heden, and have asked him who fired first. I asked him in July last, and he said, "We fired first, and they are murdering Brown and Bou-"cher, by keeping them in gaol."

Cross-examined by the SOLICITOR-GENERAL.

Solicitor-General.—Where did he tell you this?

Bennerman.—It was in this town, and he sent me for Mr. M'Kenzie, saying that he would tell the truth now.

Solicitor-General.—Pray, Sir, what are you?

Bennerman.—I was formerly a settler at Red River.

Solicitor-General.—Was you not a servant to the Earl of Selkirk?

Bennerman.—I was not; I came out as a settler, and not as a servant.

The Hon. WILLIAM M'GILLIVRAY, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Do you, Sir, know Paul Brown, the prisoner at the bar?

Mr. M'Gillivray.—Yes, I do; he is in the service of the North-West Company.

Mr. Sherwood.—Has he been so, Sir, for some time, so as to enable you to know his character?

Mr. M'Gillivray.—He has for some years; he has always conducted himself as an honest man, and a faithful servant. I have always heard him spoken well of.

Mr. Sherwood.—Do you know the other prisoner, François Firmin Boucher?

Mr. M'Gillivray.—Boucher is a young man, and has not been long in the service of the Company, but has acted well; his reputation is good.

Mr. Sherwood.—Is not his father a respectable man in Montreal—a freeholder?

Mr. M'Gillivray.—He is a man of good reputation.

CHARGE TO THE JURY,

By Chief Justice POWELL.

Gentlemen of the Jury,

This is an Indictment for the Murder of a Mr. Semple, which is said to have been committed in the Indian Territories, or in a country which is out of the limits of the Provinces of Upper or Lower Canada, but subject to enquiry by this Court and yourselves, under a particular statute, the 43d of the King, which gives or extends the jurisdiction, originally of the Province of Lower Canada, and specially that of this Province, when by an Instrument under the Great Seal of the Lower Province, it is certified that the offence can be more expediently tried in Upper Canada. The first object, and one of importance, supposing it had been attempted at all to doubt it, is to establish that we have the jurisdiction given by the statute, and then we should have to consider, whether the place at which the offence is charged to have been committed, is without the limits of Upper Canada, and of Lower Canada, as required by the Act of the 43d. Upon these points we can judge only by inference, and by certain proof given in testimony during the trial, that this Red River country, or the Frog Plains, are somewhere about 49½° of north latitude, and from 90° to 100°, or thereabouts, of longitude. I premise by stating this to you, and also mention, that there is no further evidence to satisfy you of your jurisdiction. Having thus premised, I shall proceed, leaving the remainder of my remarks on this part of the subject, till I have detailed to you, as nearly as I can recollect it, and I believe that will be with tolerable correctness, the very extraordinary evidence

which has been adduced on this very important trial, and which, from the peculiarity of the circumstances of the case, has branched out, and exhibited a series of evidence, such as I believe never before was produced, or allowed, in a Court of Justice, upon a direct charge of murder; but the nature of the Charge and of the Defence, perhaps rendered it unavoidable. The evidence altogether, however, amounts to this.

Here are two Trading Companies, carrying on a commerce with the Indians to the westward of this Province, the one for so long a time, and so extensively, as to have almost acquired, or amounted to, an exclusive possession, or a supposed exclusive right. In this trade they are interrupted by the other Company, who said that *they* had the exclusive right. Thus, as might naturally be expected, difficulty arose between the two, and in the prosecution of hostilities, they were actuated evidently by a disposition to destroy each other. This, I think it is evident, has been proved to have been determined by the one and the other. Relative to the particular charge before you, the charge against Boucher and Brown, it has been proved, that on the 19th June, 1816, the day on which the homicide is charged to have taken place, the settlers of the Earl of Selkirk, and servants under the Hudson's Bay Company, were, from certain reports which had been brought to them, apprehensive of an attack from the Half-breeds, who have been described to you as the bastards of white men, their mothers being Indians, and they the illegitimate offspring of French and English traders, belonging alike to the North-West and Hudson's Bay Companies. On the 19th June, it is necessary to recollect, according to the evidence, that they expected the Half-breeds to come. From what particular circumstance they were led to expect them on this day, does not appear, but it is manifest that they were expected. They did come,

but not to the fort. It is in evidence, that they passed by the fort, and went on towards the river. When they were first seen, notice was given by a man from a watch-tower, a watch having been constantly kept for some time, in consequence of their apprehensions, raised by the reports that prevailed. These persons, the Half-breeds, did not pass quite near the fort, nor so far from it as to pass the Settlement, which continued for a space of two or three miles. Michael Heden, the first witness on the part of the Crown, gives this account of the circumstance. He begins his evidence by stating that he was a blacksmith, and resided, in the year 1816, at the Red River Settlement; that he had lived there three or four years previous to the month of June in that year, and was there on the day on which the Indictment alleges the offence to have been committed. He goes on to depose, that he knew Mr. Semple, usually known by them as Governor Semple; that the Settlement was warned by the freemen and Indians, as early as March, that an attack was intended to be made during the summer, to destroy the Settlement. Fort Douglas, the residence of Mr. Semple, he describes to be on the Red River, and the Settlement below it, some little distance, and extending from a quarter of a mile to three miles. In consequence of the warning which they received, a look-out was constantly kept, and on the 19th June, 1816, the person on watch, at about six or seven o'clock in the evening, announced that a party of armed horsemen, with two carts, were approaching. Mr. Semple, it appears, went to ascertain what was the cause of the alarm, and ordered some of his people to follow him with their arms, for the purpose, in the words of the witnesses, of seeing "what these fellows wanted." They obeyed him to the number of about twenty, but had not gone far, when they were met by some women and children, crying that the Half-breeds were coming with carts and cannon, and that they had taken prisoners some of the persons belonging to

the Settlement. It does not appear that any very great attention was given to this; but after they had proceeded on about a mile, when they met more, who confirmed the report of the women, with reference to the cannon, Mr. Semple sent back a person, who was produced before you, to fetch a piece of ordnance from the fort. Mr. Semple and his party proceeded on, and the Indians and Half-breeds galloped up, and dividing themselves into two parties, surrounded the others, by forming a line in the shape of a half-circle. One of them, who has been sworn to be François Firmin Boucher, one of the prisoners, came up to Mr. Semple, and asked, "what do you want?" to which Mr. Semple replied, by asking, "what do *you* want?" Boucher answered, "we want our fort;" Mr. Semple said, "go to your fort;" to which Boucher replied, "you damned "rascal, you have destroyed our fort." Upon this Mr. Semple seized his bridle, and it may, Gentlemen, be worthy of your remark, that he called at the same time to some of his people to make him prisoner. The evidence of Heden goes on to state, that Boucher then slid off his horse, on the other side to that where the witness stood; that he immediately heard a shot, which came from the Indians' party, and almost instantaneously a second from the same direction. By the first, witness deposes, that a Mr. Holte, belonging to their party, was killed; and by the second, Mr. Semple fell, and then told his men to take care of themselves. It was given in evidence, that Mr. Holte's gun went off by accident, some time before their coming up with, or being met by, the party of Half-breeds; and this witness swears positively, that, with the exception of this accidental discharge of Mr. Holte's gun, the two shots he spoke of, were the first that were fired; and he distinctly alleged that they were discharged by the other party. During the conversation between Mr. Semple and Boucher, he had his face directed towards the semicircle of the Indians

and Half-breeds, who were armed with guns, spears, tomahawks, and bows and arrows. Boucher did not fire, to the witness's knowledge, nor did Mr. Semple give any orders to his people how to behave. He states also, that he saw some Indians in blankets at the battle, but they did not fire; that he heard, at the time of forming the half-moon or semicircle, the war-whoop given; he afterwards heard the wounded men of the Colony crying for mercy. Mr. Semple was shot in the shoulder. Witness with some others made their escape, by running towards the river, and were pursued by six, who fired at them, and the surgeon fell; and while the Half-breeds were killing him, the others got across the river. He saw the body of Mr. Semple, with nine others, brought in by the native Indians; the body was full of wounds of spears *. The next day the Half-breeds came to the fort, and Mr. M'Donell capitulated with them, that is to say, with Cuthbert Grant, whom he also swears he saw in the battle with the party by whom Mr. Semple and the other persons had been killed. That Grant acknowledged to witness that he had fired the day before, and warned him not to come again to the fort. He also swears most positively, that Paul Brown, one of the prisoners, whom he identifies, came to his tent, and said he had killed six Englishmen, and that he should be the seventh, and that he would take his life before he left the tent. Witness understood by the six men, those of the party who had been killed the day before in the battle. That the prisoner presented a pistol to his breast, but was prevented shooting him by a woman.

---

* The Learned Judge appears to have omitted in his Charge to the Jury, to remark the contradiction which appeared in the evidence, relative to the state of Mr. Semple's body. The witnesses for the Crown directly contradict each other, Heden swearing that his body was so full of spear-wounds, that he could not see whether there were any ball-holes or not;—M'Coy, that he was wounded in the thigh and the arm;—Corcoran, that one of his arms and thighs were broken, and a musket-ball had gone in at his throat;—and Nolin, that he was wounded in three places with balls, *but there were no marks of spear-wounds.*

In answer to the questions put to him upon his cross-examination, he says, that he and his party had been turned out of the Red River country once before, and their fort burned; that he himself was in the service of the Hudson's Bay Company, and that he came to that country by way of Hudson's Bay, and not through the Canadas; that there had been disputes between the Hudson's Bay people and those belonging to the North-West Company; that he does not know if the Settlement had been purchased; that on the 19th June, the day of the catastrophe, the Half-breeds did not come to the fort, but kept about a quarter of a mile from it. He then swears to a circumstance entitled to serious consideration, namely, that they received no orders to fire on the 19th June; some of their party had bayonets to their guns; he did not go to take any pemican, nor did he say that he would take it from the North-West Company, nor take their furs; nor did he hear others belonging to their party say so. Pemican he stated to be the food prepared to support the traders. The Red River receives the Assiniboin, and they unite near Fort Douglas, and fall into the Lake Winnipic. The Half-breeds, he again admits, went by Fort Douglas, where they had cannon to protect it from attack by the North-West. It was generally reported in that country, that Fort Gibraltar had been razed by the Hudson's Bay Company's people. He swears positively, that he never said the Hudson's Bay people fired first. Witness thinks, that when Boucher replied to Governor Semple, that they wanted their fort, he alluded to Fort Gibraltar, and he admits that the materials of that fort were brought down in rafts to Fort Douglas. Brown spoke to him in the Cree language, when he threatened to kill him; he repeated the words, and interpreted them; he also stated that he should have understood the prisoner, had he not comprehended the language, by the signs which he made,

but that he understood the language then as well as he does now. These are all answers to questions put to him by the Counsel for the prisoners; and his cross-examination ends by his saying that, though he does not, of his own knowledge, know of any pemican being taken, yet it was commonly reported that, in 1814, some had been taken from the North-West Company by the Hudson's Bay people.

The next witness is Donald M'Coy; his evidence is, that he arrived in the Red River country in 1812, and was there in 1816, and that he always heard that the Hudson's Bay people were threatened to be turned away. That coming down the river some time before in that same year, he was taken prisoner, and sent to Qui Appelle; that Cuthbert Grant, who is also charged as a principal in this murder, but who is not here, was among the party who thus took the witness; and Paul Brown, one of the prisoners before you, was also there; that, altogether, the party at Fort Qui Appelle amounted to fifty or sixty. He was detained four or five days at the fort, and during that time heard one François Deschamps say that they would go down and destroy the Colony. At Brandon-house he heard Boucher, the other prisoner, say, that he was glad their men had been taken; and when witness said there was a good many more at the Colony, Boucher answered, that they would destroy the Settlement. Next day they proceeded to the Settlement, and learned that they expected to be attacked, and were armed to defend themselves. On the 19th June, the day on which the Indictment charges the offence to have been committed, the watch which had been kept up since they received warning, gave notice of a party coming down towards the Settlement: Mr. Semple looked through a spy-glass, and then called for twenty men to accompany him, and see what they were coming for. They accordingly took their arms and went out, and were shortly after partly sur-

rounded by two parties of Half-breeds and Indians, who were generally painted. He swears that he saw Grant, and many others whom he knew; that some had bows and arrows, some spears, and some guns. Mr. Semple halted them to see what the others would do, and he saw Boucher come up to Mr. Semple, and some words passed between them, but he did not understand what they were, but he saw Mr. Semple take hold of the bridle of Boucher's horse, and of the butt of his gun, upon which, he says, Boucher sprung off his horse, and he (witness) heard two shots, nearly one after the other, one of which killed a Mr. Holte belonging to their party, and the other Mr. Semple, who, on receiving his wound, called out to his people to do the best that they could for themselves. That he heard other shots, and saw, very shortly after, that most of his people had fallen. That he was fired at himself as he retreated. That he saw one down who had been wounded, crying for mercy, and upon seeing his body the next day, he observed that his head had been cut. The party he described as being French, Half-breeds, and Indians, and headed by Cuthbert Grant, but that he does not know whether Grant fired or not. Many of the Half-breeds were painted, which he states is not common; a point in which you will recollect that he is contradicted by other testimony. He deposed also, that he remained that night at Fort Douglas, and that he saw François Firmin Boucher at the fort on the next day, with the party, of whom he knew Fraser, Grant, Brown, and others; that he heard Brown ask for Michael Heden, and say that he would kill him; that he saw Mr. Semple fall, and that he was wounded in the thigh and in the arm; and that, on being wounded, he put his hand to his head, and told his people to take care of themselves. He stated that five of the Colonists had been made prisoners by the Half-breed party before the battle. He thinks the gun which killed

Mr. Holte was not discharged by his own party; and you recollect, Gentlemen, that he assigned his reason for thinking so, namely, that the gun by which Mr. Holte was killed was not fired near him; and that, if it had been fired by any of his own party, he should have heard the sound nearer. He also says, that he saw no firing from his own party, except on the retreat by one man; and he at the same time was pursued by a Half-breed on horseback, armed with a spear. He says that Fort Gibraltar was taken by the Hudson's Bay people, and also, that pemican was taken by them from the North-West Company. These answers, you will perceive, were given during his examination by the Counsel for the prisoner. He continues, that he knows Mr. Miles M'Donell, and knows also, that a Proclamation from him was read, but that he himself reads very little, and not enough to understand the Proclamation. He knows that two or three boat-loads of pemican were taken, in consequence of that Proclamation; and in reply to a question put to him to ascertain the time, he admits that they were taken before the North-West people had taken any from them; for you can not but have observed, Gentlemen, that both parties have committed similar outrages upon each other: but upon that subject I shall address you presently. He continues by stating, that there was cannon at Fort Douglas, and that before that time, the North-West people had been in the habit of going down the Red River with provisions, and that the Half-breeds, on the 19th June, had provisions with them in carts; that when they were first seen, they were not coming towards the fort, but going towards the Settlement. Mr. Semple, he says, took hold of Boucher's gun, before which they were talking together, and that he did not see Boucher assault Mr. Semple. He admits that he himself fired at a man, but in vindication, says he was pursuing the witness with

an intention to kill him. Bourke, he says, went to Fort Douglas for a cannon, by order of Mr. Semple. This cannon, it appears, was sent for under an impression that the Half-breeds had cannon with them, but it does not appear that it had reached the battle-ground. Being asked relative to the nature of the Settlement, he states that there were about forty to fifty settlers near the fort, that they were farmers, and had raised wheat and potatoes on their farms, which had ripened and been gathered.

The next witness is John P. Bourke, who states that he also was at this Settlement in 1816; and without troubling you with the whole of his evidence, it is sufficient that he confirms, in every particular, the report that they were to be attacked, and the other circumstances, up to the time of Mr. Semple's sending for the cannon from Fort Douglas; and he was the person, he states, who went for it, and that, on returning, he saw a flash of a gun from a circle, partly formed round Mr. Semple. He goes on to say, that he afterwards heard a great many shots; he went on, and saw a number of horses, guarded by some men, and proceeding on, he saw some men on their knees in the bushes with arms; that they called to him to come to Mr. Semple, asking him if he would not come to his Governor, but that fortunately he did not go, as they fired at him. Near where he left Mr. Semple, he saw a man kneeling, in his shirt, with a handkerchief round his head, present his piece at witness, and firing it at him, the witness was wounded. He saw the two prisoners after the battle, at the fort. Being asked as to the nature of the report of which he had spoken in a former part of his evidence, he replied, that the report was, that the North-West were assembling the Half-breeds from all quarters at Qui Appelle, under Alexander M'Donell. Being cross-examined, he states himself to have been a clerk in the Hudson's Bay service since the year 1812, and in that

of the Earl of Selkirk; has heard it reported that Earl Selkirk was a Partner in the Hudson's Bay Company, and does not know the contrary. He obeyed Mr. Semple as Governor, holding authority from the Hudson's Bay Company. Witness said that he knew Mr. Miles M'Donell, and having seen him write, that he believed the signature to a Proclamation shewn to him to be the hand-writing of Mr. M'Donell. You will recollect, Gentlemen, that to the reading of this Proclamation, Mr. Attorney-General objected at the time, but the Counsel for the prisoners satisfied the Court that it was admissible evidence, upon the grounds which they stated they produced it for, namely, as the foundation for an uninterrupted chain of aggressions, which continued from the date of this Proclamation, down to the very hour in which this unhappy battle took place; and thereby they contended they should do away the charge of murder altogether, by shewing that these continued and uninterrupted provocations, kept the minds of the persons engaged in this deplorable contest, in that state of aggravated excitement, that, if they failed in proving that the melancholy result was produced in self-defence, and therefore justifiable, yet the circumstances would acquit the prisoners of malice prepense, and therefore reduce the killing to manslaughter. I conceive that you will not think it necessary that the Proclamation should be read to you again. You will remember that it assumed an authority over that part of the country, and under it, or by virtue thereof, forbade the purchase of meat killed there, or of other produce of the country, procured, or raised, within the territory, for the purpose of being taken out. The effect of the Proclamation was to produce, according to the witnesses, discontent among the Half-breeds and Indians. This witness (Bourke) continues his evidence, (you will recollect that he is now being cross-questioned,) by saying that he had heard

of the taking of pemican by the Hudson's Bay Company's servants; that Michael Heden, the former witness, was, as he believes, at the taking of Fort Gibraltar, and that he (witness) saw the materials of that fort, as he believed, brought down in rafts to Fort Douglas, in the latter end of May of the year 1816. He says also, that Mr. Semple and his people went out to protect the settlers; and he adds, that if they had been in the fort, he does not think that they would have gone out. Their apprehension of being attacked arose from reported threats of an attack upon the settlers being intended, and also from their having been driven away the last year; and after the 19th June, the Half-breeds did drive away the settlers who were then in their power. In answer to a question from the Crown Officers, he said that the Half-breeds could have escaped from any pursuit by the Hudson's Bay people, they being on horseback, and that without abandoning their carts, as the road was a plain.

Hugh M'Lean, another witness on the part of the prosecution, also resided in 1816 at Fort Douglas; he confirms the preceding witnesses, relative to the reports of an intended attack upon the Colony, and that upon the 19th June, he saw the Half-breeds making towards the houses of my Lord Selkirk; upon which Mr. Semple went out with about twenty men; the Brulés, he represents, as being seen from a spot near the fort, at about a mile, or a mile and a half distance, coming towards the woods, which were above the Settlement, and between it and the fort; that he went into the fort, and remained there till Bourke came for the cannon; he went with him and drove the cart for about a mile; when, at a distance of about half a mile farther, he saw a number of men on horseback, riding among Mr. Semple's people, upon which, by Bourke's direction, he returned with the cannon to the fort. He states

that he found Bourke afterwards at the place where he had left him when he returned with the cannon, and that he was wounded; at this moment four or five men came up, who advised him to return back, which he did, several persons firing at them; being asked if he knew any of them, he answered that he did not. He mentioned that the Frog Plains were two or three miles below the fort. A large party, he stated, came to the fort the day following, and amongst them Cuthbert Grant, whom he then knew for the first time. He also gave evidence of seeing a number of dead bodies, on the day following, and among them that of Mr. Semple; that one of his arms were broken, and one of his thighs, and it appeared that a ball had passed through his throat and head. He closed his examination in chief by saying, that he saw the prisoner Boucher also at the fort, on the next day, with Cuthbert Grant. In answer to the cross questions, he said that it was Mr. M'Donell who bid him go with the cannon; but he added, that he had no ammunition, nor any orders to fire; that the Colonists were plundered of some of their goods by the Half-breeds after the battle, but were none of them murdered, though completely in their power.

Patrick Corcoran, another witness, introduces his testimony in the same way, stating that he was at Fort Douglas in 1816. In the spring of that year he went with a party to Qui Appelle, and on his return he was made a prisoner, and carried back to the North-West fort, where it was the general talk that the Settlement was to be attacked. There were not many Indians there; but a good number of Half-breeds, some of whom told him of the intended attack. Pangman, or Bostonnois, was at Qui Appelle, also Cuthbert Grant. Witness related these conversations when he returned to Fort Douglas, and that he had heard Cuthbert Grant say that they were going down to visit Mr. Robert-

son, who should see what they could do. On the 19th June he was at Fort Douglas, not in the battle, but in the fort; he saw the party go out with Mr. Semple, and the settlers and women come crying. On the next day he saw some Half-breeds come to the fort, and he saw both the prisoners there; he also saw the corpse of Governor Semple; and Cuthbert Grant, he also states, he saw at the fort. Being cross-examined, he says that it was in the month of May, 1816, that he was at Qui Appelle, which he describes as about four hundred miles from Fort Douglas. He has been seven years in the Hudson's Bay Company's service; he saw Fort Gibraltar after it was taken, and the materials brought down to Fort Douglas. When they said they were going to visit Robertson, they alluded to the circumstance of Robertson having taken Fort Gibraltar from the North-West Company. Robertson was in the service of the Hudson's Bay Company, and as witness thinks, was under the orders of Mr. Semple, by whose orders witness himself went to Qui Appelle. He says that he does not know, nor did he ever hear, that cannon were planted on the banks of the river, to prevent the North-West people from going down. He also said, that he had heard that the North-West people went down to within about a day's journey from the fort in canoes, when they disembarked, and pursued their route by land. He swore that he himself had told them at Qui Appelle, that Mr. Robertson would not stop any persons passing quietly down or up that river.

The next witness is Mr. P. C. Pambrun; but, Gentlemen, I consider it unnecessary that the testimony should be read further to you, as you will doubtless remember its general tenor, and its very contradictory nature. Indeed the state of my eyes does not permit me to read by candle-light, but I am satisfied you will remember its ge-

neral tendency, and the particular points shall be adverted to by me in the course of my observations. The testimony on the one side and on the other, is almost all from the servants of the contending parties, and differs in almost every material fact. The very first which presents itself is, who fired first? One swears peremptorily that it came from the Half-breeds, and gives you his reasons for so swearing; also proving, as far as his testimony can prove it, that, by this shot, and another from the same party which instantaneously followed, a Mr. Holte and Mr. Semple were killed. On the other hand, it has been sworn to with equal positiveness, that when they saw each other in the field, Boucher, one of the prisoners, from his speaking some English, was sent from the party of Half-breeds to enquire what the Hudson's Bay people, or Settlers, wanted; and they say positively, that the *English*, or Governor Semple's party, fired first.

It may be proper, at the present moment, to notice an argument that has been insisted upon, relative to the crime charged against the persons named in the Indictment. It has been contended, by the Counsel for the Defence, that this melancholy affair, ending in the death of twenty-two persons, ought not to be considered as murder, but as a great trespass, the country being, from peculiar circumstances, in a condition which put its inhabitants out of the ordinary protection of the law; the individuals forming these two great Companies, together with their servants, being in a state of hostility towards each other, and by their mutual acts of violence, forming a state of affairs similar to that of the ancient nobles and their adherents, during the contests of the Barons under the feudal system. But, Gentlemen, happily we do not live under the feudal system; those days of discord and confusion have passed, and with them, those constructions of law applicable only to such

a state of affairs. Another circumstance worthy of your observation, is the mode by which you acquire the jurisdiction, and its nature. Although this Province had no jurisdiction till given by the statute of the 43d of the King, upon which the Indictment is founded, over offences committed in what is called the Indian Territory, yet that Act completely establishes the power, under the provisions contained therein, and which have been strictly attended to in the case before you; the Instruments under the Great Seal of the Lower Province having been given in evidence; and in addition to giving the jurisdiction, it provides for the exercise of it, in the same manner in every particular, as if the offence had been actually committed within the district where the trial is held. What is crime here, is crime in those Western Territories; what constitutes murder here, constitutes murder there; and the offence is to be ascertained in the same way, and if convicted of any offence, then the offender is to receive the same punishment, as if committed here, in the Home District. Then, Gentlemen, you are called upon to consider this a crime charged against the prisoners, (though committed neither in the Provinces of Upper or Lower Canada, and without the limits of any civilized government of the United States of America), in precisely the same manner as though it had been committed actually within the Home District. The first point to satisfy yourselves upon will be, that the persons charged are in fact killed. Upon that part of the subject you can, I imagine, entertain no doubt. Various witnesses detail to you that they saw the corpses, and assisted in burying them. There can then be no reasonable doubt of the homicide having been committed, indeed none at all. The next consideration will be, by whom was it perpetrated, and, with regard to the prisoners, how they are severally affected by the evidence produced on both sides. Relative to Paul

Brown, there appears, I think, no evidence against him, but that which arises from his own folly on the next day, as detailed in the testimony given by Michael Heden, the first witness examined on the part of the prosecution: he swears, you will remember, that, on that day Brown came into his tent, and presented a pistol at him, saying in the Cree language, "that he had killed six Englishmen, and that he "should be the seventh;" and witness says, that he did suppose that he meant in the affray the day before. Excepting this witness, there is none, I think, that gives any testimony affecting Brown; whilst, on the other hand, it is sworn positively, by witnesses who were in company with him at the time of the firing, that he was not in the battle. I think, from the unsuspicious evidence of the Canadian who was examined, (Ducharme), it is manifest that he went below the scene of action, for that witness states, that he himself was encamped a short distance below the Frog Plains, and that, on hearing the first firing, he went up, and saw Brown, who had just arrived with the cart of provisions of which he had charge; a circumstance which would be likely to keep him away from the battle. Indeed there are two who swear positively, that he was not on the battle-ground; and there is only one circumstance, (which certainly, if you credit the witness, arose entirely from himself), that makes against Brown, namely, what passed in Heden's tent. No one swearing that they saw him on the ground at the time of the battle, and two shewing a positive *alibi*, I think you will have no difficulty in saying, (as I think it perfectly clear), that the prisoner Paul Brown, was not on the ground at the time of the battle, and consequently could not have perpetrated the crime. With reference to Boucher, it is certainly equally clear, that he was there, and you are to examine what share he took in the proceedings. The commencement clearly was not with

him; they, that is his party, whatever might have been their original motive, or real intention, in coming to this part of the country, had certainly, at the moment when the unfortunate Mr. Semple marched out, (under perhaps an idea that he had authority for any measure he might adopt, or perhaps with a view to ascertain the object of an armed force, and to afford protection to the Settlement, which had become apprehensive from the reports of an intended attack), the Bois-brulés' party had certainly given no offence, nor offered any insult. Their having been perceived passing the fort at a distance, led Mr. Semple to direct some twenty men to follow him, to see what these fellows wanted. Boucher, from the evidence of several of the witnesses, advanced towards Mr. Semple, and the testimony as to what passed is this: Boucher enquired of Mr. Semple, "what do you want?" who rejoined, "what do *you* want?" The answer was, "our fort." To this Mr. Semple replied, "go to your "fort." Boucher then said, "you damned rascal, you "have destroyed our fort." Up to this time there does not appear to have been any act of violence; the language was certainly violent, and calculated to provoke. Those who were near to Mr. Semple at this time represent that, at this moment, he took hold of the bridle of Boucher's horse, and of the butt of his gun; upon which Boucher slid off his horse on the opposite side, and made his escape. This forms the whole of the evidence against Boucher, as far as relates to the 19th June. On the 20th, he is proved to have been among those who went to the fort, so that the evidence, as to his being one of the party, is complete. Before convicting the prisoner for being guilty of murder, you must be satisfied of the malice prepense of his mind; and it is necessary that I inform you that, where it does not clearly appear so as to be capable of open and direct proof, the law always supposes it to exist; it takes the circum-

stance of presence as a proof, and puts it upon the person charged to clear himself from the allegation, by proving circumstances which alleviate the offence to manslaughter, or render it justifiable homicide. Thus, though there is no evidence that Boucher took any part in the battle, and certainly none that he killed any body, yet, if he came up there with an ill intention, then the law considers him guilty. It is, therefore, not to be wondered at, that the extraordinary line of defence which has been taken by the Counsel for the prisoners, should have been adopted. When the evidence was first gone into, an extraordinary latitude was given, from the very peculiar nature of the whole case. Ordinarily, when a person is charged with murder, to diminish or alleviate the offence to manslaughter, the accused must shew such an immediate impression of mind, arising from aggravation, that, in its exasperated state, it was incapable of controul, and that there was no interval sufficient to allow the mind to cool from the effect of the provocation. In the case before you, a long chain of circumstances have been gone into, to prove the exasperated state of mind in which the servants of these two great Companies were, owing to mutual and continual attacks upon each other's persons and property; a state of mind which, it is contended by the prisoners' Counsel, was continually kept up by uninterrupted aggressions; and it is thus they account for what, in a civilized country, would in itself be sufficient proof of a criminal intention. They stated, and endeavoured to satisfy you by evidence, that the reason for their riding in what might be considered as in armed array, was merely to protect their persons and property from attacks which they apprehended would be made upon them; and they state that this apprehension arose from the circumstance of their having been previously attacked, and their provisions and property taken from them.

The North-West Company, it has been stated, are the masters of an immense number of servants of different descriptions, and carrying on trade over an immense territory, where provisions are not, in many places, able to be obtained; and that the Red River country is the place where the buffalo abounds, and from whence, up to this period, they were in the habit of obtaining those supplies from the hunters, which their trade rendered necessary, but which, from the conduct of the Hudson's Bay party, they say, they could not expect for the future; because it is put in evidence, if you believe the testimony, that it had been seized, and taken from them, by the servants of the Hudson's Bay Company. The first evidence upon this part of the subject, is a Proclamation of Mr. Miles M'Donell, as Governor of Ossiniboia, and which they state was acted upon, by their pemican being seized. It was insinuated that, if the object was merely to send provisions, they would have been sent in the usual method by water. To rebut this, evidence has been put in to shew that, unless they went by land, from the nature of the country, there was no passage except in view of the fort; and this they make appear; indeed it is not attempted to be contradicted. Another circumstance may as well be noticed here, as it accounts perhaps for their being so near the fort at the time they were deseried; they state, and give evidence, that a swamp prevented their passing it at any greater distance. The prisoners' Counsel contend upon the whole case which they have made out, that they were apprehensive of being attacked, and of having those provisions (which they allege it was indispensable should meet the canoes which were expected from Montreal and Fort William) taken from them, and that, therefore, it was only an act of common prudence, or absolute necessity, to send a guard with them; and they allege, that that was the only reason for their appearing armed. They go farther,

and contend that they have shewn that, though armed, they acted in strict compliance with the orders which had been given by Mr. M'Donell at Qui Appelle, which were, to avoid the Hudson's Bay people, if possible, and to go as far from the fort as practicable. On the other hand, Gentlemen, and it is for your consideration to which the truth belongs, it is contended that all this is mere pretence, and that the taking of provisions was merely a pretext to cover what had long been entered into and decided upon, viz. a deliberate plan to destroy this Settlement of the Earl of Selkirk. In support of this position, they have gone into evidence of a large number of Half-breeds and others assembling at Qui Appelle, for hostile purposes, and, according to some of the witnesses, they were prepared for aggression by harangues being made to them of an inflammatory nature, and by presents being given, and other means calculated to excite them to the commission of aggression. On this, Gentlemen, you are to decide. It is not the Court, but you, who are to estimate, whether it was really and truly to protect their provisions, and guard themselves from attack, or whether it was, as contended by the prosecution, only an artifice resorted to, to mask the destruction they meditated against this infant Settlement?—Whether this melancholy termination resulted from their accidentally meeting, whilst both parties were in a state of exasperation, from the mutual aggressions which had been offered, I do not know: it is for you to determine, from the evidence, who commenced the affray, and what are the circumstances which justify or palliate the conduct of the prisoners. I do not know, nor is it requisite, but it is my duty to tell you, that if it shall appear to you, from the whole tenor of evidence which has been adduced, that, instead of protecting their provisions, and being in a situation to defend themselves if attacked; I say, if the tenor of the whole evidence

shall appear to you to demonstrate, that this was a mere pretext, and that, under cover of a justifiable precaution, they did give orders, if the least insult was received from the Hudson's Bay people, they were then to destroy all they could meet—I repeat, Gentlemen, if you believe that this sending of provisions under a strong guard was only a pretext, although orders were not given to the Half-breeds actually to destroy the Settlement, or to commence an attack, unless some insult should be offered, then, Gentlemen, I have no hesitation in saying, it is as much murder as if the slight insult given to Boucher had not been offered. But I do not know that it was the case; it is you who are to judge, it is you who are to say where the weight of testimony preponderates; but I do not think you will find the evidence go that length. The evidence as to the party with whom the firing commenced, is contradictory. The testimony on the one hand is, that it began on the side of the Half-breeds. The Hudson's Bay people assign as a reason for going out of Fort Douglas armed, that they had heard reports that they were to be attacked by the Half-breeds, and they swear, some positively, and others to the best of their belief that the two first shots, and by which Mr. Semple and a Mr. Holte fell, came from the Half-breeds. If you believe this testimony, Gentlemen, there will be an end to the justification set up by the prisoners' Counsel. If, on the other hand, you believe that the North-West party went armed merely for the purpose of guarding their provisions, which it was indispensable they should send to that part of the Indian Territory, and that upon seeing them approach the Settlement at Red River, this unfortunate Mr. Semple went out with a number of men armed, no matter with what intention, whether, as given in evidence, simply to ascertain what the Half-breeds wanted, or by a show of force to frighten them, and thus deter them from the commission of any violence, and on their part intending to commit none,

yet that from their party the first shot was fired, in point of fact, the case will certainly be very different. It is, Gentlemen, for you to construe this differing testimony as you please, and no doubt you will exercise a sound discretion. If these people were inoffensively, and of necessity, going on a lawful business, and had no other intention, I am not prepared to say that Boucher even is guilty. I say nothing of Brown, as there is no proof against him. If, however, you are of opinion that they originally intended to destroy this Settlement, and kill those who opposed them, then it is murder, because all the appearance of lawful and necessary avocation, is only a criminal precaution, shewing a deliberate and deep-laid plan to effect the object in view. But if you think that this melancholy scene was produced, perhaps by feelings of indignation for former oppression, creating apprehensions of present danger, or from any other cause, and the Hudson's Bay people fired first, then I can not say that the others were not justifiable in using their arms to protect themselves. It is, however, your province, Gentlemen, to decide this point as well as all others. It is the duty of the Court to give you opinions only as to the law applicable to these points. Upon the whole, as to Brown, I think you will have to acquit him, as there is no evidence against him, except what arises from his own folly, in saying he had killed six men. An *alibi* being positively sworn to, and not contradicted by any testimony on the part of the prosecution, I do not perceive that the declaration given in evidence can prevent his acquittal. If after due deliberation, you find the charge of murder to be established, then Boucher is, as he is charged in the Indictment, a principal; but he is not so unless you are satisfied of a felonious intention having been proved to exist in his mind, or in the mind of those that sent him. It only remains that we consider our jurisdiction, connected with locality, to give us a right to try them under

the Act upon which they are indicted. The offence must have been committed out of the limits of this Province; whether we have a right or not, I declare I am at a loss to decide. Mr. Attorney-General has put in evidence the latitude and longitude of the Frog Plains, but he does not put in evidence, whether this latitude and longitude is without or within the boundaries of Upper Canada, and I do not know whether from 90° to 100° or 150° form the western limit of Upper Canada; nor do I know whether a place at that longitude, and having 49° or 49½° north latitude, is within the Province of Upper Canada or beyond its boundaries.

Attorney-General.—Your Lordships will remember that, by the questions which I put to Colonel Coltman, I ascertained the precise situation of the place in which Mr. Semple was killed; that is, I proved it to be somewhere between 90° and 100° west longitude, nearer, as Mr. Coltman said to 100°, and in 49½ north latitude. I proved it to be at the Forks of Red River, formed by its junction with the Assiniboin, and that it was situated between the River Winnipic and the Lake Manitouba, about twenty miles west of the former. I had thus established the situation of the place by immutable boundaries, and I conceive it is for your Lordship to instruct the Jury, whether a place so situate be, or be not, without the Provinces of Upper or Lower Canada, and part of the Indian Territories. This I conceive to be matter of law, and not matter of fact, deducible from Treaties, Acts of Parliament, and Proclamations; a point self-evident, and not depending upon extrinsic testimony.

Your Lordship sees that the opinion of an illiterate, uninformed man upon this point, would have been, in fact, no evidence. Mr. Coltman was the most proper person to interrogate on the subject. I therefore ascertained from him the exact situation of the *locus in quo*, and thus laid the

foundation for future discussion, if there appeared to be doubt on the subject of jurisdiction. I also prove by him that, when at the Forks, commissioned to investigate offences that had arisen out of the unhappy differences in that country, he had acted by virtue of his commission as a Magistrate of the Indian Territories, and not as a Justice of either Provinces of Canada: this shewed, at least, his impression. I could push him no farther. I could not, my Lord, ask Mr. Coltman to swear positively on oath respecting a matter of opinion, which I have reason to know engages at this moment the doubt of many men who have given the matter most serious investigation; and even if he had, I conceive it would not have been conclusive evidence. I have proved the latitude and longitude of the Red River Settlement; it is for the Court to instruct the Jury, within what territory a place so situated is comprehended by Treaties, or Acts of Parliament, which are matters of public law; and I have always considered, that if this appeared to the Court to require discussion, they would direct the Jury, if they should find the prisoners guilty, to bring in a Special Verdict, declaring them guilty of murder, at a place situated as I have proved by the witnesses: but whether the said place so situated, be without the limits of the Provinces of Upper or Lower Canada, and of any civil government of the United States of America, and therefore within the jurisdiction of this Court, by virtue of the Great Seal Instrument, produced in evidence, the Jury pray the advice of the Court: a Special Verdict would be drawn up in form, and then the question of jurisdiction would come fairly in discussion before the Court upon the facts of locality found by the Jury; and, of course, guilty, or not guilty, would depend upon the decision of that point.

Chief Justice.—That is what I was about saying. Brown, from there being no evidence against him, must be acquitted. If, on the testimony that has been produced, the Jury shall

be of opinion that the homicide was murder, and that Boucher was a principal, present, aiding, helping, abetting, comforting, assisting, and maintaining, the person who committed the murder, from malice aforethought, in himself, or in those that sent him, and that this lamentable effusion of blood did not arise from a sudden impression on rude and half-savage minds, from seeing their comrades assailed, or from any apprehension of death to themselves, but that it was the result of a felonious intention, then you will find him guilty on a special verdict to this effect: "We find François "Firmin Boucher guilty of the murder of Robert Semple. We "can not see, from any evidence before us, what are the "limits of Upper Canada;" then, when the case is made up for argument, it will be set forth that the spot was in about 49½° north latitude, and between 90° and 100° west longitude; and a solemn decision being had upon it, justice will eventually be administered according to the decision.

Mr. Sherwood.—I beg leave most humbly, but confidently, to submit to your Lordships, that the question of jurisdiction is not one of law, but one of fact, and consequently one that indubitably, and of right, belongs to the Jury. In support of this position, I remark, that a plea to jurisdiction can not be pleaded in abatement, for it is a matter of fact; and all matters of fact belong to the Jury, and it is only matter of law that can be pleaded in abatement. If the question of jurisdiction does not go to the Jury, it can be considered no where, as I conceive, or as far as my knowledge extends. I hold in my hand an authority completely in point.

Chief Justice.—The Jury may return a general, or a special verdict, as they think proper.

Officers were sworn to the safe-keeping of the Jury during their deliberations, in the usual form. The Court was then adjourned for one hour; but before the Judges had left the Court-house, it was intimated that the Jury had

agreed upon their verdict, and being called over, they severally answered to their names.

Clerk of Assize.—How say you, is Paul Brown, one of the prisoners at the bar, guilty of the felony and murder whereof he stands indicted, or not guilty?

Foreman.—NOT GUILTY.

Clerk of Assize.—How say you, is François Firmin Boucher, the other prisoner at the bar, guilty of the felony and murder whereof he stands indicted, or not guilty?

Foreman.—NOT GUILTY.

The Verdict was formally recorded, and assented to by the Jury, who were then discharged.

Chief Justice.—The Court having knowledge that there are other Indictments against the prisoners, they can not be discharged.

The Court was then adjourned until to-morrow morning, nine o'clock.

Wednesday, 28th October, 1818.

PRESENT AS BEFORE.

Attorney-General.—I beg leave to mention to your Lordships the situation in which the prisoners Brown and Boucher, who were acquitted yesterday on the charge of murdering Governor Semple, stand at the present moment, as well as some other persons, accused of offences alleged to have been committed in the Indian Territories. The opinion on the question of jurisdiction given by your Lordships, as I understand it, is, that by the statute 43d Geo. III. your authority is extended to the trial of every offence particularly specified in the Instruments transmitted under the Great Seal of the Province of Lower Canada, but not to the trial of persons described in those Instruments, for *all offences* committed by them in the Indian Territory, or for any offence not specifically mentioned. I am the more

anxious not to misapprehend your Lordships on this point, as, although such was the construction I had in my own mind given to the Act in question, yet most of the instruments being in general terms, transmitting the accused to this Province for trial, not only on the particular charges contained in them, but *for all other offences committed by them in the Indian Territories*, I had prepared Bills of Indictment against various persons, on informations charging other offences besides those named in the Great Seal Instruments, and had presented them to the Grand Jury, who have returned several of them true bills. Among these, there is one against Cuthbert Grant, Louis Perrault, and the two prisoners who were acquitted yesterday upon their trial for the murder of Governor Semple, for the murder of Alexander M'Lean, which Indictment, indeed, I do not conceive subject to the objections taken by the Court on the question of jurisdiction; for I consider the trial of this offence as specially transferred to this Province under the Great Seal Instrument, which charges the prisoners with the "murder of twenty-one men, of whom Governor Semple "was one." The murder of Alexander M'Lean, and the murder of Robert Semple, are, in effect, the same charge, and parts of the same transaction; but to avoid the many disputes and discussions which might arise, as to the application of particular parts of the evidence to each individual homicide, and to the guilt of accessaries before and after the fact, I thought it better, that the ends of justice might not be defeated by any nice and technical objections, to charge the murder in various ways. I foresaw that several questions might be raised, (some of them not very difficult of decision), from the peculiar circumstances of this melancholy transaction, and the divided jurisdiction which the Court here has over the persons charged with the murder. In a case like the present, where, in a promiscuous firing of one party of men upon another, several persons are slain, it must generally happen, that it cannot be certainly ascertained what particular individual killed any other individual. Still, however, it is necessary to charge *some one person in particular* with having killed another; and then the evidence of a general firing, in which the prisoners participated, would make them principals, aiding and abetting the person charged with having inflicted the actual stroke. A foundation must be laid, by a proper and circumstantial charge of murder, against a given person, before you can charge others as principals, aiding and

abetting, or as accessaries before or after. I thought it better to select Cuthbert Grant, as being the leader of the band by whom the alleged murders were committed, and charge him with having killed Robert Semple, the only one particularly named in the Great Seal Instrument as having been murdered on the 19th of June, and the prisoners Boucher and Brown as principals in the first degree, aiding and abetting Cuthbert Grant in the murder. But, as it might turn not on evidence, that the proof of the murder of Mr. Semple could not be so unequivocally established as of some others of his unfortunate companions, or Cuthbert Grant might be enabled to prove that some other person than himself gave the mortal blow, I was desirous of charging the murder in other shapes against the prisoners, and to select the cases to which the evidence would most plainly apply.

For instance, I might be able to prove to the Jury, that one John Rogers, another of the unfortunate persons who perished on the 19th June, received his mortal wound from one Thomas M'Kay; and having thus proved the murder by M'Kay, I might proceed to establish the guilt of the prisoners as principals. But here it might be objected, that I could not charge the prisoners as principals, aiding and abetting, in a murder which we had no authority to enquire into, (the murder of John Rogers not being named in the Great Seal Instrument), still less as aiding and abetting Thomas M'Kay in a murder, whom, if he were present in Court, we certainly could not try, as he is not among the persons over whom we have jurisdiction given us. I need not express any opinion as to the weight of such objections. It was prudent, however, to anticipate them; and I therefore charged the prisoners, in a third shape, by alleging that a certain person unknown murdered one Alexander M'Lean, another of the sufferers, and that the prisoners were principals, aiding and assisting in that murder. I was aware that no point is now more clear, than that it is only necessary to prove a murder committed, and that, though it should be found, that not the person charged in the Indictment as the actual murderer, but one of those accused as aiding and abetting, or even a person not named in the Indictment, was in truth the murderer, still those aiding and abetting might be convicted on such Indictment: but it might be contended, that this general principle of law was affected by the confined jurisdiction of the Court in these particular cases. I therefore chose to charge the murder in the different forms I have mentioned. The precedents did not

warrant me in joining charges against different persons, for the murder of different persons, in the same Indictment, though all was in effect the same transaction. Each murder is a distinct felony, and they could not be joined without producing great confusion in the application of the evidence to the persons charged in the different degrees of aiders, and abettors, and accessaries. I have therefore prepared three Indictments: the one which I have mentioned, charging one Thomas M'Kay with the murder of John Rogers, and the prisoners Boucher and Brown as principals, I have not yet presented to the Grand Jury. That for the murder of Alexander M'Lean is returned a true bill, and I have prayed the process of the Court against Grant and Perrault upon it; but as respects the prisoners at the bar, Brown and Boucher, considering that this unfortunate man, M'Lean, was one of the party killed at the same time with Mr. Semple, of whose murder they were acquitted yesterday, after a full and impartial trial by their country, in which the whole of the evidence on both sides was most fully gone into, I am conscious that justice demands no further proceeding against them, for the part they acted in the melancholy business of the 19th of June. In thus deciding, I am not influenced by an opinion that the *legal right* to try them, though thus acquitted, for the murder of any others of those twenty-one persons, can be even questioned, but because they were virtually as much tried for the murder of Alexander M'Lean as they were for the murder of Robert Semple, and that I could produce no other evidence against them than they had already been tried upon for their lives; and that, therefore, though not strictly speaking illegal, it would be unjust, to put them upon trial again for the merits of the same charge, as their acquittal was not owing to the particular manner in which the offence was laid, but went entirely upon a full consideration of the evidence.

I was desirous of explaining this point to your Lordships, and having done so, I now move to enter a *noli prosequi* against Paul Brown and François Firmin Boucher, on the Indictment for the murder of Alexander M'Lean.

Mr. Sherwood.—Then, as the Attorney-General has nothing more against François Firmin Boucher, he is discharged of course.

Solicitor-General.—Upon a reference to the case of my Lord Thanet, I believe it does not follow, of course, upon the acquittal of a prisoner, that he is instantly discharged.

Mr. Justice Campbell.—It is quite unnecessary to refer to

authorities, Mr. Solicitor-General. If the Court has any reason to suspect there are other charges against a prisoner, it will detain him, but he can not be detained for any fees, or on any other consideration. If his enlargement is not opposed by the Crown, or the Court have no reason to suspect other charges against a prisoner, he must be forthwith discharged upon acquittal. If there are any grounds of opposition, the prisoner is committed, under a rule of Court, to the custody of the Sheriff, which, I suppose, will be the case with one of these men now before the Court.

Chief Justice.—Is there any thing, Mr. Attorney-General, against these two men?

Attorney-General.—My Lord, against Paul Brown there are Indictments for felony. Against François Firmin Boucher I have no other charge.

Chief Justice.—Let Boucher be discharged, and Paul Brown stand committed to the custody of the Sheriff, to answer to the Indictments against him.

Mr. Sherwood.—In the case, my Lords, of the King against Cuthbert Grant and others, for the murder of Robert Semple, I beg leave to mention, that Mr. John Siveright, charged as an accessary before the fact, is in gaol, under process of the Court, and wishes to be put upon his trial, although the whole of the principals are not convict or attaint. I therefore move that he be arraigned with the accessaries after the fact, who are also equally desirous to be put upon their trial, and, I believe, equally entitled to demand it.

Chief Justice.—The law makes no distinction between the accessary before or after the fact, relative to his trial, if the one or other choose to run the risk of going to it before the principals are convict or attaint. It may be well to remember that, if conviction followeth trial, no sentence can be passed till the whole of the principals are tried or attainted.

Attorney-General.—There is, I believe, no instance on the books, in which accessaries have been put upon trial before the principals, though it may be their right, if they choose to risk it.

Chief Justice.—There is no doubt, absurd as it is, that they are entitled to be put upon their trial if they choose it. I think it, however, a point worthy of their serious consideration, particularly the accessaries after the fact, that they can not be bailed after they are arraigned, and that, if found guilty, they can never be discharged till all the principals are tried and acquitted. However, as it does not suit the Court

to attend to any of these trials till to-morrow, you had better, I think, consider of it; and if the question is then raised, it shall be disposed of. But I think it will become you seriously to reflect before you adopt the measure.

The Court then proceeded to the ordinary business of the District.

Thursday, 29th October, 1818.

Nothing took place this day relative to the trials connected with the disputes between the North-West and Hudson's Bay Companies, excepting the trial of PAUL BROWN, upon the Indictment *(Appendix, D.)* for stealing a blanket and a gun from Michael Heden. This trial was one of very little interest; and it will suffice to say, that the evidence was of such a nature that the Jury, without hesitation, *acquitted* the prisoner.

TRIAL

OF

JOHN SIVERIGHT,

ALEXANDER MACKENZIE,

HUGH M'GILLIS,

JOHN M'DONALD,

JOHN M'LAUGHLIN,

AND

SIMON FRASER,

S

Jo

An
Hu
Jo
Jo
Si

wa

Gr
Jo
Wi
Pe
Mi
Jo

PROVINCE OF UPPER CANADA.

HOME DISTRICT.

Session of Oyer and Terminer and General Gaol Delivery, held at York, in the said Home District, on Monday the 19th Day of October, 1818, and continued by adjournments, to

Friday, the 30th October, 1818.

PRESENT:

His Lordship Chief Justice POWELL,
The Honourable Mr. Justice CAMPBELL,
The Honourable Mr. Justice BOULTON.

JOHN SIVERIGHT, Accessary before and after the Fact;

ALEXANDER MACKENZIE,
HUGH M'GILLIS,
JOHN M'DONALD,
JOHN M'LAUGHLIN, and
SIMON FRASER,
} Accessaries after the Fact;

were severally arraigned on the Indictment (Appendix B,) *and after some unimportant observations respecting the Great Seal Instruments, the accused severally pleaded* Not Guilty; *and various challenges having been made, on the part of the prisoners, the following Gentlemen were sworn as a Jury:*

GEORGE BOND,
JOHN WILSON, 3d.
WILLIAM HARRISON,
PETER LAWRENCE,
MICHAEL WHITMORE,
JOSHUA LEACH,
JOHN M'DOUGALL, jun.
PETER WHITNEY,
ALEXANDER MONTGOMERY,
JONATHAN HALE,
HARBOUR STIMPSON,
JOHN HOUGH,

Counsel for the Crown,

Mr. Attorney-General Robinson,
Mr. Solicitor-General Boulton.

Counsel for Prisoners,

Samuel Sherwood,
Livius P. Sherwood,
W. W. Baldwin,
} Esquires.

Solicitor-General.—May it please your Lordships, Gentlemen of the Jury. The prisoners at the bar are accused, as you will have perceived from attending to the indictment, of the crime of murder. It is not alleged against these individuals, who are charged in different degrees, that any of them actually killed Robert Semple, whose death is the unfortunate subject of the present trial, but that they, severally and jointly, assisted one Cuthbert Grant and Louis Perrault, alias Morain, to take the life of the deceased, or received and comforted, the murderers, knowing of their guilt. John Siveright is indicted as an accessary before the fact, and the description of one guilty of being accessary before the fact, is, that he counsels, procures, or commands, another to do and commit a felony. Accessary after the fact, is the crime of receiving, relieving, comforting, or assisting the felon to escape the punishment due to his crime, and of this offence the five other Defendants are accused. In the present case, Gentlemen, there will be a necessity to be satisfied that the crime has been committed within the Indian Territories, and not within the Province of Upper or Lower Canada. A second point will be, to ascertain that the murder has actually been committed; and, those facts established, you will enter immediately on the enquiry for which you are impannelled, viz. that of ascertaining and declaring if John Siveright counselled, procured, or commanded, the murder to be perpetrated; and further, whether those charged as accessaries after the fact, or any of them, (and Siveright is included in the number), did receive, relieve, comfort, or assist, the principals, having a knowledge of the felony; and if this is made out, it will be your painful duty to return a verdict of guilty. The case will be fully opened to you by the Attorney-General; it is therefore unnecessary that I should detain you.

Attorney-General.—May it please your Lordships—Gentlemen of the Jury. You are now, as the learned Solicitor-General has just told you, impannelled to try John Siveright, as an accessary before the fact, and Alexander Mackenzie, Hugh M'Gillis, John M'Donald, John M'Laughlin, Simon Fraser, and John Siveright, as accessaries after the fact, upon an indictment for the murder of Robert Semple, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America. It will be obvious to you, Gentlemen, that we must first establish the original offence, because there can be no accessary before the fact, unless we satisfactorily prove the original offence. This much I fear, Gentlemen, will be but too clearly shewn; it will then be necessary to consider what is meant by the terms counsel, aid, hire, or command, a person to commit a felony, which constitutes the crime of the accessary before the fact. The expressions are exceedingly general, and comprehend almost any act which has a tendency to promote the perpetration of crime. It may not be improper to mention to you, that in many cases the crime and the punishment of the accessary is the same as the principal, and murder is, by the British statutes, particularly distinguished as one of those offences in which the law considers the guilt to be equal, and inflicts the same punishment upon an accessary as upon the principal. In ascertaining the guilt of persons accused as accessaries after the fact, it is necessary to enquire what assistance was given or rendered, and when you satisfy yourselves that it was actually afforded, with a knowledge in their own minds of the guilt of the principals, the offence is brought home against the defendants. There is one thing that it is necessary to mention, viz. that it is not in the power of the prosecution to compel persons, who are accused as accessaries, to take their trial, till those who are charged as principals are convicted or attainted, for, notwithstanding the conviction of the accessaries, if the principals, upon their trial afterwards, should be acquitted, the conviction of the accessaries is void; but whilst it is not in the power of the Crown to compel them to trial, they may waive the privilege of not being called on to plead, and demand their trials, though the principals are neither convict or attaint. I am now stating to you, Gentlemen, the general principle of a rule of law, that the Crown could not have compelled these Defendants to come in and take their trials at present, and

it is but fair and candid in me to admit, that the conduct of the Defendants, in thus coming forward and putting themselves on trial, might be considered, in their circumstances, as shewing a consciousness of innocence, amounting to a certainty of acquittal. I sincerely hope and trust this consciousness and certainty may prove to be well founded. But, Gentlemen, though this conduct is such, that, acting from humane and honourable principles, it might well be esteemed as indicating the total absence of guilt, it must not be received by you as absolute proof of innocence, but you will give your attention to the evidence which will be produced on both sides, and then give such a verdict as justice may require, no matter who may be affected thereby. There is another circumstance which I ought to mention, for two or three reasons. It is, that the indictment upon which the Defendants have been arraigned, charges four persons as principals, that is to say, with having actually perpetrated the murder. Of these, Gentlemen, it is right to inform you, that two have been tried and have been acquitted, but it is also my imperative duty to mention, that this is by no means to be taken by you as evidence that no murder has been actually committed, any more than that the persons you are impannelled to try, are not accessaries in the degrees that they are severally charged. The verdict returned the other day, in relation to Boucher and Brown, was undoubtedly correct, and most particularly in respect to Brown, who was satisfactorily proved not to have been there; but that verdict was confined to the guilt or innocence of those two individuals alone; but the prisoners committed to you are charged as accessaries to the whole four who are accused as principals, and if you find either of the four committed the crime of which they are accused, and that these individuals were accessaries to the catastrophe of the 19th of June, they are just as guilty as though the other persons had been convicted.

It will be necessary, Gentlemen, (but I shall do it in as few words as possible,) to give you a very brief outline of the occurrences of the 19th of June, which will be fully detailed to you in the course of the evidence about to be placed before you. Sometime about the year 1812, it will appear that a Settlement or Colony was begun to be established by the Earl of Selkirk, upon a portion of land ceded to him by the Hudson's Bay Company, and a number of emigrants from different places of Scotland, England and Ireland, had, under his auspices, been conveyed to the spot,

situated at the Forks of the Red River, distant about fifteen hundred miles from this place, at different times, up to the year 1815. In that year, owing to a most outrageous attack, no matter at the present moment by whom, the settlers were dispossessed of their possessions, which were destroyed, and themselves compelled to remove towards Hudson's Bay. It appears, however, that, after proceeding to a post belonging to the Hudson's Bay Company, called Jack River House, and remaining there sometime, they returned to the spot where the Settlement had been established, and were, at the period of this melancholy catastrophe, in the occupation of a few temporary houses, situated at a distance of two or three miles from a building called Fort Douglas, erected at the Forks of the Red, and Assiniboin Rivers. The evidence to be adduced before you, Gentlemen, will prove that, for some time previous to the 19th of June, the colonists had been alarmed by rumours of a deliberate intention on the part of the Half-breeds, Indians, and Canadians, to disperse them again and break up the Settlement. This very prevalent report had occasioned a constant look-out to be kept from a sort of watch-house at Fort Douglas, and, upon the evening of the 19th of June, the man at the station gave the alarm, that a number of persons, armed and on horseback, were passing the fort at some distance. Upon this notification, Mr. Semple took his spy-glass, and, accompanied by two or three officers of the colony, went to the look-out station, to ascertain who or what this unusual party were. I do not know that we shall be able to produce any evidence as to their approaching in any particular order or rank, but they were armed and painted, and their whole appearance evidently hostile. Mr. Semple ordered about twenty men to accompany him to see what this force could want. That number, or rather more, I believe, the evidence will shew, took their arms and followed Mr. Semple. At first they observed only a very small band, but when they had proceeded about a mile and a half, they observed that there was a very large party. We shall distinctly prove to you, Gentlemen, that this party was headed by Cuthbert Grant, who is charged in the indictment to have actually perpetrated the murder, by shooting Governor Semple. Whatever, Gentlemen, may have been the deficiency of evidence relative to other persons, we shall most incontrovertibly prove, not only that Grant was there, but that he actually headed the party. We shall also go farther, and shew by his own confessions, or declarations, the

part which he took on the 19th June. As to Louis Perrault, or Louis Morain, the other principal, who has not been tried, we do not propose to offer any evidence to his conduct, because it is unnecessary. If we prove to you that there is one murderer, and that the Defendants were accessary to the felony and murder committed, it is the same as if we proved the particular share of each participator in the melancholy affray. There was an examination of the person named Perrault or Morain, taken by a magistrate, but as he is not here to prove it, of course it will not be put in evidence. Having dismissed from your consideration a circumstance that might have embarrassed you, I shall continue the statement I was submitting to your notice.—Governor Semple observing that the party of horsemen was so numerous, halted the men who were with him. They were standing then in a confused state, nor shall I be able to prove that any particular order was given by Mr. Semple for their conduct. This very circumstance, I think, furnishes a strong presumption that there could not exist any intention on his part to attack the horsemen; indeed he could hardly be so mad as to intend to attack a larger party and make no preparation. The peaceable intentions of Mr. Semple might also be gathered, I think, from the manner in which he went out. Why not take every man and the cannon that were in the fort, if he had any hostile plans? whilst they were standing in the irregular and unprepared manner I have mentioned, the half-breed party gallopped up towards Mr. Semple and his party, then suddenly dividing themselves, the one party stretched towards the river, and joining the other division, they encircled or surrounded Mr. Semple's people in the shape of a half moon. One of the mounted party, a Canadian speaking a little English, now advanced to Mr. Semple's party, calling out "What do *you* want, what "do you want?" To which Mr. Semple replied, by enquiring "What do *you* want?" The Canadian replied, "we want our fort." On this part of the narrative I would remark, Gentlemen, that it may perhaps appear to you in evidence, that this expression referred to a fort which had formerly been in possession of the North-West Company, to which the Defendants generally belong; but, Gentlemen, whatever may have been the aggression through which they were deprived of that fort, it can form no justification for the conduct pursued on the 19th June, nor any defence for the accused. To this expression of "we want our fort," Mr. Semple rejoined, "go to your fort." Boucher, the

Canadian, replied, in most opprobrious and insulting language, saying, " you damned rascal, you have destroyed our fort." Mr. Semple, who was a man of superior mind, and of very refined manners, no doubt felt indignant at such a coarse and vulgar epithet being applied to him, incautiously laid hold of the bridle of Boucher's horse, and called, I believe, to some of his people, to make him a prisoner. At this moment, Gentlemen, the first shot was fired, and although the witnesses generally will not perhaps say positively from which party it came, yet, from a variety of circumstances, I think you will be induced to believe that it must have come from the Indians and Half-breeds. By this shot a Mr. Holte, belonging to the Semple party, was shot, and was seen immediately struggling. Instantaneously a second shot was heard, and by it Governor Semple fell. Boucher had slid from his horse during the time Mr. Semple had hold of the bridle, and it was almost at the moment that he did so that Mr. Semple fell. His followers gathered round him to ascertain what injury he had received, and a general fire from the mounted party took place, by which all, excepting four, I think, were either killed or wounded. These persons most miraculously escaped, and they will be brought before you as evidences. Their testimony will too fully establish the death, to admit of doubt being entertained for a moment on that part of the case. The next point for your consideration will be; what were the intentions of Mr. Grant and his party, in going to this Settlement, or to this part of the Red River country; and upon this, Gentlemen, we shall exhibit before you a very strong piece of evidence, viz. a Letter of Mr. Grant's own writing, dated at Fort Qui Appelle, in which, I think, you will find the object so unequivocally avowed, that you can scarcely hesitate in declaring that malice aforethought did exist in his mind. In considering this case, it will be absolutely necessary that you correctly ascertain whether it is one of manslaughter or murder, because, if you find it to be manslaughter in the principals, there can be no accessary before the fact, although there may be after. Manslaughter being an offence which the law considers sudden and unpremeditated, does not admit of accessaries before, but to every felony, (and manslaughter is a felony as much as murder,) there may be accessaries after the fact. Having very briefly stated the outlines of the case, we shall proceed to call the witnesses, and adduce the evidence before you in support of our charge against John Siveright, as an accessary *before* and *after* the fact, and

against the other Defendants as accessaries *after* the fact only. The Court will tell you what constitutes the offence in either case, what aiding and assisting will make an accessary before, as well as what receiving and relieving, an accessary after, the fact. And after hearing the testimony, assisted by their directions, you will weigh, as in any other case, the evidence that has been produced on the one side and upon the other, and render a verdict agreeable to the dictates of your consciences, and there can be no doubt of its coincidence with the strictest justice.

Mr. Sherwood.—Before we begin to examine evidence, there are some difficulties that I should like to have settled; and first, can evidence against absent principals be made to bear against accessaries? and also, how does Mr. Attorney-General propose to apply the evidence to the accessaries, in relation to the several principals? The Indictment charges four principals, and the Defendants as accessaries, Two of these principals have been tried and acquitted; these Gentlemen may therefore be considered as half acquitted already. It is a rule of law, that when one principal is convicted, the Crown may put the accessaries upon trial; but here those they have put upon their trial are acquitted, and the Attorney-General appears, in his opening speech, to take no notice of that circumstance, or although he did advert to it, he did not state that it would make any difference in his mode of producing the evidence—except the bare mention of the circumstance, that Brown and Boucher had been acquitted, he did not even by a side-wind touch upon the subject. The Attorney-General proposes to go into evidence as to the conduct of absent principals, and then make it evidence against the Defendants, who are charged as accessaries.—Before he is allowed to do so, I think it is incumbent upon him to produce some legal authority for his course, because it is one that appears to me to be completely novel, and as extraordinary as novel.

Mr. Justice Campbell.—You should have thought of this difficulty before you insisted upon being put upon your trial; it has been your own act to bring it on, and you can not restrain the Crown from shewing that the murder has been committed. It must enquire into, and establish the guilt of the principals, as much as if they were on trial.

Mr. Sherwood.—I would remark, my Lord, that we are left without any rule upon the subject. From my Lord Hale down to Chitty, we have no authority upon the point, that I know of. I do not positively say there is no authority,

but there is no application of it, and therefore it would be merely speculative to give an opinion on the subject. In the absence of authority, or of the production of it, I apply to the Court for information, whether Mr. Attorney-General can, against the present Defendants, adduce as evidence the conduct of absent principals. I think he can not. If he can, I should like to know under what rule it is.

Attorney-General.—I confess, my Lords, I cannot see what the Learned Gentleman means. He has insisted upon going to trial before the principals are tried, and before they are attaint. Did the Crown possess, and had it exercised, the power of compelling these persons to take their trial, the Learned Gentleman might be warranted in calling upon us to shew the rule by which we justified the application of evidence; but in availing himself of the right which the law gives to the accused, of compelling the Crown to put accessaries on trial, in the absence, and before the conviction or attaint, of any of the principals, they have made the rule for themselves, and must take it with all its inconveniences. If, my Lords, it is permitted to persons accused as accessaries to compel the Crown to put them on their trials, I would ask, how can it be possible to convict them, unless evidence is admitted of the guilt of the principals? To attend to this doctrine of the Learned Gentleman would be to say, that in granting the application of these Defendants to be put upon their trial, your Lordships directed their acquittal. Our evidence will be first, to the guilt of those who are charged as principals, and having established that, we shall add to it all the testimony we possess to substantiate the accusation against the accessaries. If there is any hardship in the course, it is a hardship of the Defendants' own seeking; they insisted upon their trial, and compelled the Crown to arraign them.

(The Court intimated its approbation of Mr. Attorney-General's observations, and directed the trial to proceed, remarking to Mr. Sherwood, that when he thought the rules of evidence infringed on, he could apply to the Court. Mr. Sherwood, assenting to the direction of the Court, demanded that the witnesses on the part of the Crown might be ordered to withdraw, and remain out of Court till called for.—The witnesses upon both sides were called over, and went out of Court.

MICHAEL HEDEN sworn.

Examined by the ATTORNEY-GENERAL.

Heden.—I was living, in the year 1816, and during the summer of that year, at a place called Red River, in the Indian Territory. I was there in the month of June, in the capacity of a servant in the Settlement. I was a blacksmith. We were compelled, I think it was on the 23d of that month, to leave it, by the party who attacked us on the 19th. We were warned, both by the hunters and free Canadians, that we were to be turned out of Red River; both the Indians and freemen told us we were to be attacked. On the evening of the 19th of June, perhaps about six or seven o'clock, as we had for some time before kept a watch at the fort, the man on watch gave notice that a party of armed men were going towards the Settlement. Governor Semple was alarmed, and took a spy-glass, and went to look, accompanied by Capt. Rogers. He soon came down again, (I did not go with him to look,) and said the Half-breeds belonging to the North-West Company were coming. He told about twenty men to take their arms and follow him, to see what those fellows were about. There were about forty servants, men, women, and children, in the fort at the time. Perhaps about thirty or forty men, now I recollect, but I am not sure. I think about twenty-eight men went out with him. I do not know how many were left, but there were, I should think, more than ten left. There were three or four pieces of cannon at the fort. Going on, at a little distance from the fort, we met some women and children running, clasping their hands, and crying; they said the Half-breeds were coming, and the North-West, with carts and cannon. Going on a little farther, we met more of the settlers, men, women, and children, who said the same. Mr. Semple did not ask them to go with him, but told them to go to the fort. When Mr. Semple heard that the Half-breeds had cannon with them, he sent Mr. Bourke to the fort, to get one of the pieces of ordnance, and Mr. Bourke went, but did not return with it, that I saw. I saw only two or three horsemen at first from the fort, but at about two miles distance I saw more, and then they gallopped up to us, and surrounded us in the shape of a half moon, they were in a body and armed. I only knew Grant and Brown; they were painted, but I do not know if differently to going to war. I do not know if they paint in different ways. They formed the half moon, and remained firm till Governor

Semple was challenged by Boucher. When they had surrounded us, Boucher came from his party, and waved his hand, riding up to us at the same time; and called out, "What do you want, what do you want?" Mr. Semple said, "What do *you* want?" Boucher answered, "we "want our fort." Governor Semple told him, "well, go to your fort;" when Boucher immediately said, "No, you "damned scoundrel, you have destroyed our fort." Mr. Semple said, "You rascal, do you tell me so?"

Attorney-General.—What did you understand by "we want our fort?"

Heden.—I do not exactly know, but as far as I can understand, it was Fort Gibraltar that he meant, which was about a mile above, at the Forks. The Governor caught hold of the reins of his bridle, and called out to some of the people to make him a prisoner. When Boucher heard that, he slid from his horse on the other side. As soon as Boucher had done so, Mr. Holte was killed by a shot from the other party, and immediately after, there was a second shot, and Governor Semple fell; these were the first shots I heard.

Attorney-General.—Had any thing happened in going along, that gave you to understand what Mr. Semple's wishes were about firing?

Heden.—In going along, at about a mile distance from the fort, Mr. Holte was carrying his gun carelessly, and it went off by accident. Mr. Semple reproved him, and told him that he ought not to carry his gun in that careless way, and that the other party might make a handle of it; for, says he, I do not mean any firing at all. When they were coming up to us, one Kilkenny, belonging to our party, said, "we shall be shot. I see there is something bad "approaching: if you will give me leave," (speaking to the Governor), "I will take down Cuthbert Grant, who is one "of the heads." Governor Semple was very angry with Kilkenny, and said, "I want no firing at all." This was before Boucher challenged the Governor. None of our party were on horseback. We walked, but did not hurry; they might have got out of our way if they would, certainly, as they were on horseback, and we on foot. Mr. Semple was not on horseback.

Attorney-General.—And you are sure Mr. Holte and Mr. Semple fell by shots from the other party?

Heden.—Yes, by the first shot Mr. Holte fell, and then Governor Semple by the second; afterwards the firing was

general, and nearly all our people were killed. One Michael Kilkenny and I were together, and he said, " can not we " make our escape ?" I said, " the Lord have mercy upon " us, while there is life there is hope, let us try and make " our escape." We accordingly did, and outrun the Surgeon, who started with us. There were about six Half-breeds had got between us and the river, they shot at us, and the Surgeon fell. While they were stripping him, Mr. Bourke and nine or ten men with the artillery took their attention, and we got to the river and escaped. Kilkenny by swimming, and I and one M'Kay in a canoe. When Governor Semple fell, the people all gathered round him, though he called out to them to take care and do what they could for themselves, and directly a volley was fired, and scarce one of our party was left standing. I saw nine or ten dead bodies next day at the fort.

Attorney-General.—How did you get to the fort ?

Heden.—After making my escape, I got to the fort in the night, and remained there. Among the dead bodies brought next day to the fort, was that of Governor Semple; there were nine or ten bodies.

Attorney-General.—Did you see whether it was wounded by a musket ball ?

Heden.—It was mortally wounded in the left breast, but I could not distinguish whether by a musket or not, as it was all over spear wounds.

Attorney-General.—Did you see Grant afterwards, and Perrault ?

Heden.—I saw Cuthbert Grant the next day, but I do not know Perrault. Grant came to the fort, and took possession of it, and ordered us away. We went on the 23d June, in consequence. We were to take away the private property, the public was to be left behind, it was not to be moved. The fort was taken possession of on the 20th June by Cuthbert Grant and a party that came with him. It was given up to him, he was at their head, and he received it. Mr. Grant told me I could not leave Red River too soon, and on the 23d I went away, and all the servants and settlers, men, women, and children, were all sent off on the 23d.

Attorney-General.—Do you know how many did escape ?

Heden.—I do not know the exact number, but there was one George Sutherland, Michael Kilkenny, Daniel M'Kay, and myself.

Attorney-General.—Do you know whether Mr. Pritchard escaped, and how he effected it?

Heden.—I know that Mr. Pritchard made his escape, but I could not account for him; I can not tell how. We went off in boats, but without any guard, though a guard had been promised us. We were sent down the river to take our own chance, without any protection at all. On the 24th, at day-light, we met a number of canoes with Mr. M'Leod; there were ten canoes, with ten people in each. Mr. M'Leod enquired whether Mr. Semple, and that rascal, Robertson, were there, and Mr. Pritchard, I believe, said they were not. We were then all ordered to be put on shore, and our trunks and things were all overhauled, and our papers taken from us. I do not know what was the reason for keeping our papers. We went on to Netley Creek, and Mr. M'Leod with us, and then we were overhauled again, and I and several others were made prisoners. Mr. Alexander M'Kenzie was there, the Emperor, as he is generally called; a Mr. Leith, and a Mr. Haldane. Mr. John M'Donald, one of the Defendants, was there.

Attorney-General.—Was Simon Fraser there?

Heden.—I do not know. I do not know Simon Fraser.

Attorney-General.—Was Doctor M'Laughlin, or Mr. M'Gillis, there?

Heden.—Doctor M'Laughlin was there, but not Mr. M'Gillis.

Attorney-General.—Was Mr. Siveright there?

Heden.—He was not there then, I saw him the next day.

Attorney-General.—He came afterwards, did he? Did the others come with Mr. M'Leod, or arrive afterwards?

Heden.—I am not sure whether they came with Mr. M'Leod, as other canoes did arrive that day and the next. I saw some of Cuthbert Grant's party arrive at Netley Creek whilst I was there. I saw a clerk, named Fraser, and others arrive. Fraser was one of those who was in the battle of the 19th June.

Attorney-General.—Was you present at the conversation between the three that you have identified, and the Half-breeds who arrived from Fort Douglas?

Heden.—No, I was not. I did not hear any. I do not know of any presents being made to the Half-breeds. I do not know that rum and tobacco were served out to them. I did not see any of the clothes that had been worn by our people on the 19th, on these Half-breeds. We were sent to Point au Foutre, and kept a few days, and then sent on to

Fort William. At Point au Foutre Mr. M'Leod asked me about Mr. Cameron, who had been made a prisoner; and then shortly after I was put in irons, and sent to Fort William, and afterwards to Montreal, being kept at Fort William only a few days.

Attorney-General.—Is there, Heden, any other circumstance connected with this affair, that you remember, relative to which you have not been examined, but which you desire to mention? If there is, relate it now.

Heden.—I do not recollect any thing else.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood.—You have, I think, told us that you was in the service of the Hudson's Bay Company on the 19th June?

Heden.—I was in their service.

Mr. Sherwood.—And you was put under recognizance, and taken to Netley Creek, and thence sent to Fort William, and afterwards to Montreal?

Heden.—Yes, I was. I was sent a prisoner to Montreal, from Fort William, under a warrant from Mr. M'Gillivray.

Mr. Sherwood.—And you made oath to a long paper before Mr. M'Cord, the Magistrate there.

Heden.—I did take my oath before Mr. M'Cord. I made a deposition.

Mr. Sherwood.—You read, I suppose?

Heden.—Yes, I read a little, but not much.

Mr. Sherwood.—Did you ever read your own deposition in a book, or do you know that it was printed in a book?

Heden.—I do not know that I ever read it. I heard it was printed.

Mr. Sherwood.—How came it to be printed? Did you take it to a printer to get it published?

Heden.—I do not know how it was printed. I did not take it to any printer myself to have it published.

Mr. Sherwood.—I suppose you do not happen to know how a Magistrate came to publish in a printed book the King's evidence?

Heden.—I do not know any thing about it.

Mr. Sherwood.—Do you happen to know, that when you met Mr. M'Leod and his party they were coming from Montreal?

Heden.—I do not know that they came from there—*(in answer to a question from Mr. Sherwood, Heden said)*—

was told they did, but I do not know that they came from here.

Mr. Sherwood.—Do you know what route they were going to take, or what party Mr. M'Leod joined?

Heden.—I know nothing about their route at all, nor do I know any thing about what party Mr. M'Leod joined.

Mr. Sherwood.—I think you said in your examination by the Attorney-General, that you were sure you saw Doctor M'Laughlin and Mr. John M'Donald at Netley Creek; did I understand you right?

Heden.—Yes, I did say I saw them there, and I did see them.

Mr. Sherwood.—Recollect yourself; when did you see them?

Heden.—I can not be sure whether it was the first or second day, but I am sure that I did see them both at Netley Creek.

Mr. Sherwood.—And all you have sworn to is as true as this?

Heden.—I have only sworn to the truth; all is true.

Mr. Sherwood.—Answer my question, for you perfectly understand it. I am not asking you whether it is all true that you have been telling, but I ask you, is it all as true as this, that you saw Doctor M'Laughlin and Mr. John M'Donald at Netley Creek, or Riviere aux Morts, the first or second day after your arrival there?

Heden.—Yes, that is true, and it is all as true that I have sworn to.

Mr. Sherwood.—Can you swear what papers were taken away from you? were any taken from you individually?

Heden.—There were none taken from me, but there were from some of our party. I saw them being overhauled, and some were kept, and some returned.

Mr. Sherwood.—And is that as true as that the gun and blanket were stolen from you, which you swore to the other day, and the jury refused to believe; was it as true as that?

Heden.—I will not answer that question, except I am forced.

Mr. Sherwood.—Why not?

Heden.—Because I do not think you have a right to put it.

Attorney-General.—I really should submit, my Lord, that the Learned Gentleman ought to confine his cross-examination to the case before the Court, and not harass a witness by questions no way relevant to this trial.

Mr. Sherwood.—If corrected by the Court, I shall of

course bow to its authority, but Mr. Attorney-General must permit me to conduct my own cross-examination. I shall repeat the question.

Heden.—I won't answer that about the gun and blanket, except I am forced by the Court.

Court.—We shall not force you to answer it.

Mr. Sherwood.—Of course I do not put it then. You have spoken of some persons arriving at Netley Creek from Fort Douglas, and that these gentlemen appeared glad to see their acquaintances, and that they gave the labouring people some tobacco, and a glass of rum. Do you know how long that has been the crime of being accessary to murder?

Heden.—No, I do not know.

Mr. Sherwood.—Tell us again what passed when the people came from Fort Douglas?

Heden.—When the people arrived at Netley Creek from Fort Douglas, there was a great shaking of hands, and rum and tobacco was served out.

Mr. Sherwood.—Are you sure it was to the people who came from Fort Douglas that this good cheer was given?

Heden.—Yes, I am sure they came from there, and had been in the battle of the 19th June.

Mr. Sherwood.—Well, did you see any thing on the part of these gentlemen like assisting or helping to commit a murder, either individually or collectively? look at them all, and tell us if any of them helped to commit a murder?

Heden.—I did not see any of them helping to commit a murder.

Mr. Sherwood.—Did you see any thing on the part of Mr. Siveright, that was like helping to commit a murder?

Heden.—I did not see Mr. Siveright at all.

Mr. Sherwood.—You spoke in your examination in chief, of your being completely surrounded by the Half-breeds; was that the case? Were you entirely surrounded, or was there an opportunity for you to have got to the fort, if you had wished to have done so?

Heden.—I did not say, nor intend to say, they surrounded us completely; they formed a half-circle, and cut us off from the river, by getting between us and the river, but there was still an opening between us and the fort.

Mr. Sherwood.—Now, recollect yourself well. I ask you, was not the first shot fired from your side, or do you in fact know on which side it was fired?

Heden.—There were two shots fired before there was one from our party, by the Bois-brulés, if you except Mr.

Holte's gun, which went off some time before, and quite by accident. The two first shots were fired by the Half-breed party, and by them Mr. Holte and Mr. Semple fell.

Mr. Sherwood.—And every thing you have sworn to to-day is as true as this is, is it?

Heden.—It is all true, as far as I know.

Mr. Sherwood.—That is not what I ask you. My question is this, is every thing you have sworn to to-day as true as that the Half-breeds on the 19th of June fired two shots before your party fired one?

Heden.—It is all true that I have said, as far as I know.

Mr. Sherwood.—I will have this question answered; this is nothing about the blanket and gun. I will repeat the question to you, and you shall answer it.

Heden.—There were two shots coming, as I believe, from the same quarter, and I think by the smoke and the reports, from the Half-breeds, and by them Mr. Semple and Mr. Holte fell, and therefore I say, I think the Half-breeds fired first.

Mr. Sherwood.—That is very different from what he said before. I will therefore again put the question; have you never said that your party fired first, to any body whatever?

Heden.—I do not believe I have. I do not recollect that I ever did.

Mr. Sherwood.—Can not you recollect whether you ever said to any one that your party fired the first shot? I do not enquire whether they actually did so, but have you never said that they did? Recollect yourself, and tell the truth.

(The Witness did not reply immediately.)

Attorney-General.—I should be extremely sorry to object to any course of cross-examination, except such as has the appearance of ill treatment or incivility towards a witness. and I can not refrain from saying, that I do not consider the questions put to this man by any means fair, but on the contrary extremely irrelevant, and such as are calculated to confuse the witness, without promoting the ends of justice.

Mr. Sherwood.—The doctrine advanced by Mr. Attorney-General amounts to this, that he only is the proper judge of suitable questions in cross-examining a witness, and that no more must be obtained from a witness than meets his approbation. If this is to be tolerated, we

shall have no more of the truth than what such witnesses as this may choose to give us of their own accord; which may suit the views of some persons, but is not satisfactory to us, who are desirous that the whole truth may appear.

Attorney-General.—I am sincerely desirous that the whole truth may appear, and I have merely said, that if the man is not bothered, I believe the whole that he knows will be obtained from him; but if, by a series of questions no way bearing on the case, the man is to be confused, it is very improbable that satisfactory testimony will be obtained relative to the firing; all that the witness has ever presumed to say is, that he heard two shots and then a general firing, but that the shots were so instantaneous by which Mr. Holte and Mr. Semple fell, and the general firing so immediately followed them, that he could only judge from seeing the smoke and hearing the reports.

Mr. Sherwood.—I have no wish to delay time, I will therefore merely put the question to him, not as to who *did* fire first, but whether he ever said who fired first? Did you, when you returned from the battle, say to any body, "It was our party, or Governor Semple's party, who fired first?"

Heden.—I do not know what I might have said when I came out of the battle, I was so confused; I do not recollect that I said so, or any thing like it, but I was so confused, I do not know what I might have said.

Mr. Sherwood.—I have but this question to put to you. Have you ever to any body, within a few months, in this very town of York, said that your party fired first, and that you deserved what you got, for that you would have served them the same if you could?

Heden.—I do not recollect that I have. I do not think I have.

Mr. Sherwood.—One more question. Do you happen to know whether there were any of the Bois-brulés killed in this affair of the 19th of June?

Heden.—I do not know as a fact that there were any. I have heard that there was one man killed on the side of the Bois-brulés, but I do not know it of my own knowledge.

DONALD M'COY, *sworn.*

Examined by the SOLICITOR-GENERAL.

M'Coy.—I was ordered, in the spring of 1816, by Mr. Semple, to go to Qu'Appelle. I went, and on my return I

was taken prisoner by Cuthbert Grant, Thomas M'Kay, and several others, and carried back to the North-West fort at Qu'Appelle, and remained there a prisoner for three or four days. Whilst there, I heard the people talk of an intended expedition to Red River. I particularly heard one Francis Deschamps speak of it, besides others who were there.

Solicitor-General.—Do you know Mr. Alexander M'Donell of Qu'Appelle?

M'Coy.—I do, he was the head at Fort Qu'Appelle.

Solicitor-General.—Did you hear any speech made by him, or know of any speech being made by him, in going down, or at Qu'Appelle, to the Indians and Half-breeds, or by any body else?

M'Coy.—I did not hear any, nor I do not know of any being made by Mr. M'Donell. I heard Deschamps frequently say that the Brulés collected at Qu'Appelle, were going down to kill the settlers at Red River.

Solicitor-General.—Might it not be to disperse them, that he said?

M'Coy.—No, he did not; he said those same words, to kill them. I heard him frequently say so. I was kept at Fort Qu'Appelle three or four days, and then we marched to Brandon-house. I met a good many persons there, and amongst others, Boucher was there, and we talked about my having been taken prisoner at Qu'Appelle. I said we had plenty more at the fort and Settlement, to which he answered, they were soon going down, and would completely destroy the Settlement and the fort altogether.

Mr. Sherwood.—I beg leave, my Lords, to ask what we have to do with this evidence relative to an intention of Mr. Boucher or any other person to destroy this Settlement? Supposing even the intention to have existed, we are not indicted for the destruction of the Colony at Red River, or, if we were, this evidence would not be admissible against us, upon the vital principle of our law, that hearsay is not evidence. Let Mr. Attorney-General put us fairly upon our trial for being accessaries to Cuthbert Grant and Louis Perrault, in the murder of Robert Semple, and we are prepared to meet it, as we are every other charge he may think proper to bring against us; but we are arraigned to answer the accusation I have just mentioned, and I should suppose the Attorney-General would be obliged to confine himself to that charge.

Attorney-General.—We have no intention of going

into any other question than the one which obviously arises upon the Indictment. The accusation against the prisoners is, that they were accessaries before and after the fact, to the murder of Robert Semple on the 19th June. To maintain this charge, it is indispensable that we shew the prior, as well as subsequent, conduct, not only of the accused, but also of those who accompanied the principals in this outrage, or who gave directions for carrying it into effect.

Mr. Livius Sherwood.—I submit, my Lords, that the Attorney-General must shew that these orders were given by the persons whom he charges as principals, and to whom he alleges in the Indictment we were accessaries

Solicitor-General.—I presume, my Lords, we are entitled to shew the object with which the party set out from Qu'Appelle, amongst whom were the principals charged with the murder committed on the 19th June. If not, how are we to prove that which is the very essence of murder, viz. malice aforethought? what though the orders were given by a person not named in the Indictment; if we prove that they were accepted by the parties named therein, they made them their own, and participate in the malice which dictated them. I shall ask the witness, whether at the time of his being at Brandon-house, he saw Alexander M'Donell? —(*the question being put*)—

M'Coy.—Yes, I did.

Attorney General—I give up Boucher entirely, and shall not, in conducting this prosecution, again refer to him. I do so, not because I consider that I am precluded from referring to his conduct in connection with these melancholy transactions, from the circumstance of his having been acquitted of the murder, but because I consider that there is nothing important in his share in them that may not be, with equal and greater facility, brought home to the accessaries, by confining our investigation to the conduct of other persons. Relative to Alexander M'Donell, I shall pursue the examination, also with regard to Alexander Fraser, though not named in the Indictment. For, my Lords, I would ask how is it possible, in any case of murder, to convict either principals or accessaries, unless permitted to shew that which, as Mr. Solicitor-General observed, is the very essence of the crime, the malice of aforethought; and how is this to be done if we are precluded from examining into, or giving evidence of the previous conduct of this party? May we not, though governed by the strictest legal rules, shew, that in adopting the instructions of any man, though he be

not named in the Indictment, the malice aforethought was evident? What is the charge against Siveright and others? that they wilfully, feloniously, and of malice aforethought, not only commanded, hired, procured, and counselled, but also *abetted*, the four persons charged as principals. That may be done in a variety of ways, and though it should have been in concert with persons not named in the Indictment, yet it would constitute a fact of the same felony, and if proved that any of the four were aided and abetted in the commission of the crime by any of the persons who thus premeditated it, those who are charged as accessaries in this Indictment may be convicted upon that proof against the murderers being established.

Mr. Sherwood.—That I deny. I deny that the Crown has any right to associate us with persons not named in the Indictment, and infer our guilt from their conduct. The charge against us is not a general one, that with one general privity the offence was preconcerted or premeditated, but that we actually incited, moved, stirred up, the four principals named in the Indictment to perpetrate the murder of Robert Semple, or that, knowing it to have been committed, we afterwards received, harboured, and maintained them.

Solicitor-General.—We shall prove Cuthbert Grant to have been present at the time the orders were given, and that he was at Brandon-house at the time of the conversation referred to; also at the time of Mr. M'Donell's speech to the Indians; we therefore think———

Mr. Justice Boulton.—You had better continue your examination, but try and confine yourselves to what bears strictly and closely upon the case.

Solicitor-General.—Did you, M'Coy, hear Mr. M'Donell make a speech to the Indians, and what did he say?

M'Coy.—I did not hear any in particular. When Mr. M'Donell was speaking to the Indians I could not understand him, because he spoke in French. Afterwards I went to Fort Douglas, and found it was rumoured there that they were to be attacked. I remained there till the 19th June, and I was there on that day. Towards the evening of that day, the man at the watch-house in the fort called out that there were a party of men on horseback, coming down towards the Settlement. Governor Semple hearing the alarm, took his spy-glass, and with one or two of the gentlemen went into the watch-house, and saw them himself. He came out and told about twenty of us to get our arms and follow him, which we did. When we got about a mile from

the fort, we met some women running and crying that they were making to the Settlement, and had got carts with cannon; and going on a little farther, we met more settlers, who told us the same thing, and that they had taken some prisoners. Mr. Semple sent Mr. Bourke back to the fort for a piece of cannon that was there, and to get as many men as Mr. M'Donell, who had been left at the fort, could spare. We did not wait for the cannon. Upon coming near to the party on horseback, we saw that they intended to surround us, for they divided into two parties, and the one got between us and the river, and the other between us and the fort. When the horsemen began to gallop towards us, we stopped, and when they came near to us, they separated, and one party came across the road, and met the other, who had kept by the river's edge, and formed a sort of half-circle round us, and between us and the river and fort. We were scattered about and standing just as we chose. Mr. Semple, I think, was in front of the party. Boucher came over from his party to the Governor. I can not say I saw him ride up to him, but I saw him in conversation with him. I could not hear what passed between them, but shortly after, I saw the Governor take hold of the butt of Boucher's gun, and I immediately heard a shot, which came too near me, and I turned back and saw that Mr. Holte was wounded, and afterwards I saw that Mr. Semple had fallen; there was another shot which I heard directly after the first, and it was not till after the second, that I saw Mr. Semple down, but the two were close upon one another, indeed immediately after one another. The Governor told the men to take care of themselves; they had gathered round him upon seeing that he was wounded, and immediately after there was a volley fired, and I saw very few of our people standing.

Solicitor-General.— Was there any firing after that?

M'Coy.—Yes, there was, but not in a volley; there were a few guns fired afterwards. One Michael Kilkenny, myself, and Heden, run towards the river, and were followed by some men; one, who was armed with a spear, being very close to me, I fired at him, and so got away.

Solicitor-General.—Did you meet with Mr. Bourke in going towards the river, or hear any thing of him?

M'Coy.—I did not see Mr. Bourke, but I heard that he was wounded by a shot. We got into an old batteau, and got across the river, and then went to the fort in the night. Mr. Pritchard, who had been taken prisoner by the Half-breeds, came to the fort with a proposal to give it up, which

was represented to Mr. M'Donell, and by him to the settlers and people who were there, but at first they would not agree to give it up; afterwards Cuthbert Grant and Fraser (Alexander Fraser) came with a large party, and it was given up to them, and we were all to go away. We went away on the 24th, I think. We all went away from Fort Douglas, and were to try and get to some of the Hudson's Bay posts at a distance from the Red River country; but we met Mr. M'Leod and a large party, consisting of nine canoes and a batteau. Mr. Alexander M'Kenzie and Doctor M'Laughlin were there.

Solicitor-General.—Did you see any of the others there?

M'Coy—No, I do not recollect that I did. We were ordered all on shore and were examined, that is, a good many of us were examined, and afterwards we went to Netley Creek, where both parties encamped. Whilst there, some of the Half-breeds arrived from Red River. I mean some of the party who were engaged in the battle of the 19th June. They were very well received. I did not see any rewards or presents given to them. I did not see Cuthbert Grant after the 19th. I do not recollect of seeing Morain at Netley Creek, but I saw him afterwards at Point au Foutre, in company with those who had come from Red River.

Solicitor-General—Did you see any thing done by either of those gentlemen *(the whole of the Defendants)* that was like giving countenance to persons who had committed murder?

M'Coy.—No, I can not say that I did.

Cross-examination, conducted by Mr. LIVIUS SHERWOOD.

Mr. Livius Sherwood.—You have said, that when the Half-breed party saw you they galloped up and surrounded you; where were they at that time? who were nearest to the fort?

M'Coy.—We were nearest, as they were below us. They came nearly up to us, and then divided, and got behind us, and formed a half-circle.

Mr. L. Sherwood.—Did they get *between* you and the fort?

M'Coy.—Yes, they were below us, and one party went before us to the river, and one passed behind us, getting between us and the fort.

Mr. L. Sherwood.—Why then they cut off your retreat, if they got between you and the fort?

M'Coy.—Yes, they did. We could not get to the fort.

Mr. L. Sherwood.—Might you not be mistaken as to that?

M'Coy.—No, I could not. I am sure they surrounded us in a half-circle, one party going to the edge of the river, the other passed between us and the fort, and then joined them, and formed a sort of half-moon, cutting off our retreat.

(The Court directed Mr. Sherwood to wait whilst they made a reference to Heden's testimony upon this point. After some conversation between the Judges, the examination was continued).

Mr. L. Sherwood.—What language did you say Mr. Alex. M'Donell spoke in, when he addressed the Indians?

M'Coy.—Mr. M'Donell spoke French; when he made speeches to the Indians, he always spoke French to them.

Mr. L. Sherwood.—Do you understand French, so as to tell us what he said to them?

M'Coy.—I do not understand French much, and can not tell what he said to them. I do not understand French so as to speak it.

Mr. L. Sherwood.—Where was Mr. M'Donell when he spoke French to the Indians?

M'Coy.—He was amongst them; standing in the middle of them.

Mr. L. Sherwood.—Did the Indians understand French?

M'Coy.—I can not say; they pretty generally do.

Re-examined by the SOLICITOR-GENERAL.

Solicitor-General.—Was there an interpreter among the party that set out with Mr. M'Donell from Qu' Appelle?

M'Coy.—Yes, there were interpreters with us. I do not know if what Mr. M'Donell said to the Indians was interpreted. I can not say whether it was or not.

Solicitor-General.—If the Indians had not understood what was said to them in French, could it have been translated into Indian to them by the interpreters?

M'Coy.—It could certainly, but I do not know that it was.

Solicitor-General.—Are you sure that the Brulés were between you and the fort, so that you could not get to it without passing through them?

M'Coy.—Yes; they surrounded us on every side; at first they were before us, and then they divided into two parties, one going round by the river, and stretching beyond us, and the other, going round the other end of our line, got be-

tween us and the fort, and so cut off our retreat, that we could not get to it without passing through them.

Solicitor-General.—Then the wing extended so far as completely to cut off your retreat or passage to the fort?

M'Coy.—Yes, it did. There was no passage to it but by passing through the Brulés. I am sure there was not.

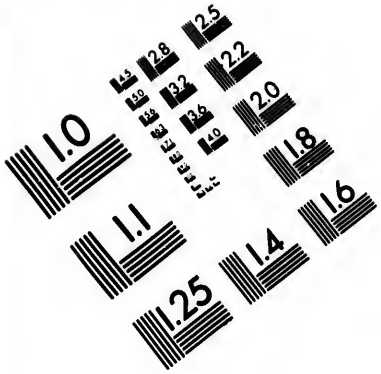
JOHN P. BOURKE, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Bourke.—I was at the Red River Settlement in 1816, and in the capacity of store-keeper to the Colony established by the Earl of Selkirk. I was there on the 19th June, and at about five or six o'clock, the persons on watch called out that the Half-breeds were in sight, and were making towards the Settlement. I went and looked myself, and saw a party on horseback going towards the Settlement. Governor Semple and a number of others went out to see what they were about, what they wanted. We had for some time been obliged to keep a watch, because we expected to be attacked; we had information that a large armed force were collecting at the North-West fort on River Qu'Appelle, and that they were coming down to destroy the Settlement. Indeed we heard that they had set off for that purpose. Mr. Semple, and from twenty to twenty-five of us, set out from the fort. We had not gone far when we met a number of women running in terror towards the fort, crying that the Half-breeds were come, and had carts and cannon. I believe they mentioned the North-West servants. I think they said the Half-breeds and North-West people. We went on a little farther, and then met more of the settlers, crying in the same way, saying the Half-breeds were coming down upon the Settlement with carts and cannon. Upon hearing this, Mr. Semple directed me to go back to the fort and get a piece of ordnance that was there, and to tell Mr. M'Donell to send as many men as he could spare along with the cannon.

Attorney-General.—How many men were there at the fort, at the time you saw the Half-breeds?

Mr. Bourke.—I think there were about forty or fifty, perhaps less, perhaps more. I believe that about as many were left behind as went out with Mr. Semple, but I could not be sure. Mr. Semple did not take all the men with him that he might have done; he told about twenty to follow



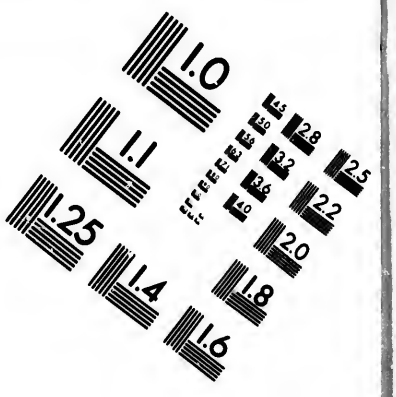
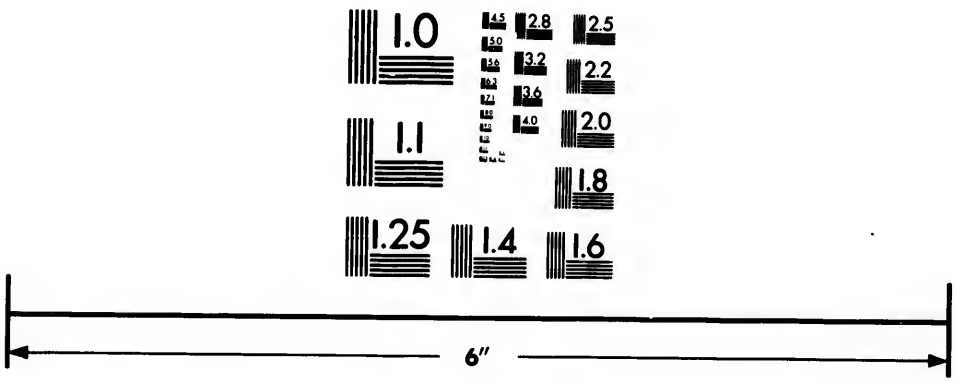
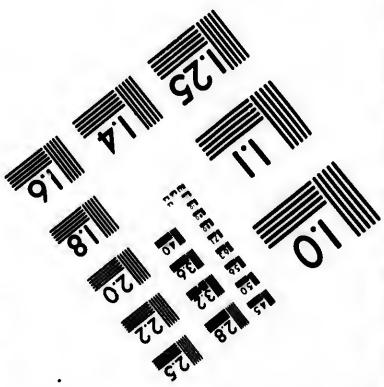


IMAGE EVALUATION
TEST TARGET (MT-3)





Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
2.5
3.2
2.2
3.6
2.0
1.8
1.1
1.0

him, more were going, but he hindered them; he could have taken from forty to fifty able men, had he wished to do so. We might as well have taken the cannon at first, as have got it afterwards, but we did not take any. It was not till the people told us the Half-breeds had cannon that I was sent to get one.

Attorney-General.—Were you put into rank, or order of march, or did you load your guns?

Mr. Bourke.—No, we were not, nor did we load our guns.

Attorney-General.—Your sole object in going out was to see who the party of horsemen were, and what they wanted?

Mr. Bourke.—That was all, and if Mr. Semple had not been there, Mr. M'Donell would have gone. Capt. Rogers, Mr. White, and Mr. Holte went with him. There were no orders given by Mr. Semple, or by any other person that I heard, to attack them, nor did I see any thing like an intention to do so. We went out to see who they were, and what they wanted, and when we met the people in terror crying that the Half-breeds were coming with cannon, I went to the fort to get one, and I did not afterwards join the party. After obtaining the cannon, I was returning, and I saw the horsemen gallop up towards Mr. Semple and his party. Mr. Semple had not reached the end of the Settlement when they surrounded him. I was then on horseback, and could command a view of the whole. I did not advance farther, for just as the party surrounded Mr. Semple, I saw a flash from a person who was mounted, and then immediately after a second, and directly a general firing took place. I was afraid lest I should be intercepted with the cannon, and determined to return with it. I went back part of the way with it, and meeting some men coming from the fort, I sent the cannon back with the man who drove the cart, and returned to where I expected to find Mr. Semple, with the men who by this time had joined me.

Attorney-General.—The circle that you spoke of just now, did it extend completely to the river?

Mr. Bourke.—No, it did not, there were woods on the bank of the river, so that it did not stretch to the banks.

Attorney-General.—Could your party have got back to the fort, if you had not been prevented by the Half-breeds?

Mr. Bourke.—Certainly they might, if the half-circle had stood still, and not fired upon them.

Attorney-General.—But if the party of horsemen were

between you and the fort, you could not get there, could you?

Mr. Sherwood. — I object to Mr. Attorney-General putting leading questions to this witness. His testimony and Heden's upon this very material circumstance directly contradict one another, and Mr. Attorney-General must not tell the witness what Heden has sworn to.

Attorney-General.—I have no wish to do so. I merely want to ascertain the fact. What do you say you did with the cannon?

Mr. Bourke.—I was afraid that I should be intercepted with it, and I sent it back to the fort, and returned with some men towards the place where I expected to find Governor Semple. Going along I met some men belonging to the opposite party, who called out to me in English to come on, saying the Governor was there, and wanted me. I however did not go up to them, but turned back, and tried to make my escape; as we were running away, we were fired at, and I was wounded, and a man named M'Naughton was killed. I however escaped to the fort, and on arriving there, or some little time afterwards, I heard that Governor Semple and all who were with him but four or five, had been murdered.

Attorney-General.—I thought you said you was on horseback.

Mr. Bourke.—I had sent my horse back to the fort.

Attorney-General.—How did you get to the fort, being on foot and wounded, and they on horseback?

Mr. Bourke.—They were dismounted and on foot then; they called out to me to give up my arms, which I refused to do, and run away, and they fired at me and wounded me. Duncan M'Naughton was killed by a shot about the same time. I did not see Cuthbert Grant among the Half-breed party on the 19th June, so as to distinguish him. On the next day Cuthbert Grant and Fraser, I believe, came to Fort Douglas. I was wounded and up stairs. I however crawled out of bed, and saw a large party, about sixteen or twenty, apparently under the command of Grant, who insisted, I believe, on every thing being given up to them, and that the settlers should all go away. I did not hear all that passed, but understood we were to leave the Settlement, and we did leave it on the 23d, I believe. As I understood, and as it was generally understood, we were granted our lives upon condition that we all left the Red River Country, and gave up all the public property and Lord Selkirk's property.

Upon these conditions we were permitted to go, and Cuthbert Grant promised to furnish us a guard to protect us from other parties of Bois-brulés who were expected. We went away in boats guarded by François Firmin Boucher. Cuthbert Grant did not go. I do not know if Morain did; he might perhaps, but I do not know him. On the second day after we left Fort Douglas, we met some canoes with a number of North-West partners and men: among them were Mr. Norman M'Leod, Mr. Alexander M'Kenzie, (commonly called the Emperor), Mr. John M'Donald, Mr. M'Gillis, Mr. James Leith, and a number of other partners. We met them before we came to Netley Creek. When we met them they set up the Indian war-whoop, and when we got close to them, they asked if Mr. Semple was of the party; this was done in a very insulting manner; they enquired if that scoundrel Robertson was there, and that rascal Pritchard. Being informed that Mr. Semple was killed, and of the melancholy affair of the 19th of June, they made us put to the shore. Mr. M'Leod ordered us to go. When we got on shore we had all our trunks searched, and after that they made us go to Netley Creek. This party was armed. When we approached them they appeared to be loading their guns; they also had two pieces of artillery, which had been stolen from the Colony the year before by the settlers, and taken to the North-West fort. There were Half-breeds in their party, but not in ours, but they were not any of those who were in the affray.

Attorney-General.—You know Cuthbert Grant; did he, at Fort Douglas, tell you what his intentions were in coming down with this armed party?

Mr. Bourke.—No, he did not tell me his intention, except with reference to Mr. Colin Robertson, whom Grant said, had he got hold of, by God, he would have him scalped.

Attorney-General.—Was any thing taken from the people, or was it merely a search that was made among your trunks?

Mr. Bourke.—They took what they liked, we were completely at their mercy; they took a good deal of property from me, which I asked for, but it was refused.

Attorney-General.—When you communicated the particulars of the horrid affray of the 19th June, and its melancholy termination, did they appear sorry or concerned about it?

Mr. Bourke.—No, they did not appear at all sorry; on the contrary, they all appeared very well pleased with the news.

Attorney-General.—Did the party with Mr. M'Leod appear short of provisions?

Mr. Bourke.—No, they had plenty; they did not express any surprise at not meeting provisions. I never heard them even say they expected them, nor do I believe that they did. Netley Creek is about fifty or sixty miles from Fort Douglas. An encampment was made, and all the settlers kept till the next morning, when I was arrested; Mr. Pritchard had been before. Michael Heden, Daniel M'Coy, one Corcoran, Mr. Pritchard, and myself, were made prisoners. I was not allowed to speak about the affair of the 19th June. I wanted to relate what I knew to Mr. Norman M'Leod, but I was not permitted. I was confined by my wound, so that I was unable to go about the encampment. We were treated with every insult and inhumanity. I was very bad from my wound, but could get no medicine, nor any thing done for my sore, and all my clothes were afterwards taken from me. A party of Half-breeds came from Fort Douglas, and among them were Fraser and others who were at the massacre on the 19th June. I noticed Alexander Fraser particularly, and besides him there were some of the others who took possession of Fort Douglas on the 20th, and whom we left there on the 23d, when we came away from that place under the guard of Boucher. Cuthbert Grant did not come with them. Relative to telling any of them that these people had been engaged on the 19th, and had afterwards taken possession of Fort Douglas, and sent us away, I certainly did not communicate with the Defendants, but they must have known it, for every body knew it that was there. I did not tell either Mr. M'Kenzie, Dr. M'Laughlin, or Mr. M'Donald, three who came with Norman M'Leod, but my fellow-prisoners did. I know Siveright, but he was not at Netley Creek, nor at the taking of Fort Douglas. After a few days, the settlers pursued their route towards Hudson's Bay. Myself and the four I have mentioned, were detained prisoners at Netley Creek.

Attorney-General.—Did you leave Netley Creek in company with these Gentlemen now under trial, or those you have named?

Mr. Bourke.—I did leave it in their company, and went a prisoner to Bas de la Rivière. I can not say I left it in their company, but they left it at the same time that I did, and I saw them afterwards at Bas de la Rivière. I saw Mr. M'Leod and the most of the Gentlemen I had seen before at Netley Creek, and I saw some of the Half-breeds who had

been at Fort Douglas on the 20th June. We were afterwards taken to Fort William. Before we went to Fort William I was put in irons. Irons were put on my hands, and all my clothing, a case of instruments, and my watch, were taken from me. Mr. M'Gillis came with the party, and I saw him afterwards at Bas de la Rivière, and at the same time I saw there Alexander Fraser, and two others who came from Fort Douglas to Netley Creek. Mr. M'Gillis was there, and so was Mr. John M'Donald. I was a prisoner during the whole of the time. I saw Hugh M'Gillis at Netley Creek afterwards; I do not recollect that I saw Simon Fraser among them.

Attorney-General.—Although *you* did not tell any of the Defendants that these people, who arrived at Netley Creek from Fort Douglas, had been engaged in the affair of the 19th June, and afterwards had sent you out of the Red River country, yet you have no doubt but they were acquainted with all the circumstances?

Mr. Bourke.—I have none at all, for it was the common topic of conversation at all times upon our passage to Fort William. I have heard the partners, and amongst them some who are now at the bar, frequently talking about the destruction of the Colony, and the murders of the 19th June. I particularly heard Mr. M'Gillis and Mr. Alexander M'Donell in conversation on the subject. M'Donell asked M'Gillis what had been his plan to destroy the Settlement, to which M'Gillis answered that he would have attacked the fort at once; to this Alexander M'Donell replied, "if you had, there would have been one half of "you killed."

Attorney-General.—Let us know more particularly about this conversation, for it appears to be very important. Where did it occur?

Mr. Bourke.—It was whilst we were on our way to Fort William. We were within a few days journey of the Lake called La Pluie, when late one night I was in my tent, and heard a conversation between a number of the partners of the North-West Company who were standing by a fire. I did not hear the whole of it, but some parts, which were spoken in a high tone of voice, I distinctly heard. There were a number of the partners together, but I can not say who they were, but I know Mr. M'Gillis and Alex. M'Donell were two who were present at the time I heard Mr. M'Donell——

Attorney-General.—Was it Alexander M'Donell, who was at Qu' Appelle, that you are speaking of?

Mr. Bourke.—Yes, it is the same person. I heard him, in this conversation, say, that the sending down the Half-breeds was certainly carrying things to extremities, but that it could be said that our people had gone out of the fort to attack the Half-breed party, and by that means met their fate. Mr. M'Donell asked Mr. M'Gillis what was the plan which he would have taken to destroy the Settlement, and he replied that his plan was to attack Fort Douglas at once, or immediately; to which Mr. M'Donell said, that if they had, they would one half of them have been killed, as the fort was fortified. Mr. M'Gillis then asked Mr. M'Donell what had been his plan; to which M'Donell answered, he had proposed to starve the fort, as they had only a few bags of pemican. There was a good deal more said, but that was all I heard about the affair of the 19th June. I was taken to Fort William, where I was kept a close prisoner, in the most horrid manner, in a place that had been a privy, and into which no light was admitted but what came through the crevices, between the logs of which the building was constructed. I was kept in this place above twenty days, and was then taken to Montreal.

Attorney-General.—Was any thing said by Mr. M'Gillis about the murders which were committed on the 19th June?

Mr. Bourke.—I did not hear any thing.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—You, Sir, I believe came out to the Indian country from Europe in the service of the Hudson's Bay Company?

Mr. Bourke.—I came out under Lord Selkirk's protection, and not in the service of the Hudson's Bay Company.

Mr. Sherwood.—Do you not know that the Earl of Selkirk is the principal proprietor, that he is at the head of the Hudson's Bay Company?

Mr. Bourke.—No, I do not; I do not know any such thing.

Mr. Sherwood.—Do you not know that he is a Partner in the Hudson's Bay Company?

Mr. Bourke.—No, I do not. I never saw any writing, or any thing by which I am able to say that he is a Partner.

Mr. Sherwood.—Well, Sir, though you have never seen the Deed of Partnership, (which I did not suspect you

had), did you ever hear that Lord Selkirk was a Partner in the Hudson's Bay Company, or do you believe he is a Partner?

Mr. Bourke.—I have heard that Lord Selkirk is a Partner of the Hudson's Bay Company, and I have no reason to doubt it. I do believe that he is a Partner, but I do not know it.

Mr. Sherwood.—But, though Lord Selkirk is a Partner, yet *you* do not consider yourself in the service of the Hudson's Bay Company?

Mr. Bourke.—Certainly I do not. I was engaged by Lord Selkirk's agent, and have always considered myself engaged in his Lordship's service.

Mr. Sherwood.—You are not in the service of the Hudson's Bay Company then, you are sure?

Mr. Bourke.—No, I am not, that I know of. I do not think I am.

Mr. Sherwood.—You do not *think!* Do you not *know?* I suppose you know whether you are in the service of the North-West Company or not?

Mr. Bourke.—I am not in the service of the North-West Company, you may depend upon that. I am in the service of the Earl of Selkirk, and, as I consider, in his service only.

Mr. Sherwood.—Do you know that a few months before the 19th June, the North-West Company were in possession of a fort, called Fort Gibraltar, situated near the Forks of the Red River, about a mile from Fort Douglas?

Mr. Bourke.—Yes, I do. I know Fort Gibraltar was about a mile, or not so much, from Fort Douglas.

Mr. Sherwood.—Do you know that your people took possession of it, and afterwards razed it to the ground, and conveyed the materials to Fort Douglas?

Mr. Bourke.—I know that it was taken by our people, but that is all I shall say about it.

Attorney-General.—I feel it my duty, my Lords, to oppose, in this early stage of the present trial, the course which, by the question just answered by the witness, the Learned Gentleman seems prepared to pursue. In the examination of the witnesses on the part of the prosecution, nothing has been produced but what there was an absolute and inevitable necessity for, to substantiate the charge brought against these Defendants, by shewing the intention with which this party set out from Qu' Appelle. Beyond that we have not taken a step, though we might pursue pre-

cisely the same course, and prove aggression upon aggression. But I should not dream of proving, as a defence to a charge of murder, that three or four months before a provocation was given sufficiently strong as, at the moment perhaps, to have alleviated such a charge to some diminished homicide. Such a course must serve, I think, to convict, by shewing that malice, which the law always contemplates and charges as existing in cases of murder, actually did exist, and assigning a cause for its existence. How can the destruction of Fort Gibraltar justify even the taking of Fort Douglas? but how by possibility can it be any defence for being accessary to the murder of twenty-two persons? I submit to your Lordships, that the Learned Gentleman ought not to be allowed to enter into an examination of any circumstances but such as are strictly connected with the charge which the Defendants are called upon to defend themselves against.

Mr. Sherwood.—I differ with the Learned Attorney-General, and humbly believe I shall have the honour of being supported in the reasons of my difference by your Lordships, because I am rigidly following the course authorized by the Court on the trial of two of the principals on this very Indictment. The defence of the accessaries is precisely the same as that which we satisfactorily offered for the principals, and we have no doubt but the result will be similar. If they prove the taking of Fort Douglas, why may not I prove the sacking of Fort Gibraltar? If they are admitted to prove the capture of property, why am I to be debarred the proof that our property has been taken from us? I would solicit your Lordships' attention to what was the nature of our defence the other day, because the very same defence we shall present on this, with this difference only, that our personal evidence will be much stronger to our innocence, than on the former trial. We shall offer the same chain of circumstantial evidence, in combination with a mass of positive testimony, and it must be an extremely severe construction indeed of the rules of evidence which can exclude it; a construction that, after our experience in the former case, we are confident the Court will not enforce. I most respectfully repeat an observation which I addressed to the Court on a former argument, viz. that it is a case *sui generis*, and ought not to be bound by that strict construction of rules which, in ordinary cases, governs our practice. But, my Lord, to-day we stand in a very different situation to that which we occupied when for-

merly discussing the same question; we have no occasion to be enquiring what may be done; we may refer to the wisdom of your Lordships' decision, and shew what has been done under it in the fellow-case, in a trial under the same Indictment: we have a precedent to refer to in the trial of Brown and Boucher. In reply to an observation of Mr. Attorney-General, as to the strictness with which he has confined himself to the rules of evidence, I remark, that he has introduced mere hearsay testimony against persons who are not indicted. I had always thought that hearsay was not evidence in regard even to those who were indicted, but it is the first time I ever witnessed it admitted relative to a third person, as evidence against a prisoner; but, in your Lordship's opinion, it no doubt was necessary to the administration of substantial justice in this extraordinary case. If Mr. Attorney-General goes back to circumstances, to shew that the *malus animus* existed previous to the battle, may not we go back and shew, from a combination of circumstances, that a state of irritation mutually existed between the adherents of these two great Companies, such as might be reasonably expected to lead quickly to blows whenever they met? and if we establish that fact, do we not thereby do away the charge of premeditated malice? If we are not allowed to do it, the coming with guns might be considered a proof of malice premeditated, whereas, if we are, (as we shall shew the necessity there was from this very state of things at all times to go armed), it will turn out to be an accidental rencontre, very fatal in its consequences, and much to be regretted, but, nevertheless, from the mutual state of exasperation between the parties, not amounting to murder. It can not be too often enquired, whether, under the circumstances of the country, notwithstanding the lamentable loss of lives, murder could be committed, as well as whether the Partners of the North-West Company were accessaries to its commission? I should think that the Crown felt doubts upon the subject, for to sustain the simple charge, the abstract accusation of committing murder at Red River, and being accessary, we have seen the Attorney-General travel up to Qu'Appelle, as different a position as Onondaga is to Lake Simcoe. We see him travelling four hundred miles from the place; from there he goes to Bas de la Riviere, just touching at the scene of action; then we meet him at Lac de la Pluie, and finally at Fort William and Montreal; a journey of nearly three

thousand miles, which, it will be seen by this bird's eye view of his route, he has found it necessary to take, to prove the very first ingredient of his charge, viz. a premeditated malice.

Attorney-General.—I have to beg that the Learned Gentleman, though his statement does not affect the case at all, will state correctly. I have not mentioned Lac de la Pluie during the trial.

Mr. Sherwood.—I beg the Learned Gentleman's pardon, but I have not yet mis-stated him. Mr. M'Gillis is mentioned as having come from Fort William with Mr. M'Leod, and a conversation is related, which took place at Lac de la Pluie, and, except in that instance, the name of Mr. M'Gillis has not been introduced by any witness, either on his examination in chief, or in his cross-examination.

Attorney-General.—It is a matter of very little consequence. This irregular method of cross-examining a witness must be opposed some time, and it may as well be at the present moment. As to the example which the Learned Gentleman considers I have set him in going from place to place, it is in no point of view similar. I must take this party wherever I can find them. I prove their setting out from Qu'Appelle. I accompany them to Portage des Prairies; shew their departure for the Settlement, and the melancholy catastrophe that occurred on the 19th June; after that I endeavour never to lose sight of them; if they are at Bas de la Riviere, I shew their conduct; if they are to be met four hundred miles in a contrary direction, I follow them, and shew their conduct, and from their conduct the Jury will appreciate their intention. It is indispensable that this should be done, because it is only by their conduct that their intentions can be correctly appreciated; what may be the consequences of my doing so, is not a point necessary for me to argue.

Mr. Sherwood.—I did not consider Mr. Attorney-General at all in order, in interrupting me in the argument I was addressing to your Lordships. There are, I take it, two points highly necessary for us to pay attention to in these very important trials. We have to take care, for the purpose of distributive justice, to preserve the strict rule laid down the other day, and also that we carefully follow the entire course of that trial, for it was a satisfactory and correct course, and eminently calculated to attain the ends of substantial justice. On that occasion it was argued and settled, that the names of Grant and Perrault appearing on

the Indictment as principals, testimony might be given of their conduct, and that it was good evidence against Brown and Boucher, the principals then under trial. To-day the accessaries are under trial, and a new question arose; can the dictum of these individuals be taken as evidence against accessaries? The Crown Officers said, you shall not go into your evidence of justification as the other day, because, although there might be a justification for the principals, it does not follow that it is one for the accessaries. But, my Lords, we contend, and with confidence, that we have a right to pursue precisely the same course to-day. We are now on trial without a single principal being convicted or attainted, and all that have been tried have been acquitted, and they were acquitted on this very ground, that we shewed satisfactorily that, although lives were lost, still there was no premeditated malice, and therefore there could be no murder. Till Mr. Attorney-General establishes the premeditated malice, he establishes no fact, and we must meet his endeavours to do so, and refute them if possible. There can be no accessaries before the fact where there is no fact; there can be no accessaries after the fact where there is no fact, and no fact has Mr. Attorney-General yet proved. To convict us, he must shew to this Jury that the principals are guilty, though hereafter, on their own trial, they may be acquitted, and we, consequently, relieved from the present consequences of an erroneous verdict. To shew this premeditated malice, Mr. Attorney-General has travelled to Qu'Appelle, and proved that this party set off armed; he gets to Portage des Prairies, and we hear of an Indian harangue, and of the party proceeding on horseback, and in this manner he has taken his witnesses from place to place, all over the Indian country, and even to Montreal. After this, shall we not, my Lords, be permitted to shew that this, instead of indicating malice, was exercising the duty of self-protection? Shall not we be permitted to disprove this pretended harangue, or to shew that any regrets, contained in casual observations made to Indians, were occasioned by the depredations daily committed on our property preventing our treating them as we had been accustomed to do? Shall we not be permitted to shew, that our going on horseback was one of the inconveniences which the conduct pursued towards us compelled us to suffer? Yes, my Lords, if Mr. Attorney-General travels, so must we, for we have just as good a right.

Attorney-General.—My Lords, I stand here the advo-

cate of propriety, and humbly represent to your Lordships the extreme irregularity of the course pursued by the Learned Gentleman, not only in his examination of the witnesses, but in the observations which he submits to the Court. The Learned Gentleman says, I have travelled four hundred miles from the scene of action. I have so, but it is absolutely necessary that I should do so, or how am I able to prove the intention of the persons accused? If, instead of four hundred, it had been a thousand miles that they had gone, I must have followed them. The course, my Lords, that I have adopted, I consider to be obviously the correct course. I traced this party to Fort Douglas, and I never have left them for one moment; wherever I may have journeyed, it has been so as not to lose sight of the accused; and it is a matter of no consequence whither I am obliged to trace them, though even across the Rocky Mountains. Respecting the licence which your Lordships allowed on the former trial, I bowed, as it is my duty to do on every occasion, to the wisdom and authority of the Court; but I do trust that the extent to which that privilege was carried by the Learned Gentleman who conducted the former defence, and the manner in which it was used, will have satisfied your Lordships, that the ends of public justice are not to be promoted by admitting a repetition of it. I can not see what justification—justification it can not be—or what defence can it be, that aggressions have marked the conduct of both parties. So far from being any defence, I consider that the very circumstances produced for that purpose established the charge, by shewing the malice, which the law considers the criterion of murder. I trust we shall not be exposed to the inconveniences which invariably attend any deviation from the strict rules of law; as in the Act giving us power of jurisdiction over offences committed in the Indian Territories it is declared, that they shall be tried in the same way, as well as be considered offences of the same nature, as if they had been committed within the province exercising the jurisdiction; and moreover, as the offence now under trial has, by the Grand Jury, been found to have been committed at York in the Home District, I do hope the ordinary and established rules for trying such offence will be adhered to, or if attempted to be exceeded, your Lordships will enforce their observance.

Mr. Sherwood.—My Lords, I cannot refrain from expressing my astonishment at this attempt of the Learned

Gentleman to overturn the salutary and excellent decision given by your Lordships at the commencement of these proceedings; a decision acted upon with such singular propriety, and so perfectly conducive to the real and substantial purpose of impartial justice between the Crown and the accused. It is true, my Lords, it was as Judges of Assize that the decision was given, and as Judges of Assize that your Lordships presided over the trial which was regulated by that decision. But, my Lords, though a trial at the assizes, it was conducted with all the dignity of a trial at bar. Nothing could be more grave than the deliberations which took place, nothing more solemn than the decision which your Lordships' wisdom gave upon the arguments we severally had the honour of submitting to the Court in support of our opposing opinions; and not only was that decision grave and solemn, but it was a decision perfectly equitable, and also perfectly satisfactory to the public, who have a lively interest in the result of all decisions made in the course of these trials. Your decision, my Lords, was founded upon rules of law laid down by the most eminent Judges that ever adorned and dignified the administration of justice. Upon the principles of the great Lord Hale, upon the principles of the great Sir William Blackstone, a course was adopted the other day, upon that excellent, sound, and wholesome decision, as satisfactory as the decision itself; and it was a course, that, like the decision, was perfectly satisfactory to the public. The decision and course were substantially right, because they admitted that which the justice of the case required, viz. every combination of circumstances that could throw any light upon the transactions which produced the state of exasperation which was incontestably proved to have existed in that country; the utmost latitude was admitted on both sides, and very properly admitted. It was a case completely *sui generis*, such a case as the wisest on the bench never witnessed, such a case as never was considered by any Court. The decision to admit every thing to be shewn, was a wise decision, because it was a decision consonant to the ends of strict, impartial, and substantial justice. It is a decision that has established a precedent upon which we may safely rely, a precedent which ought to be most strictly followed. It was a salutary principle of action, (and salutary it certainly was), in the case of the principals on this Indictment; why should it be narrowed in a case where, from the very peculiar situation of those interested in the application of the rule, it ought rather

to be extended? Why, I would ask, is a rule so recently established in the case of the principals, to be set aside upon the trial of the accessaries? It is impossible to assign any reason that will satisfy, and I am persuaded that you will not, until that is done, vary from so equitable a decision as the one which your wisdom dictated on the recent trial. But if doubt existed whether a rule made for the trial of principals ought to extend to the accessaries upon the strict principles of law, yet there is one rule so general, and so congenial to the spirit of British Law, that I think, under it, your Lordships will not hesitate a moment; it is the principle, that every thing that can, without violation of a known and fixed rule of law, shall be conceded *in favorem vitæ*, and, my Lords, upon that principle alone I would stand without fear, confident that your Lordships would not overturn a rule where accessaries are under trial, which yourselves established when the principals were before you.

Solicitor General — I fear, my Lords, unless your Lordships take a different view of the subject to that which the Learned Gentleman has adopted, we shall find ourselves altogether in a very awkward dilemma. The Learned Gentleman is not, I think, entitled to receive from your Lordships the indulgence extended to him the other day, because he completely failed in proving that which he said he would prove, namely, a continued, unabated state of exasperation of mind, that never, from the continuity of aggression, had been allowed to cool, or had had time to subside. It was upon this statement, and I conceive upon this strong statement only, that your Lordships, after very considerable hesitation, admitted the course to be pursued which was contended for by the prisoners' Counsel; but, my Lords, after completely failing to prove, from the Proclamation of Mr. M'Donell to the 19th June, an uninterrupted state of passion, diminishing the homicide to manslaughter, if not justifying it, the Learned Gentleman ought not, I think, a second time, to be allowed to go into the course of examination and defence permitted on that occasion. The reason it is wished for, I think but too evident. It is obvious, I think, that it is not the object of the party to prove a state of actual irritation, such as legal rules admit in extenuation of the crime which is obliged to be charged as murder, but it is, by going into a lengthened statement of difficulties which have occurred between these two companies, to blacken the conduct and character of the opposite party: as such testimony can amount to no defence on a charge of murder,

we do think, my Lords, it ought not to be allowed to be produced.

Mr. Sherwood.—Our object was then, (and, with great deference to Mr. Solicitor-General, I think I may be allowed to say, I understand what it was quite as fully as he possibly can do), as it is now, to shew first, provocation exciting a degree of irritation; and secondly, repeated and uninterrupted aggressions, continuing that irritation, from that first provocation up to the unfortunate 19th of June. My object was to shew these two particulars, and for what? to obtain the acquittal of the prisoners, by satisfying the minds of the respectable Jury who tried them, that they were innocent of the crime of which they were accused. I was permitted by your Lordships to proceed with the evidence I humbly contended the substantial justice of the case demanded, and we had the satisfaction of seeing the trial eventuate in the acquittal of two of the principals on this Indictment. The very same objects I have in view, now that the accessaries are upon trial, and the very same course I propose to pursue, because I am confident I shall attain the same aid.

Attorney-General.—I do not, my Lords, intend to offer any additional reasons to induce an acquiescence in what appears to me the only legal mode of conducting this trial. In making use of that expression, I beg I may be understood as intimating my humble opinion, with the greatest deference to your Lordships' wisdom, by which at all times I desire to be governed; but having on a former occasion so fully developed my ideas upon the question, I should consider I was unnecessarily protracting the discussion, were I to offer again the same, or even additional arguments. The question is submitted to your Lordships' decision, and by that we must be regulated.

Mr. Justice Boulton.—Your question, Mr. Sherwood, I think can not be put, for no answer that is given to it can be made evidence. It is calculated only to shew that malice did exist, and was cherished, and certainly does not, according to my idea, come within the limits of fair evidence.

Chief Justice.—The object of the prisoners' Counsel can not, I think, for a moment be concealed or misapprehended, for it is a very plain one, and a very important one for them to establish, if they have evidence to do so. They say they have the evidence, but the question is then, can the evidence be legally admitted? Their object is to shew that, what in ordinary cases would manifest a felonious intent, does not do so in this. That is undoubtedly the real ob-

ject; it is obviously so. To establish this point, they go back to a certain period of time, and tracing from thence aggression upon aggression, upon the one side and upon the other, they endeavour to establish the necessity of sending an armed force to guard their provisions when under transportation. In that point of view, I did think it proper to allow them to shew that this necessity did exist, and I am not prepared to say that we went too far in permitting it. Whether the indulgence thus given was not carried beyond the limits that were intended, may also be questioned. They contend that they have a right to shew the innocence of the remainder in the same way they did that of the others. But it is necessary to observe, that the case here is a case of accessaries; a case not exactly, as the Counsel for the prisoners contend, the same as the former, for the principal may extenuate or justify his conduct in cases where a prisoner can not that is an accessary after, for there can be no accessary before the fact, in this, or any case of murder, if upon the trial it is alleviated to manslaughter, but there may be accessaries after the fact. My opinion is, that we did right the other day, and that the same course ought to be pursued now. Let the Jury have before them all the witnesses know upon the subject. I think it is but fair that every thing should be proved that can throw any light upon the subject of these unfortunate quarrels, which led indubitably to this melancholy catastrophe. The justification for going armed, which is the main prop of the defence, can be proved no other way than by admitting evidence that, from the state of things in that country, it was a measure of self-defence almost indispensable. If they satisfactorily establish such a state of things, then they go a great way towards meeting the charge, or at least towards accounting for their conduct in setting out armed, which, if they were not admitted to explain, might of itself be considered as furnishing strong evidence of hostile intentions. They commence with the Proclamation, as shewing that the exportation of provisions was prohibited, and they say the effects of that Proclamation, and of the attempts to enforce it, were to produce a high state of exasperated feelings among the persons accustomed to trade in that country, and that, under that state of excitement, it was not murder which was committed by the principals, and consequently the accessaries can not be guilty of the crime of which they are accused. This state of excitement, I think they may prove, provided they never lose sight of it, but go on and shew that it never subsided, from the

moment of the Proclamation being issued, up to the truly lamented affair of the 19th June; but if there is any interval allowed to be shewn, then it is a defence that must fail.

Attorney-General.—Respecting the Proclamation, my Lords, of which so much has been said, I observed before, and I do so again at the present moment, that I consider it as having no weight whatever on the accusation, or the defence to that accusation which is now trying before your Lordships, and I think that it was unadvisedly admitted on the former trial. As to its forming any defence to the persons now trying, I should contend that, although it might be admitted to have provoked animosity, still proof of animosity existing between the parties can not amount to a justification, and ought not, therefore, to be allowed to be given in evidence. The utmost length I consider this mode of defence ought to be permitted to extend itself, is to general questions as to the state of the country, but particular acts of aggression should not be allowed to be set up as a defence, merely because they provoked animosity. It is not my shewing that violence on my part was not entirely unprovoked, that will operate as a defence against a charge of murder, but on the contrary, in proving a specific provocation, I may actually establish the malice which constitutes the foundation of the charge.

Chief Justice.—I am sorry to see the principle so completely misapprehended. If the object of the Counsel for the Defendants was appreciated correctly, it would appear to be a fair one. They put in a Proclamation prohibiting the exportation of provisions, and authorizing their detention, if attempted to be sent out of the district over which Mr. M'Donell was Governor. They then ask, do you know of pemican belonging to the North-West Company being seized and taken from them by armed parties? The answer being in the affirmative, it is manifest that the object of this course of examination is to establish a justification of this party arming to protect their provisions, which they say it was necessary to send from Qu' Appelle to meet the canoes coming from below. I can not conceive how Gentlemen can misapply observations that are so plain; I should conceive it impossible for misconception to arise as to their correct meaning.

Mr. Sherwood.—May I put the question, my Lords? the object we have in view is precisely that which his Lordship has stated, and we feel ourselves completely entitled to attain

it in the manner I had attempted when I was interrupted. Of my right to adopt such a course after the recent trial, I should have thought doubt could not be entertained. I beg leave, my Lords, to enquire if I may continue my cross-examination by putting the question?

Mr. Justice Boulton.—A majority of the Court are of opinion that you may, though I can not see with my learned brothers but that, if you go into an examination of whether pemican was taken, that the Attorney-General must go into a similar one, and it appears to me a line of defence very like setting up one aggression against another.

Mr. Sherwood.—The line of defence, my Lords, that I propose to myself, is precisely the same line I adopted in the former trial; and I shall follow it, unless prevented by your Lordships, for Mr. Attorney-General really must not interrupt me again. If stopped by your Lordships, I must bow with submission, and shall do so, but I apprehend I shall not be stopped. I consider this to be a part of the self-same cause, and I shall pursue the self-same course. I shall read the famous Proclamation, and shall go on from that without stopping until I arrive where I stopped before. My first question now will be, was Fort Gibraltar taken, and when was it taken by the Hudson's Bay people?

Mr. Bourke.—Fort Gibraltar was taken, I believe, in March 1816.

Mr. Sherwood.—Now I do not ask you whether you were there, helping to commit the outrage, but was Michael Heden there? and to prevent any difficulty, I inform you that it is a question you must answer. The protection of the Court extends no farther than to prevent your being brought into difficulty yourself by any answer you might give to a question, but does not enable you to shield your companions or friends.

Mr. Bourke.—I believe Heden was there at the time.

Mr. Sherwood.—Do you know how long it was kept possession of before it was taken down?

Mr. Bourke.—I believe it was till May; I saw it up in May.

Mr. Sherwood.—Was it then razed to the ground, and sent to your Fort Douglas?

Mr. Bourke.—I can not say. I did not see it taken down, but I believe that it was taken down in May.

Mr. Sherwood.—Leaving Fort Gibraltar, which seems an unpleasant topic to you, I will ask you when, on the 19th June, you went out of Fort Douglas and your party, whether

you were not all armed with guns, bayonets, and ball-cartridge?

Mr. Bourke.—I was armed, that is, I had my gun, and we generally had guns; some might have bayonets as well as guns, but I do not know of their having ball-cartridge.

Mr. Sherwood.—What had you, if you had not ball-cartridge? had you snipe-shot?

Mr. Bourke.—I had powder and ball, but no cartridges.

Mr. Sherwood.—Was Mr. Semple armed strongly? do you recollect his having a double-barrelled gun, and pistols?

Mr. Bourke.—He had his double-barrelled gun, but I do not know of any other arms positively.

Mr. Sherwood.—Will you undertake to say he had not pistols, as well as a double-barrelled gun?

Mr. Bourke.—No, I will not, for very likely he had pistols.

Mr. Sherwood.—You said, I think, that you saw the flashes at the time of the firing; pray, Sir, what distance was you from the scene of action?

Mr. Bourke.—I suppose I might be about two miles off.

Mr. Sherwood.—And you mean to say that you could, in that country, intercepted as your view must be by trees and stumps, discern, at a distance of two miles, who fired, by seeing the flash?

Mr. Bourke.—There were neither trees nor stumps to intercept the view. It was perfectly a level flat country, and I could discern plainly by the flash, whether the fire was from a person on horseback or on foot.

Mr. Sherwood.—And from that you mean to say that the first fire came from the Half-breed party?

Mr. Bourke.—Yes, it is from that circumstance I say so.

Mr. Sherwood.—How far had you proceeded after leaving Fort Douglas, before you met the Gentlemen with Mr. M'Leod?

Mr. Bourke.—We had gone about fifty miles, I expect, when we met them.

Mr. Sherwood.—And you were then sent to Netley Creek?

Mr. Bourke.—Yes, we were, and I was kept there as a prisoner.

Mr. Sherwood.—I will now ask you, if Cuthbert Grant ever did commit a murder, do you know of either of those Gentlemen giving him any countenance in so doing, or rewarding him?

Mr. Bourke.—I believe they have. I did not see how

those who came from Fort Douglas to Netley Creek were received, because I was a prisoner at the time, but I saw some of them together afterwards at Fort William, and I believe they did approve of their conduct, and I have heard that many who took part in destroying the Settlement were rewarded for so doing.

Mr. Sherwood.—I am not asking you about *any* who were engaged on the 19th June, but I ask you, if *ever* Cuthbert Grant committed a murder, do you know of these Gentlemen approving of his so doing? Did you ever see Cuthbert Grant and them together?

Mr. Bourke.—I did not. I saw Alexander Fraser there with them, and he was one of the Half-breeds who was in the affair of the 19th June.

Mr. Sherwood.—I don't want to know any thing about Alexander Fraser; I asked you about Cuthbert Grant; answer the question that is put to you, and keep your own stories for some other time. Do you know that the North-West Gentlemen, on going to Fort Douglas, found a great deal of their own property there?

Mr. Bourke.—They did not tell me any thing about it, and I was not there when they arrived at Fort Douglas.

Mr. Sherwood.—I did not ask you if *they told* you they found a good deal of their property, nor whether you were present at the time, but I asked you, and I ask it you again, do you know, or do you not know, that the North-West Company found a great quantity of their own property at Fort Douglas?

Mr. Bourke.—I do not know what they found there, for I did not see them arrive.

Mr. Sherwood.—I shall put the question again, for I want a direct answer to it—either you do know, or you do not?

Attorney-General.—If, my Lords, this course of examination is allowed, I must also be permitted to enter into similar enquiries. I must be permitted to shew *how* it happened that property belonging to the North-West Company was found, (if any was found,) at Fort Douglas, if the Learned Gentleman is allowed, as a defence to a charge of murder, to give evidence of such a circumstance. By adopting this mode of defence, and by its being allowed by your Lordships, it might almost become my duty to account for this Proclamation, and for every other act, either of this unfortunate gentleman, Mr. Semple, or any person connected with the Settlement at Red River. What, as an abstract question, I would ask, has the finding of property at Fort

Douglas to do with the murder or destruction of twenty-one persons? In what manner, I would ask, is it to justify the accused, or to lessen the criminality of those concerned in the transaction? I repeat, my Lords, with the greatest deference, that the line of defence does appear to be a most extraordinary, and a most irregular one.

Chief Justice.—These circumstances are not adduced as justifications of murder; they are used as accounting for what might otherwise be considered a direct and positive proof of malice prepense. It is a justification for their going armed. They shew that their property had been taken from them by armed parties, and from thence account for their being found with arms in their hands.

Mr. Livius Sherwood.—We wish, my Lords, to shew that it was not a pretence of danger that led this party to be armed, but that a real necessity existed for it, if they wished to preserve their property; and one method of proving it was to shew, that in this fort we found property that had been taken from us. We wish to shew that, by the armed dependants of Governor Semple and his predecessors, ever after the Proclamation of Mr. Miles M'Donell, our provisions had been constantly taken from us, under the justification of this Proclamation which introduces our Defence. We wish to shew that this Proclamation was a commencement of aggression and hostility on their part. We do not produce this to justify acts of aggression on our part; but it goes to do away the inference of malice prepense, which our being found with arms in our hands might lead the Jury to draw. I submit, my Lords, that we are clearly entitled to do this, and I feel perfect confidence that we shall not be restricted by your Lordships.

Mr. Sherwood.—There can be no doubt that Mr. Attorney-General, in common with us all, entertains the highest respect for this Court; if he did not, I should consider his proposal to adopt a contrary course to that which was so recently solemnly decided to be the correct one, as an endeavour to lead the Court tacitly to censure its own judgment, by allowing a diametrically opposite principle to govern us now, to what regulated our proceedings before. Why, I would enquire, should we be hesitating about our course, when we have the benefit of precedent to guide us? I have always apprehended that the moment an authority was found upon any questionable point, that doubt immediately was at an end, as to the course to be pursued. Here we have a precedent so recent, that it is in all our minds; a precedent, the

benefit of which, from the infirmities of human nature, we may often have occasion to refer to, for our guidance in investigating offences committed in this remote part of His Majesty's dominions. The course of proceedings in the case of Brown and Boucher will be given to the world, and, upon all future trials for offences committed in the Indian Territory, will be looked up to as an authority the most decisive, and it is well entitled to be so looked up to, from the solemnity and deliberation which preceded it. If in the practice of law we are not to be guided by precedent, I would ask, what is to be the rule of our conduct? If the decision of your Lordships yesterday, upon the trial of a principal, is to be set aside to-day, on that of an accessary upon the same Indictment, I would ask what is the certainty, where the assurance, that to-morrow the decision of to-day may not also be set aside? We have the authority of your Lordships for our course, and we can not consent to adopt any other with that precedent before us. If your Lordships do not feel disposed to enforce your own decision, we shall be at a loss for a precedent, I fear, on every future occasion, and such a state of practice would be dangerous in the extreme.

Attorney-General.—So far, my Lords, from any danger being to be apprehended from not following a precedent, which allows murder in 1816 to be justified by a Proclamation to prevent the exportation of provisions in 1814, followed up by evidence of a series of aggressions on the one side and on the other; I say, my Lords, so far from apprehending any danger to the correct administration of criminal justice from departing from such a precedent, I think the sooner it is reversed, and a practice more consonant to the rules of law and the demands of justice introduced, the better. I would be very far from attempting to dictate what is the proper course to be pursued, but a paramount sense of duty compels me thus to oppose the Defence which it is again proposed to introduce. I go farther, and urge that, although your Lordships did, on the former occasion, allow the Proclamation of Mr. Miles Macdonell to be put in evidence, yet they failed in attaining the length to which they promised to carry the proof of an uninterrupted state of exasperated feeling from that moment till the melancholy catastrophe of the 19th June. All, my Lords, that was shewn on the recent trial was, that aggressions had marked the conduct of both parties. But surely these outrages, in

themselves violations of the law, exposing the perpetrators of them to trial and punishment, can not form any defence for persons accused of murder, even were their frequency such as to amount to an uninterrupted series of aggression. Having, my Lords, so frequently expressed my own conviction of the irrelevancy of such a defence, I shall oppose it no longer than I consider your Lordships not to have explicitly declared it to be an admissible defence; whenever I am given to understand that that is your Lordships' decision, I shall bow to it with submission, but, although on the former trial the course was allowed to be pursued which is now proposed to be adopted, yet as the promise under which the permission was obtained was not fulfilled, I think there would be no inconsistency in confining the present trial to the ordinary rules of criminal courts of judicature.

Mr. Sherwood.—I ask for this Proclamation to be read. It is the Proclamation of Mr. Miles Macdonell, read upon the former trial. The decision of your Lordships upon this solicitation will determine whether the precedent established on the former trial is to be followed, or a new rule introduced in opposition thereto.

The Proclamation, (see p. 98 of Brown and Boucher's Trial,) was then read.

Mr. Sherwood.—Did you, Mr. Bourke, ever hear how Mr. Miles Macdonell came to be Governor of the District of Ossiniboia? Did you ever see his commission, so as to say by what authority he was a Governor?

Mr. Bourke.—I always understood that he was appointed by commission from the Honourable the Hudson's Bay Company.

Mr. Sherwood.—Do you know that they possess any authority to appoint Governors, or by what authority they exercise the right of doing so?

Mr. Bourke.—I have seen the Charter of the Hudson's Bay Company, which gives the Company that power.

Mr. Sherwood.—We will go one step farther back. Do you know who granted them this Charter, which authorized them to appoint, or which they say authorized them to appoint, Mr. Miles Macdonell Governor?

Mr. Bourke.—It was granted by King Charles the IId. as I have been told, to Prince Rupert and others, and I believe gives power to the Honourable Company to appoint Governors in the Territory of Hudson's Bay.

Mr. Sherwood.—You never saw a commission from the

Prince Regent, or his present Majesty, appointing Mr. Macdonell a Governor, did you ?

Mr. Bourke.—I never did. I have no knowledge of its being necessary that he should have one.

Mr. Sherwood.—To whom, Sir, did you disclose your knowledge of what had passed in the Indian country ? Did you make an affidavit before any body ?

Mr. Bourke.—Yes, I did make an affidavit. I made it before Mr. M'Cord at Montreal, after having disclosed to the Attorney-General all I knew.

Mr. Sherwood.—Do you know if that affidavit has ever been printed in a book, and given to the public ?

Mr. Bourke.—Yes, I know that it has been printed.

Mr. Sherwood.—Did you take it to the printing-office, or give directions for it to be printed ?

Mr. Bourke.—No, I did not give it to the printer.

Mr. Sherwood.—Was your approbation asked to its being printed ? Was you consulted in any way about it ?

Mr. Bourke.—No, I was not consulted on the subject.

Mr. Sherwood.—Do you know that it is the duty of a Magistrate to keep secret the King's evidence ?

Mr. Bourke.—I do not know any thing about the duty of a Magistrate on that head.

Mr. Sherwood.—Do you think it his duty to print depositions of witnesses, and poison the public mind against any unfortunate person who may be accused, and thereby expose him to the chance of losing his life ?

Attorney-General.—I do, my Lords, trust that your Lordships will interpose, and stop this highly exceptionable examination of the witness.

Mr. Sherwood.—And, my Lords, I trust that your Lordships will not prevent so cruelly immoral an act from being exhibited in all its deformity to the world. It is, my Lords, nothing but an act of bare justice to the Defendants, that they shall be allowed to shew these efforts to poison the public mind, and corrupt the pure stream of justice by giving the King's evidence to the world, and I contend the Defendants have a right to shew that these attempts have been made to prejudice a fair trial.

Attorney-General.—These cruel immoralities have unfortunately not been confined to one side or party. Pamphlets and newspapers have been flying about in all directions, most improperly I allow, but, strongly as the Learned Gentleman characterises the enormity, it is as fully participated

in by the one party as by the other, and can not, on either side, furnish evidence on the present occasion.

Mr. Sherwood.—I resist the correctness of Mr. Attorney-General's assertion, and say that I am proud to mention, that against us the allegation of having disclosed the King's evidence is unfounded. Though, amongst the Gentlemen connected with our side of the question, there are many who are Magistrates, they have never, in the warmth of personal feeling, or in the promotion of personal interest, forgotten their paramount duty as Magistrates. Indeed the book I allude to, is the first proof I ever had that any person possessed influence enough to obtain the King's evidence, and as it is the first instance, so I hope it is the last, I shall ever witness of any person, however exalted his rank, being able to get hold of and publish the King's evidence, which every Magistrate is bound to keep secret.

Attorney-General.—I am not disposed to defend such conduct; but the complaint has very little weight coming from those whose conduct has evinced that the immorality which shocks the Gentleman is not confined to one side.

Mr. Justice Boulton.—It is a highly improper proceeding, and exceedingly discreditable, as well as criminal, in whoever was guilty of such conduct.

Mr. Sherwood.—I rebut Mr. Attorney-General's charge against us on this score, and say, we are filled with astonishment and indignation at such a violation of duty, and in no way participated in the enormity. I shall, however, continue my cross-examination. You are acquainted, I suppose, with the late Mr. Semple's hand-writing. Will you look at this letter, and tell me if it is his hand-writing? (*The Letter being handed to the witness*),

Mr. Bourke.—Yes, this is the hand-writing of the late Mr. Semple, and is addressed to Mr. Alexander M'Donell.

Mr. Sherwood.—I move that it be read.

The following Letter was then read.

Fort Douglas, 14th May, 1816.

A. MACDONELL, Esq.

SIR,

I take the opportunity of Mr. Seraphim La Mar's return towards Qu'Appelle, to acknowledge the receipt of your letter of the 5th inst. The idea of Mr. Robertson making a journey of 120 miles for the purpose of a conversation with you, appears

to me wholly inadmissible, when the same purpose may be just as effectually answered at the first point, or at either of the forts. Still less can I think of delegating full power to any man to form definitive arrangements when I myself am on the spot, and must alone be answerable for them both to friends and enemies. In the mean time, my wishes for general tranquillity will ever remain unchanged. I am satisfied with the proofs which remain in our hands, and seek no more. Should you be unwilling to meet us here, I leave it to yourself to appoint a spot at a moderate distance from the Forks for a conference. Whatever plan you may adopt, I repeat, that your person and property shall be considered sacred, unless you commence acts of hostility. Should you, however, have occasion again to write to me, it will be perfectly unnecessary to talk of your means of retaliation. I also, should I be compelled to it, have my schemes of further and still further retaliation, the shock of which, if I mistake not, should be felt from Athabasca to Montreal.

I am, Sir,

Yours, &c.

(Signed) ROBERT SEMPLE.

Mr. Sherwood.—Do you know where Athabasca is?

Mr. Bourke.—No, I cannot say that I do exactly.

Mr. Sherwood.—Do you know that a number of your people were starved there?

Mr. Bourke.—No, I cannot say that I do know it.

Mr. Sherwood.—Did you ever hear that they were?

Mr. Bourke.—Yes, I have heard that some were.

Mr. Sherwood.—I suppose you mean you do not know its latitude and longitude. I do not ask you for that, but do you know whereabouts Athabasca is? does it bear North or South from Red River, and is it near to, or a great distance away from the Colony?

Mr. Bourke.—You go towards the North to Athabasca, and it is, I believe, a long way North, but I know nothing of its latitude and longitude.

Mr. Sherwood.—You was brought to Fort William afterwards, I believe: how was you treated there?

Mr. Bourke.—Badly enough, I had been brought down in irons in a canoe, on the top of a large quantity of baggage, and on my arriving at Fort William, I was put into a place that had been used as a necessary, and into which no light came, except through the crevices between the logs of the

building, and I was kept there twenty days, and then taken down to Montreal. I was robbed of my watch and all my clothes, and not allowed to dress my wound, which I received from their people on the 19th June.

MILES MACDONELL, Esquire, sworn.

Examined by the ATTORNEY-GENERAL.

Attorney-General.—You, Sir, I believe were appointed Governor of the District in which Lord Selkirk's Settlement on the Red River country was, and in that capacity issued a Proclamation: will you state to us your object in so doing.

Mr. Macdonell.—My object in issuing the Proclamation was to prepare the means of subsistence for a number of persons who were expected from the forts at Hudson's Bay, and from Europe, in the ensuing season, to establish themselves as settlers at the Colony. I had information that a number were wintering at York and Church-hill Forts, having arrived too late to prosecute their journey to the Settlement, but they were to come on as soon as the season would admit of their travelling. I also expected a very considerable additional population for the Settlement to arrive by the Hudson's Bay ships of the next season. Apprehensive that, in the uncultivated state of the country, and its being destitute of supplies, they might suffer hardships, unless provision was made for their support, I issued the Proclamation forbidding the produce of the country to be taken out of it, except under certain provisions. It was a general order, having no more relation to the one Company than the other; it affected both equally, and perhaps inconvenienced both, but I thought it my first duty to provide, from the lands, for those who were to settle on them; and the state of agriculture in the District affording but a very small supply, I felt myself bound to use every means in my power to secure those settlers that I knew were wintering, as well as those whom I had reason to expect in the ensuing season, from want, and I therefore issued a general order, prohibiting the exportation of produce, except so far as might be necessary for the supply of the traders actually in the country, and the Proclamation provided for their receiving, or being furnished with whatever was necessary for their supply; and they were supplied,

though I felt it my imperative duty to stop provisions from being taken out of the District. I did, on one occasion seize a large quantity of provisions from a North-West, station; but afterwards, upon a requisition being made for them, I restored what was necessary, according to their own ideas, to carry on the trade. That was the nature of the Proclamation. It was only to prevent an unnecessary exportation of provisions, and to secure the rest for the use of the inhabitants, at a fair and reasonable price, according to the value in the country. The object of the Proclamation was to secure provisions, so as to prevent the emigrants from being exposed to starvation, from the unsettled, or rather uncultivated state of the country, a measure rendered necessary by the addition that was expected during the year.

Attorney-General.—Upon application, Sir, were provisions returned to them, that is, were they furnished with them?

Mr. Macdonell.—Yes, upon their application they were furnished. They made a requisition, and I gave them what they required, and they did not stint themselves. Any party of traders in the country could have as much provision as they themselves judged necessary for their own consumption, but I thought it my first duty to take care of those who were immediately committed to my care; the Proclamation invited the persons having provisions to bring them in, and stated that they would be paid for at a fair price, and I was always willing to pay for them.

Attorney-General.—Have the North-West Company received a remuneration for their provisions, or if they have not, to what circumstance is it to be attributed?

Mr. Macdonell.—They have not received any; I believe that they would not fix any price, and therefore they could not be paid.

Attorney-General.—It has been alleged, Sir, that Fort Gibraltar was taken. Had you ever experienced any ill-treatment from the residents of that fort?

Mr. Macdonell.—We did, Sir, a great deal, in my time, of the most serious nature, the most unprovoked and wanton nature, from Duncan Cameron and those under his command. Our people were fired upon often when doing nothing but pursuing their work on their farms; our cattle were killed, and indeed every species of insult and outrage was constantly practised against us. I, on one occasion, as agent for Lord Selkirk, gave or addressed a notice

to the person in charge at the fort, to quit the premises by a certain time, but nothing was ever done in consequence of it. Attacks of a very serious and monstrous description had been repeatedly made upon us; it is impossible to state of what description, they were so various. On one occasion, one of my gentlemen was fired at, and mortally wounded; on another, the Settlement was attacked, and afterwards burned to the ground. Every outrage that could well be offered we experienced from them. I had a commission appointing me Governor of the District of Ossiniboia, and it was in virtue of that commission that I acted in the Red River country. I received it from the Hudson's Bay Company, from the Court of Directors; it was a commission under their seal, appointing me Governor of that District.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood.—You were not aware, Sir, I presume, that, in appointing you Governor, the Hudson's Bay Company were exercising authority which they did not possess, or authority that they had no right to give; that they had no right to delegate the powers you assumed yourself entitled to exercise? You, of course, esteemed your commission valid. Do you know that it was so?

Mr. Macdonell.—I think it was so, or I should not have acted upon it, but I may err in judgment.

Mr. Sherwood.—I am sure that is the only way Captain M'Donell would err; no person can have a higher respect for the private character of Mr. Miles Macdonell than I have, nor can any person entertain a more contemptuous one for every thing appertaining to the Governorship. Will you just look at these two Notices, and say, Sir, whether they were issued by you?

Mr. Macdonell.—They were; my reason for issuing them was to prevent any claim of prescriptive right being set up.

Mr. Sherwood.—I do not impute any improper motive to you, Mr. M'Donell; you undoubtedly thought it necessary to do so. I move that they be read.

(The following Notices to quit were then read).

DISTRICT OF OSSINIBOIA. } To Mr. Alexander M'Donell, or the person acting for the North-West Company in the vicinity of Carleton House.

TAKE NOTICE, that by the authority and on the behalf of your Landlord, the Right Hon. Thomas Earl of

Selkirk, I do hereby warn you and all your associates of the North-West Company, to quit the post and premises you now occupy in the vicinity of Carleton House, within six calendar months from the date hereof.

Given under my hand, at Red River Settlement, this twenty-first day of October, 1814.

(Signed) MILES M'DONELL.

DISTRICT OF OSSINIBOIA. } To André Poitras, or the person acting for the North-West Company at Rivière la Souris.

TAKE NOTICE, that by the authority and on the behalf of your Landlord, the Right Hon. Thomas Earl of Selkirk, I do hereby warn you and all your associates of the North-West Company, to quit the post and premises you now occupy at Rivière la Souris, within six calendar months from the date hereof.

Given under my hand, at Red River Settlement, this twenty-first day of October, 1814.

(Signed) MILES M'DONELL.

Mr. Sherwood.—I have no farther questions to put to Mr. M'Donell. I am very happy that Mr. Attorney-General called him, as it prevents the necessity of my doing so, and I embrace this opportunity, with the permission of the Court, to say that every observation that has been made by me, relative to Mr. Miles M'Donell, is directed only to his public character, or to his public situation, for as a man, as a gentleman, as an upright active magistrate, as an estimable and valuable member of society, as a brave and indefatigable soldier and officer, no person can entertain a more exalted opinion of another than I do of that gentleman; but I have the most sovereign contempt for his delegated power, and those who gave it him. I hold in the most absolute derision this assumption of authority by a person who is no more a Governor than I am.

HUGH M'LEAN, *sworn.*

Examined by the ATTORNEY-GENERAL.

M'Lean.—I lived at Fort Douglas in 1816. I knew Mr. Semple in that country; he was Governor there. We had frequently been informed that we were to be attacked by the Half-breeds and North-West people. On the 19th June, as I was coming home to the fort in the evening, I saw an armed force on horseback going towards the Plains. As I

got nearly up to the fort, I saw Mr. Semple and between twenty and thirty persons going out of the fort.

Attorney-General.—Could you distinguish whether the people on horseback were armed?

M'Lean.—I saw them at that time too far off to say whether they were armed or not; afterwards I knew they were. Mr. Semple's people were generally armed, perhaps all might be, but I can not particularly say, for I did not go with them. I was told that Mr. Semple had taken them to see what the people wanted who were seen going to the Plains. After they had been gone some time, Mr. Bourke the store-keeper came back for a cannon, and then I went out. I went with Mr. Bourke, and drove the cannon, which was in a cart. We did not overtake Mr. Semple and his party. We went on a short distance only with it, and then I returned with the cannon to the fort, by directions of Mr. Bourke. I reached the fort in safety. I was not wounded, but the horse drawing the cannon was. I left it at the fort and then returned. The mounted people were formed in a circle or half-circle, and our people who were on foot were on the inside of the circle; the Half-breeds were formed like a half-moon. I saw both those on horseback and on foot, but I did not see any firing between them. Having left the cannon, I went out again, but had not gone far before I met about eight or ten people running as hard as they could, and they were being fired at. I found Mr. Bourke wounded: he had been looking for the Governor, and was called to by a parcel of men hid behind some bushes, to come to Governor Semple, and was then fired at and wounded.

Attorney-General.—Then you reached the fort safe, did you?

M'Lean.—Yes, thank God, I was not hurt any way. The next day I saw nine or ten dead bodies, and among them was the corpse of Governor Semple; they were brought to the fort in carts by the Indians. I saw Cuthbert Grant on the 20th, at the fort, with a large party of Half-breeds and others. I did not hear what passed between him and our Gentlemen, but I understood it was about our all going away, and giving up the fort, for we had been asked if we would give it up by our own Gentlemen.

Attorney-General.—Do you know John Siveright, one of the prisoners at the bar; did you ever see him before?

M'Lean.—Yes, I saw him in the spring at Fort Gibraltar.

Attorney-General.—Did you see him after the battle?

M'Lean.—No, I do not recollect that I did. Two days after, or on the 23d, we all went away from the fort, and the Settlement was entirely broken up. We went to Jack River House by water. On the day but one after we left the fort, we met a large party in canoes; there were nine or ten large canoes full of people, and we were all ordered ashore, after some conversation between some of their party and some of ours. I saw Mr. Alexander M'Kenzie there, but I do not recollect for the others; there were, as I understood, a number of the Partners of the North-West Company there, but I did not know them.

Attorney-General.—Do you know of any information being given to the Partners of the North-West Company by the people from Fort Douglas, of the affair of the 19th June?

M'Lean.—No, I do not. I was not near enough to hear any thing that had passed between them.

Attorney-General.—You have said that you saw the mounted party and those on foot at a distance. Could you distinguish any of the mounted party, so as to say who they were?

M'Lean.—No, I was not near enough to see who was in the battle. I merely saw them at a distance.

Attorney-General.—Were you present at any assembly of Half-breeds, where any speech or harangue was made by any body on the subject of the affair of the 19th June?

M'Lean.—No, I was not. I never heard any from any body.

Cross-Examination, conducted by Mr SHERWOOD.

M'Lean.—I do not know who fired first. I know that murders were committed, because I saw the bodies.

Mr. Sherwood.—What do you mean by murders being committed? would you call it murder if you killed a man in battle?

M'Lean.—No, not if he was killed fairly, but these were not, for they were shot first and speared afterwards, and I don't call that killing a man in battle fairly.

Mr. Sherwood.—Would you think it murder to kill a person in defence of your own life, or your property?

M'Lean.—No, certainly I should not think it murder to try and save my property, or my life, and if I killed a man in doing so, it would be his fault, and not murder.

Mr. Sherwood.—How do you know that these persons

were not defending their lives or property on the 19th June?

M'Lean.—I do not believe Mr. Semple or his people would have meddled with them, if they had not with him.

Mr. Sherwood.—Do you know, or did you ever hear, of any of these Gentlemen having assisted in the murders, as you call them? do you know that any one of them assisted to commit these murders, as you think proper to call them, or were helping in any way?

M'Lean.—No, I do not know that any of them did. I have heard a good deal about them.

Mr. Sherwood.—What you have heard is not exactly evidence, but I dare say you have heard, and would like to tell us, a great deal: but you may go.

JOHN PRITCHARD, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Pritchard.—In June, 1816, I lived at the Red River Settlement, at the Colony of the Earl of Selkirk; I was a settler. I knew Mr. Robert Semple; he was Governor of the Hudson's Bay Territory in general. On the 19th June, Governor Semple and a number of other persons were killed. We had been alarmed with reports for some time, that the Colony was to be attacked by the Half-breeds. On the 17th, Moustouche and Courte Oreille, another Indian, came to the fort from the Half-breeds' camp, and gave us information that we were to be attacked within two days from that time, by a party who had set off from Qu'Appelle, and had stopped at Portage des Prairies, under the command of Alexander M'Donell. There were generally residing at Fort Douglas with Mr. Semple, from forty to fifty men; that was the usual number of residents.

Attorney-General.— Upon receiving this information from the Indians, what did Governor Semple say or do?

Mr. Pritchard.—He heard all they had to say, and examined them very particularly, but said to the Gentlemen that it was impossible, after all their other depredations, that the North-West people could be so bold and unprincipled as to think of attacking the Settlement. He then desired a strict watch to be kept night and day, so as to receive the earliest information of their approach; which was done. He said he could not believe they would be so unprincipled as to break up the Settlement, and distress the poor people who were settlers, and did them no harm, whatever might be their

hatred of the Company's servants, (Hudson's Bay Company's servants.) As I was about returning home from writing, I heard a man cry out, " the Half-breeds, the Half-breeds !" this was about six o'clock in the evening, I should think. Immediately the alarm was given, and I saw Governor Semple take his spy-glass, and go to a place whence he was likely to have a good view. I went and looked too, and I distinctly saw a number of persons on horseback going towards the Plains. Shortly after, the person at the watch called out that the mounted party were making towards the Settlement. We saw they were armed. Mr. Semple then said, " we " must go and see what these people want; let twenty follow " me." Something was said by some person about more going, but he said, " no, twenty will be sufficient, let twenty " come with me." About that number took our guns and went along with him. I believe there were about twenty-five or twenty-six. We had not gone far before we observed, beyond a point of wood, that the party increased very much; Mr. Semple, therefore, directed Mr. Bourke to go to the fort, and get a small piece of ordnance, and to tell Mr. M'Donell to send as many men as he could spare, and return as quick as possible. We met a number of the settlers running towards the fort, and crying, but we went on. We stopped a little while, but Mr. Bourke being delayed, we went on again towards the Settlement. We had not gone far before we observed the Half-breed party advancing towards us. They came up in a direct line, and when they were pretty near up to us, they opened into two parties, and surrounded us in a half-circle or half-moon. As they advanced upon us, we went back to get out of their way. It was not to run away, but we retreated back a few steps; it was no use to run, they being on horseback, and we on foot; we then saw Boucher advancing from his party, waving his hand to us, and calling out in broken English, " What do you " want ? what do you want ?" Mr. Semple directly said, " What do *you* want ?" to which Boucher answered, " we " want our fort." Mr. Semple replied, " go to your fort." What Boucher said then I do not know, as by this time they were close together, and spoke too low for me to hear. What the answer was I can not tell.

Attorney-General.—But what you have related you heard distinctly, did you, so as not to be mistaken?

Mr. Pritchard.—Yes, I did; I heard Boucher make some reply to Mr. Semple then, but I was not near enough to hear what it was that he did say, but I saw Mr. Semple

put his hand on the butt of Boucher's gun, and almost immediately there was a firing, and I saw Mr. Holte struggling on the ground, and immediately after I heard a general firing, a sort of irregular volley.

Attorney-General.—Was it a single shot you first heard?

Mr. Pritchard.—Yes, I heard the report of a gun, and turning round directly, I saw Mr. Holte struggling on the ground, and almost immediately there was a general firing, like an irregular volley, and nearly all our people were either killed or wounded.

Attorney-General.—Can you say from which party the first shot that you heard, the single shot, came?

Mr. Pritchard.—I can not. We were in a good deal of confusion, expecting every minute to be attacked, so that I could not say from which side it came, nor I never did have any certain information who fired first. I saw Mr. M'Lean rise once, and he was defending himself when he fell a second time, and I believe expired. I saw Captain Rogers rise after he had fallen, and he came running towards me. At that time I did not see another of our people standing, and I said to Mr. Rogers, "for God's sake, throw down your arms, "and give yourself up—we shall be murdered here else—we "shall be murdered; for God's sake, Rogers give yourself up." He directly threw down his arms, and run towards the party, crying in broken French for mercy, and saying he was their prisoner. A Half-breed, named M'Kay, called him a dog, and said he was one of the Officers of the Colony, and immediately shot him through the head, and another ripped his belly open, uttering the most horrid imprecations. I now almost gave myself up for lost, when I observed a Canadian whom I had known. I now begged of him for God's sake to try and get my life spared. I said to him, "you are "a Frenchman, you are a Christian, so am I—you are a "man, you are a Canadian, join with me in begging my "life." He did, he begged for me, and warded off blows that were aimed at me, and received several himself in protecting me from them. M'Kay, who knew me, called me a little toad, and asked me what I did there, and said he had a great mind to serve me as he had Rogers, but eventually Lavigne succeeded in saving my life, and I was given in to the care of Boucher or Morain, they telling me at the same time that I was a poor little dog, and had no great while to live. I had several very narrow escapes afterwards. Deschamps and a number of Brulés wanted to kill me; once Boucher saved my life—once I had to beg Morain to let me

save myself, though I knew the Burgeois did not like me, and after great difficulty and many very narrow escapes, I at last got to the encampment at Frog Plains.

Attorney-General.—Did you see Cuthbert Grant in the battle?

Mr. Pritchard.—I might have seen him, but I do not know that I did. I saw him that night, and he told me my life was safe, and whilst I was with him that I need not fear. He said that they expected to have surprised the Colony, and then they would have starved out the fort, for they would have prevented any body from leaving it to get provisions, or if they had left the fort, they would have shot them; that having surprised the Colony, they intended at night to have surrounded the fort.

Attorney-General.—Did he say any thing about their bringing provisions down to supply the canoes that were expected from below, that is, from Fort William?

Mr. Pritchard.—No, I heard nothing like that.

Attorney-General.—When did you first hear about the object of this journey being to bring down provisions?

Mr. Pritchard.—I never heard that assigned as the cause of their coming down, till I heard it in Lower Canada; that was the first time I ever heard of it. I know Cuthbert Grant's hand-writing very well, having frequently seen him write, as he was under me for some time when I was in the service of the North-West Company.

(A letter being shewn in his hand-writing. Upon motion of the Attorney-General, the letter dated River Qu'Appelle, 13th March, 1816, from Cuthbert Grant to J. D. Cameron, Esq. (see p. 123 of the Trial of Boucher and Brown), was read).

Attorney-General.—Did you, Sir, ever see that letter before, or when did you first see it?

Mr. Pritchard.—It was an intercepted letter, and I have seen it frequently before, but I saw it in Mr. Semple's possession before the 19th June.

Attorney-General.—What was done with you? I mean individually.

Mr. Pritchard.—I was taken a prisoner, as I may say, on the 19th June, and was liberated on the 20th.

Attorney-General.—When did you first go to Fort Douglas after the saving of your life?

Mr. Pritchard.—I went on the same night. Grant told me whilst I was a prisoner at the Plains, that an attack was going to be made on the fort that night, and that if any re-

sistance was made, man, woman, and child would indiscriminately be massacred. Mr. Fraser also said the same, adding, that it had been said they (the Half-breeds) were blacks, * and we should see that they would not belie their colour. I begged of Grant to spare the women and children, who, whatever we might have done to offend, could not have injured any body. After a great deal of difficulty, I got him to consent that, upon condition of our all going away, and giving up all public property, our lives should be spared, and I then went to Fort Douglas to carry the conditions, many of the Half-breeds being very unwilling that I should be allowed to go, and warning me against the impossibility of my escaping from them, and cautioning me against attempting it. The terms were not at first agreed to, but after some consideration they were, and we prepared to go away. We went away on the evening of the 22d, having given every thing up to Cuthbert Grant, who gave a receipt for them on behalf of the North-West Company, and we proceeded on our way by water to Hudson's Bay. On the 24th we were met by Mr. Archibald Norman M'Leod, and a large party of persons; there were nine or ten large canoes, I should think, of them. When we got near, they asked if Mr. Semple was in the party, or if Mr. Robertson was there; they asked in very opprobrious terms for Mr. Semple and Mr. Robertson, and being informed they were not, and also made acquainted with the fate of Mr. Semple and the Officers of the Colony, they enquired if I was there. Being informed I was, we were all ordered to put on shore, and we did so. All our papers and trunks were examined, and such of the papers kept as Mr. M'Leod, together with the other Partners, chose; and I was made prisoner there.

Attorney-General.—Was you personally examined relative to the affair of the 19th by Mr. M'Leod?

Mr. Pritchard.—Yes, I was, and I told him all I knew. With Mr. M'Leod's party I saw Mr. Alex. M'Kenzie, and I think Mr. M'Gillis, but I am not quite sure about Mr. M'Gillis. After meeting Mr. M'Leod and his party, we encamped at a place called Netley Creek, about two miles lower down; a general encampment was made there. Whilst there, a number of those we left at Fort Douglas, and who had been engaged on the 19th June, came to Netley Creek encampment. I was a prisoner, and I can not say

* Alluding to the taunts made use of in Robert Semple's letter of the 23d March, 1816. (see p. 113 of Brown and Boucher's Trial).

how they were received, as I did not see them received. Cuthbert Grant was not among this party. Fraser was amongst them, and there were several whose names I do not recollect, but I know Grant was not one. We who were prisoners were sent to Point au Foutre, in charge of the Half-breeds and others that came down from Fort Douglas, and the others went with Mr. M'Leod to Fort Douglas, as I believe, but we were not sent to Point au Foutre till Mr. M'Leod's return from Fort Douglas. I did not return to Fort Douglas. I remained at Netley Creek, and I went with Bourke, Heden, Corcoran, and M'Kay, to Point au Foutre, upon Mr. M'Leod's return to Fort Douglas, and staid there till he joined us, when we all set off together, under the direction of Mr. M'Leod, for Fort William. On Mr. M'Leod's return from Fort Douglas he brought some field-pieces and small arms belonging to the Settlement.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—Did you ever see the whole account you have been giving us, published in a book, with the affidavits of the persons who survived the 19th June, any where?

Mr. Pritchard.—Yes, I have seen them in print certainly.

Mr. Sherwood.—Do you know who published them, Mr. Pritchard?

Mr. Pritchard.—No, I can not say that I do know.

Mr. Sherwood.—As you can not tell who fired first on the 19th of June, of course you will not say it was *not* your party any more than it was. How happen you not to know?

Mr. Pritchard.—I was more attentive to my own life than to who might fire first, for from the moment I saw them advance towards us I expected to be attacked.

Mr. Sherwood.—You saw the letter of Cuthbert Grant, I think you say, before. How did it come into Mr. Semple's possession, it being addressed to Mr. Cameron?

Mr. Pritchard.—It was intercepted by our people.

Mr. Sherwood.—Do you remember, Sir, on what day Fort Gibraltar was taken; or first, I will ask you, by what authority the letter was intercepted?

Mr. Pritchard.—I believe it was done by direction of Mr. Colin Robertson. Fort Gibraltar was taken the 17th March, St. Patrick's day, towards, or rather on, the evening of that day.

Mr. Sherwood.—There was a Mr. Holte, I think you say, among those who fell in that engagement. Was he a moderate, peaceable man, or a rash, imprudent, head-strong person?

Mr. Pritchard.—There was a Lieutenant Holte, a Swede, who perished on the 19th June. He was a very fair, upright man. I can not speak particularly of his temper.

Mr. Sherwood.—Would you know his hand-writing if you were to see it, so as to enable you to say whether this letter is in his own hand-writing or not? *(the letter was handed to Mr. P.)* is that the Mr. Holte's writing who fell in the engagement?

Mr. Pritchard.—Yes, it is the late Mr. Holte's writing.

(The letter from O. Holte, dated Fort Douglas, April 14, 1816,—see Brown and Boucher's Trial, page 128,—was then put in and read.)

Mr. Sherwood.—Who was it addressed to, Sir?

Mr. Pritchard.—It was addressed to myself.

Mr. Sherwood.—Pray, Sir, who might be meant by "Mr. Lofty, who once injured your character?"

Mr. Pritchard.—By Mr. Lofty, was meant Mr. Colin Robertson.

Mr. Sherwood.—Mr. Colin Robertson was a very active man in the Hudson's Bay service, was not he? is he the gentleman who thought proper to steal the letters, or to order it to be done?

Mr. Pritchard.—It was by Mr. Colin Robertson's directions that it was done.

Mr. Sherwood.—Was he a servant of the Hudson's Bay Company?

Mr. Pritchard.—I do not know that he was a servant.

Mr. Sherwood.—Do you recollect what it was Mr. Holte alluded to, in that part where he speaks of his passions often getting the better of him, and his wishing them to the devil?

Mr. Pritchard.—No, I do not, at this distance of time.

Mr. Sherwood.—By the bottom of the river, where this man of war schooner was to be stationed, what place was meant?

Mr. Pritchard.—By it was meant the bottom of the River Winnipic.

Mr. Sherwood.—It was at that place he meant to have stopped these canoes from Fort William, had he lived long enough, I suppose: nothing could have passed from or to

the interior without going within the reach of this man of war schooner?

Mr. Pritchard.—No, every thing must pass that spot.

Mr. Sherwood.—It was in April, I think, the letter was written, and instead of giving the North-West rascals, as he calls them, the drubbing (if he could,) he went into this engagement in June, his proper glory not being ready for him at the time; unfortunately for him, the North-West rascals, as he calls them, defended their own property, and gave him a drubbing. Who, Sir, is this Mr. Pambrun, Mr. Robertson's olio of perfection; is it the Mr. Pambrun we had here the other day as a witness?

Mr. Pritchard.—It is the same person, I believe, who was here.

Mr. Sherwood.—This olio also found Mr. M'Donell too strong for his veterans, I believe?

Mr. Pritchard.—I do not know any thing about that.

PATRICK CORCORAN, sworn.

Examined by the ATTORNEY-GENERAL.

Corcoran.—I was at Fort Qu'Appelle in April, 1816. I was there a prisoner, having been taken, together with a party that accompanied me, by some Half-breeds, and carried to the North-West fort at Qu'Appelle. Mr. Alex. M'Donell was in charge there, and there was a large collection of persons at the fort from different places; a much larger number of Half-breeds were there than, I imagine, usually were stationed there. Of these Half-breeds whom I saw there, I knew Cuthbert Grant and several others by sight. I knew a good many by sight, though I did not know their names. One Lacerte was there, and Antoine Hoole. I recollect them. I generally heard them call Cuthbert Grant Captain.

Attorney-General.—Did you hear any reason given for so large a number of persons being at Qu'Appelle?

Corcoran.—I generally understood that they were collected from different parts, with an intention of going down to attack the Settlement; that was the general talk at the fort. It was not made any secret, that their object was to attack and break up the Settlement. Pangman, or Bostonnois, was there at that time along with Cuthbert Grant, and Grant said they would come down to Red River, and visit Mr. Robertson, who should see what they could do.

Attorney-General.—When the party set off, did you hear Mr. Macdonell give them any orders, and to whom?

Corcoran.—I did not hear Mr. Macdonell give any orders, but I know that Cuthbert Grant had the command.

Attorney-General.—How long were your party detained?

Corcoran.—The rest of our party were soon liberated, that is, in four or five days; but myself, Jordan, and Mr. Pambrun, were detained for a good while afterwards.

Attorney-General.—Was you well treated while there?

Corcoran.—No, we certainly were not. I was permitted afterwards to go, under a promise that I would not fight against the North-West Company*.

Attorney-General.—Did you ever enquire why you was detained?

Corcoran.—I did of Mr. Macdonell himself, and he told me openly it was by his orders.

Attorney-General.—Was the Settlement in want of the provisions which were taken from you at Qu'Appelle?

Corcoran.—Yes, they were; when we left they had only sixteen bags. At the time it was taken, Grant promised we should have one boat-load, but upon our asking Mr. M'Donell to let it be sent, he refused, and said he did not care whether they starved or not, for it was not his look-out; he began to *sacre* in French, but I could not say for certain at what, but it appeared to me that it was against me.

Attorney-General.—Had Mr. M'Donell agreed to send the boat-load of provisions?

Corcoran.—Yes, he did once; but when I spoke to him he did not recollect any promise of the kind.

Attorney-General.—Are you confident that you heard them declare it was their intention to attack the fort?

Corcoran.—Yes, I am sure I heard several say so. I heard them say they would go down, and if they caught Mr. Robertson, they would tie him to a tree and skin him

---

* The following is the curious manner in which Corcoran engaged himself not to commit any further depredations, or to bear arms against the North-West Company, beyond *what his oath to Miles Macdonell bound him to do.*

"In consideration of my oath to Miles M'Donell, Esq. J. P. my conditions with Mr. A. M'Donell of the North-West Company are rather different—but I pledge myself that I will give no further molestations to any of the persons or property of the North-West Company, further than such oath actually binds me to do—nor bear arms against them in any other manner. (Signed) PAT. CORCORAN.

"*River Qu'Appelle, May* 13*th*, 1816."

alive. Cuthbert Grant said, we will send you off as we did before, and if you come back we will send you to hell, for you have no business here. All this took place in May. I was allowed to go upon condition that I did not bear arms against the North-West Company. As soon as I got to Fort Douglas, I told them all that I had seen. In consequence we kept a watch, night and day, to give notice of their appproach. On the 19th June, I had been at work, preparing pickets, and when my work was finished, I went to the house of M'Nolty, and shortly after the alarm was given that some Half-breeds were come. I went on a little way towards the Settlement, but thinking it nothing, I returned to the fort. I saw some of our people looking out from the top of a bastion, and I saw the Governor, with a number of people, going towards the Settlement, but I did not go with them. In a short time after I heard the firing of shots frequently.

Attorney-General.—Do you know who they were who fired them?

Corcoran.—No, I do not. I did not know any thing about it till some of the people came home who had gone with Mr. Semple, and I heard Heden tell about it.

Attorney-General.—You must not tell us what Heden told you, but only what you saw yourself. Did you the next day see any Half-breeds come to Fort Douglas?

Corcoran.—Yes, on the 20th I saw a good number come to the fort, and I was then given to understand that we were all to leave it as soon as we could get ready to go, and that we were only to be allowed to take just what belonged to us, but that all the public property, with what belonged to Lord Selkirk, was to be left behind, and that it was on those terms only that our lives were spared. I saw a number of dead bodies, and amongst them was the body of Mr. Semple dead; they were brought in on the morning of the 20th, about eight or nine of them I suppose. We remained till the 24th June, and then we all went away in boats towards Hudson's Bay. The next day we met several canoes. I saw Mr. M'Kenzie in a canoe; I also saw Dr. M'Laughlin at Netley Creek, where we were afterwards sent to, but I am not sure that I saw him in a canoe. I also saw Mr. M'Donald, but I do not think he came in the same party that we met in those canoes, but I saw him at Netley Creek.

Attorney-General.—Was Mr. John Siveright there?

Corcoran.—I do not recollect that he was; I do not

think that I saw him there. They enquired for Governor Semple and Mr. Robertson in very violent language, and being informed that Mr. Robertson was not with us, and that Mr. Semple and the others had been killed on the 19th, they enquired for Mr. Pritchard, and when they heard that he was with us, we were ordered to put ashore, which was done. Mr. Pritchard was examined personally, and his papers searched, and shortly after we were all sent to Netley Creek, and some of their party proceeded, as I believe, to Fort Douglas, at least I understood so. Whilst we were at Netley Creek, a party of Half-breeds came from Fort Douglas; some of the same that we had left in possession of it at coming away, and who, I have every reason to believe, had been engaged in the affair of the 19th June. Amongst the persons, I recollect particularly seeing Boucher, and Alexander Fraser, the one a Half-breed, and the other a Canadian. They appeared to be very well received by all the Gentlemen, as far as I saw. I saw them walking to and fro frequently in conversation, but I can not say that I heard so as to remember any particulars about it.

Attorney-General.—Did your people give any account of the matter to these Gentlemen?

Corcoran.—Yes, we gave all the particulars very frequently, as it was quite the common topic of conversation. Some said it was not true; others that it was our fault, and that of our Bourgeois, and some said they were sorry for it; but they did not appear to be sorry, but rather the contrary.

Attorney-General.—Do you know which of the persons it was that severally made these observations?

Corcoran.—No, I can not tell which of them it was.

Attorney-General.—You have not spoken as to Mr. M'Gillis; did you see him?

Corcoran.—Yes, I saw Mr. Hugh M'Gillis. I do not recollect that I saw Mr. Siveright there at all.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood.—What distance may it be from Qu'Appelle to the Settlement, as your people call it, at Red River?

Corcoran.—I suppose it may be about three hundred miles, but I have no particular means of judging.

Mr. Sherwood.—We have heard a good deal about settlers; pray, Sir, what do you mean by settlers?

Corcoran.—By settlers I mean farmers, persons who cultivate the ground. We call them the settlers.

Mr. Sherwood.—Although farmers, were they accustomed to eat pemican, and glad to get it?

Corcoran.—They used to eat pemican, and were glad to get it when they were hungry, I dare say.

Mr. Sherwood.—Could grain, Sir, be produced in that arid climate, and of what kinds?

Corcoran.—All kinds would grow there as well as here, and some better, I think.

Mr. Sherwood.—Do you happen to know where the pickets you had been employed in putting up on the 19th June came from, or who they had formerly belonged to?

Corcoran.—I can not say positively, but I believe they came from the fort that was formerly at the Red River Forks.

Mr. Sherwood.—Then they were part of the plundered property of Fort Gibraltar, were they not?

Corcoran.—I can not say positively that they were, but I believe they were brought from there.

Mr. Sherwood.—Of what description were they? what sort of wood, I mean?

Corcoran.—Some were oak, and some poplar.

Mr. Sherwood.—You say you did not meet Mr. Siveright; are you sure you met the others?

Corcoran.—I met the five, I am nearly confident, but Mr. Siveright I did not see.

Mr. Sherwood.—Nor did you see Cuthbert Grant, nor Louis Morain, did you?

Corcoran.—No, I did not see either of them.

Mr. Sherwood.—I would beg, my Lords, to remark, that these Gentlemen are indicted as accessaries to Grant and Morain; what passed therefore with other persons, I take it, can not be evidence against them. I merely make the observation, but do not intend to enlarge upon it, for I believe the witness does not speak to any thing that passed between these Gentlemen and any body who came from Fort Douglas. Who did you see at Netley Creek from Fort Douglas, that you suppose or know, had been engaged in the affair of the 19th June?

Corcoran.—I saw Alexander Fraser, who was a Half-breed, and a Canadian named Boucher, besides others whose names I do not recollect.

Mr. Sherwood.—Did you hear them say that it was the fault of Governor Semple, that what occurred at Red River on the 19th June took place, and that if he had let their party alone, nothing would have happened?

Corcoran.—I never heard them say it was Governor Sem-

ple's fault; indeed I do not remember that I talked with them on the subject.

Mr. Sherwood.—You was one of the party that went from Fort Douglas to Qu'Appelle; do you know for what purpose you went there?

Corcoran.—We went to fetch provisions, and to bring down the furs which had been collected.

Mr. Sherwood.—Was that your only object? Do you not know of any orders to take the North-West post at Qu'Appelle, in the same way that their Fort Gibraltar had been taken?

Corcoran.—No, I do not. I do not believe there were any orders of that kind given. We were to go to Brandon-house, and from there proceed to the Hudson's Bay fort at Qu'Appelle, if it should, upon consulting those in charge at Brandon-house, be thought advisable, but we had no intention of going to the North-West Post on River Qu'Appelle.

Mr. Sherwood.—That expedition went under command of Mr. Pambrun, who had formerly been an officer in the army?

Corcoran.—Mr. Pambrun had the direction of the party.

Mr. Sherwood.—Do you know any thing of Mr. Pambrun's instructions, or who he received them from?

Corcoran.—I know that Mr. Pambrun had instructions, and that he received them from Governor Semple.

Mr. Sherwood.—And how do you know what his instructions were? because his telling you what they were, will not do here for evidence. You said just now you knew there was no intention to take Fort Qu'Appelle: now although you had no instructions given you of that nature, how do you know what Mr. Pambrun received?

Corcoran.—I should know if I read them, and I know that his instructions were not to commence an attack, but should he be molested he was to defend himself. His instructions were contained in a letter from Mr. Semple, addressed to Mr. Pambrun.

Mr. Sherwood.—That you are sure of?

Attorney-General.—I will just mention, as it may save time, that I have them in my hand, and shall prove them by Mr. Pambrun himself, whom I propose to make my next witness.

Mr. Sherwood.—Then I have done with Corcoran.

PIERRE CHRISOLOGUE PAMBRUN, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Pambrun.—I was, in 1816, in the service of the Hudson's Bay Company. I was engaged at Montreal by their agent, and went up to the Red River in their service. I was sent to Qu'Appelle to get provisions from the Hudson's Bay post on that river, and take them to Fort Douglas, I received written instructions from Governor Semple for my conduct. My instructions were in writing.

Attorney-General.—Did you, Sir, set off with any hostile intentions, or had you any intention of going to the North-West fort situated on Qu'Appelle?

Mr. Pambrun.—No, certainly not. I merely went for provisions, and had no hostile intention whatever against the North-West.

Attorney-General.—Will you look at this letter, and say if it contains the instructions which you received?

Mr. Pambrun.—It does; that is the letter I received containing my instructions from Governor Semple. *(The following letter was then put in and read.)*

Fort Douglas, 12th April, 1816.

Mr. Pambrun,

SIR,

Having received intelligence from various quarters, that the agents of the North-West Company intend attempting to interrupt our boats in their passage from Qu'Appelle hither, you will proceed, as soon as possible, with the men whom Mr. Robertson will place under your orders, to Brandon-house. When there, you will concert with Mr. Peter Fidler how far it may be advisable to proceed to Qu'Appelle, or remain at Brandon. In either case, however, the power of deciding will rest entirely with yourself.

It is my wish that you avoid every act of hostility until fully justified by the conduct of our enemies. The Half-breeds having been ordered to assemble at the French fort at Qu'Appelle, any acts of hostility committed by them, must be considered as committed by immediate and authorised agents of the North-West Company, and repelled, or retaliated accordingly. I trust, however, that your moderation, and the cooler reflection of our opponents, will prevent any serious disturbance taking place. Should I, however, be unfortunately mistaken, you will remember that the quarrels in which you have before taken a part, may

have been greatly more important, but could not be more just.

I am, Sir,

Your's sincerely,

(Signed) ROBERT SEMPLE.

Attorney-General.—I believe, Sir, you was an officer in the English service during the late war between the United States and England, and the allusion at the conclusion of Mr. Semple's letter, I presume, refers to that circumstance; does it not?

Mr. Pambrun.—Yes, I was, and it is to that circumstance that Mr. Semple's letter refers.

Attorney-General.—Did you see Mr. Semple after receiving those instructions, previous to your setting out for Brandon-house?

Mr. Pambrun.—No, I did not. I set out on receiving them for Brandon-house immediately. I went first to Brandon-house, and from there I went on to Qu'Appelle, having consulted Mr. Fidler, agreeably to my instructions, and who considered it prudent for me to do so. On arriving at the Hudson's Bay post at Qu'Appelle, I understood that a very large assemblage of Half-breeds and Indians were gathered at Fort Qu'Appelle, and that they were training to the use of arms every day, mounting guard and exercising. I was given to understand that their assembling in such numbers, was for the purpose of making an attack upon the Settlement at Red River, and to take Fort Douglas. After I had been a few days at the fort, I told Mr. James Sutherland that I thought it would be better to try and make some arrangement. Mr. Sutherland saw one of their people, and said that he hoped, should they chance to meet us, we should not be harassed or stopped by them. Mr. Sutherland was told, that unless he (Mr. S.) would promise that their people should not be molested below, no promise that we should not, would be made. Mr. Sutherland told them he would undertake, if they were peaceable, no interruption would be given, nor would they be meddled with, unless they interrupted our people. We left the fort of Qu'Appelle, I think, on or about the 5th May, with five canoes loaded with pemican and furs, and drifted down to the Grand Rapids. When near them, I put on shore in a boat. I had not come to shore many minutes, before about thirty men sprang out from behind a parcel of bushes, and called to me to surrender. I

did not immediately, but after making resistance some time, finding I should be overpowered, I gave up, and the boats were sent on the other side of the river, after landing the pemican. We were taken to the North-West Fort Qu'Appelle. Cuthbert Grant, Thomas M'Kay, and Pangman Bostonnois, were amongst the party who took us prisoners, and conducted us back to Qu'Appelle. It was an armed party that took us, or we should not have given up. When I got to the Fort Qu'Appelle, I saw Mr. Alexander M'Donell, who was in command there; he came to me shortly after my reaching the fort, and took me to his house, and I had supper. I saw a number of them, the people who had taken me a prisoner, at the table, and Mr. Alexander M'Donell was there also. I asked Mr. M'Donell, by whose authority I had been taken prisoner, and he told me that it was by his; that he had sent the party which followed me, and had directed them to bring me back. I found at this fort a very great number of Bois-brulés, who had come from different posts, some of them from a very great distance, as far as Cumberland-house. Mr. Macdonell said, I had been taken in retaliation for Mr. Robertson having taken Fort Gibraltar. The object of this large assemblage of persons from distant posts, was talked of freely and openly, that it was to go down and root out the Settlement at Red River, and take Fort Douglas; the object was not hid. It was the common conversation at the fort, that they were going down. I heard that Mr. Macdonell said the affair of last year was a trifle, or as nothing, to what this year should be; that the Half-breeds and North-West were now all as one, and if any resistance was made to the Half-breeds, that they would rinse (drench) the lands with our blood. I heard them frequently talk together of going down to destroy the Settlement, and Cuthbert Grant amongst others. At the time Mr. Macdonell told me that the North-West people were sent to stop me, in retaliation for Mr. Robertson taking Fort Gibraltar, he said he would starve the Hudson's Bay servants and colonists, and make them surrender. After being kept there prisoner for some time, we all left Qu'Appelle together. I ought to have mentioned, that the people who were taken with me had been sent away, a promise being obtained from them that they would not serve against the Colony (North-West, I mean). After setting off, we drifted down to the place where I had been made prisoner and robbed; and the provisions, &c. which had been landed,

were taken into the boats, and we proceeded to the Forks of Qu'Appelle, where we encamped. We were met at this place by Alexander Macdonell, who had two boats. At the Forks we met a parcel of Indians and Half-breeds, and Mr. Macdonell made a speech to them, explaining that the party were going down to attack the English, (the name by which the North-West people always call the Hudson's Bay people) and drive them away, or if they made resistance, rinse (drench) the land with their blood. He said to them, " My friends, I address you shamefully, (with shame) " for I am in distress that I have not a pipe of tobacco " to give you, but all our merchandize and provisions have " been taken by the English, who are our enemies and " yours, as they have taken your lands—the purpose of my " speech to you is to tell you, I and my young men are " going down to chastise these people, who have robbed us, " and who are deceiving you; they tell you they will culti- " vate your land, but they are driving the buffalo from it, " and then you will be miserable. We are now going down " to drive them away, and shall be glad if you," (speaking to the chief) " and some of your young men would join us, " but if you do not come with us, we shall go nevertheless, " and if they make any resistance, we will rinse your land " with their blood." That was the purport of his speech; I can not say for the exact words, but that was what it meant. It was repeated in Saulteux Indian by Pangman and Primeau, who interpreted what Mr. Macdonell (who spoke French) said. The Chief said he should not go himself; as for his young men, they might do as they chose, but they did not any of them go, as I believe. We remained about twenty-four hours there, and then went on towards the Grand Rapids of Assiniboin River, the Half-breeds generally by land. When we arrived there, a party was sent to Brandon-house, and among them Cuthbert Grant and Mr. Macdonell went. I was left at the Grand Rapids at that time, but remained a prisoner. In the evening, about seven or eight o'clock, a horse was brought by Alexander Fraser and Taupier, and I was told I was to go to the post at Brandon-house. I accordingly went. When I arrived at their fort, or got near to it, I saw a great mob of people about the gate with arms. My horse was frightened, and would not pass through the crowd, so I was obliged to dismount. As I was going into the gate on foot, several of the persons presented their guns at my head, and I was apprehensive were going to shoot me. When I saw Mr. Mac-

donell, which I did presently after, I complained to him of this treatment, and of the insulting language which they made use of to me, but I got no redress, though he said that he would speak to them about it. I saw there a quantity of furs, which I knew came from Brandon-house, because I had seen them there a few days before, and I saw a great quantity of other things that I knew came from Brandon-house; and shortly after, I saw two of Mr. Fidler's men prisoners, and I then learnt that Brandon-house had been pillaged by the party that had left us, as I before stated. The Half-breeds were here divided into different parties, and leaders appointed to them. Cuthbert Grant, Antoine Hoole, Lacerte, Alexander Fraser, and Seraphim Lamarre, were appointed to act under Alexander Macdonell, who had command of the whole. This being done, they set off for Portage des Prairies, part of them going by water and part by land At Portage des Prairies, our property, (that is, the pemican,) as well as theirs, was formed into a sort of battery, and two brass swivel pieces of cannon, which had been stolen from the Settlement the year before, were mounted. We encamped at Portage des Prairies, and remained there two days. On the 18th June in the morning, the Half-breeds, or a great part of them, at least about sixty to seventy, with a few Canadians, armed with guns, pistols, spears, and lances, set out, under the command of Cuthbert Grant, to go to the Settlement at Red River. About thirty staid with Alexander Macdonell, and among them I remained. Their blacksmith was employed in making spears, and I was told they were to be used against the English, whom they were going to drive out of the river. On the 20th, we heard of the party that had started. A messenger arrived from Cuthbert Grant in the evening, one Alexander Triquet; it was not the messenger that was expected. Upon seeing him approach, Mr. Alexander Macdonell, Allen Macdonell, Siveright, Lamarre, and others, went forward, and seeing it was a messenger from Grant, they gave three huzzas, with their hats. When he came nigh the camp, they enquired "*quelle nouvelle*," and upon being told that Mr. Semple and twenty or more others had been killed, they huzzaed and shouted for joy, most particularly Siveright, Lamarre, and Allen Macdonell; them I distinguished particularly. Mr. Alexander Macdonell went to give the news to the other people, and I heard him say, "*Sacré nom de Dieu! bonnes nouvelles, vingt-deux Anglois de tués.*" Bostonnois Pangman enquired whether there were any killed on the side of the Half-breeds, and being told

that there had been one, and who it was, he said that it was his cousin, and that he would be revenged on all the English; that the affair should not end here. Siveright was present; Bostonnois spoke French, what he said amounted to this: " the affair shall not end here, as my cousin is " killed, so they shall all be killed; none of those dogs " shall leave the river, for if they are allowed to go away, " they will always be coming back, as they did last year, " and therefore not one of them should leave the river, " as there would always be disturbance and mischief, so " long as they were allowed to live." Bonhomme Montour, and Latour, were immediately sent off to Red River, to desire Grant not to let the settlers go away till Mr. Macdonell should arrive at Fort Douglas with his party.* Some time after we continued our route towards Fort Douglas by land, to within about thirty miles, when I was put into a boat and went the remainder of the distance by water. I found Fort Douglas in possession of the Half-breeds; of Cuthbert Grant and others of the party who had started on the 18th from Portage des Prairies.

Attorney-General.—Were any of the prisoners at Fort Douglas?

Mr. Pambrun.—Only Mr. Siveright, the others came a day or so afterwards with Mr. Norman M'Leod, and then a council was held with the Half-breeds. I saw Mr. Alexander M'Kenzie, Mr. Hugh M'Gillis, Mr. John M'Laughlin, and Mr. M'Donald; I also saw Mr. Siveright there.

Attorney-General.—He was the one who huzzaed at Portage des Prairies, was he not, when the news was first brought of this melancholy affair?

Mr. Pambrun.—Yes, it was he, and Lamarre, and Allen Macdonell, but Siveright did not attend the council.

Attorney-General.—You have not said any thing about Mr. Simon Fraser, was he there or not?

Mr. Pambrun.—I do not recollect whether he was or not, but all the others I am sure were; Mr. Fraser I do not recollect.

---

* In no part of the evidence produced on these trials, has the most distant allusion been made to the charge brought forward against Mr. Alexander Macdonell in various publications, and particularly in Manlius's Letters, and the " Notices of the Claims of the Hudson's Bay Company," viz. that " he had encouraged his men to expect more than plunder, as the re- " ward of conquest, and had promised them the gratification of their " brutal desires with the wives and daughters of the settlers," which an undeceived public will now set down as a gratuitous and wilful calumny, and an infamous libel.

Attorney-General.—Did you see Mr. M'Leod at Fort Douglas in his capacity of a Magistrate?

Mr. Pambrun.—I was taken before Mr. M'Leod when he was in the room formerly occupied by the late Governor Semple, but I do not know for what, as he did not appear to wish for any information, but what he got from the Half-breeds or others of his own party.

Attorney-General.—Did these Gentlemen know of the affair of the 19th June, and that the persons you found in possession of the fort upon your arrival there, had been engaged in it?

Mr. Pambrun.—Yes, they must have known it, because it was the general topic of conversation; nothing else was talked of.

Attorney-General.—Did they appear displeased with the Half-breeds and others who had been engaged in that affair?

Mr. Pambrun.—No, not at all, quite the contrary; they appeared pleased, and rewarded them; they dined constantly at the same table, and were always together. A council was held after Mr. M'Leod arrived, and some few bales of clothing were brought out, and given to them. The Half-breeds gathered together, and Mr. M'Leod made a speech to them, thanking them for what they had done, and gave them presents of clothing; and as there were more persons than there were suits, those who did not get them at that time, were promised they should have them when the autumn canoes arrived.

Attorney-General.—Was you at the council?

Mr. Pambrun.—No, I was not; they would not let me, and it was not my business to attend a council of murderers, but that was what all who did attend it, said was the nature of Mr. M'Leod's speech to those that had helped to murder Governor Semple, viz. that he did not expect to have met so many with Mr. Macdonell, that they were his kinsmen, and had helped them in their time of need, and he had therefore brought clothing for them; but as there was not enough for all, those who wanted them most must take what were there, and the others should have some equally good when the fall canoes came up. I saw a capote and feathers that one came away with, and he told me it was for the 19th.

Attorney-General.—Did you hear any particular conversation between the Gentlemen and any of the Half-breeds engaged on the 19th, shewing their approbation of the conduct pursued by them on that day?

Mr. Pambrun.—No, I do not know of any particular conversation on their part, approving of the Half-breeds' conduct; all I know is, that they dined together every day, and were always together, and I suppose did not disapprove of it, or they would not.

Attorney-General.—Did you go to the battle-ground yourself?

Mr. Pambrun.—Yes, I asked Mr. Macdonell to let me go and see it, and he allowed me to go; a most dreadful scene I witnessed. There were the mangled limbs of the sufferers on the 19th June exposed to the wolves and dogs to be torn and devoured; there were arms, and legs, and heads, and bowels, of the murdered victims, scattered over the ground. The Indians of the neighbourhood would have buried them, but were afraid of the Half-breeds and North-West people. All who escaped, I believe, were Pritchard, Bourke, Corcoran, and Heden.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Pambrun.—I received Mr. Semple's letter of instructions on the day it bears date, and I set off as soon as I got it. I was ready before, and was only waiting for my instructions, which Mr. Semple gave me in writing. Those instructions you have seen in the letter which contained them. Written instructions were frequently given. I suppose Mr. Semple imagined I might be stopped, because our people had been stopped before, and also because we knew there was a very large party of Half-breeds at the North-West Qu'Appelle fort.

Mr. Sherwood.—Do you, know, Sir, if part of Mr. Semple's apprehension arose from an idea, as he had taken Fort Gibraltar, that something might be taken from him, or as Mr. Miles M'Donell had taken pemican, perhaps pemican might be taken by others in return for it?

Mr. Pambrun.—I do not know that Mr. Semple took Fort Gibraltar, nor that Miles M'Donell took pemican.

Mr. Sherwood.—Do you know, Sir, that in March, not long before you started on this unfortunate journey to Qu' Appelle, Mr. Colin Robertson, who sometimes, I believe, was called Mr. Lofty, took Fort Gibraltar?

Mr. Pambrun.—No, I do not, I was not there in March.

Mr. Sherwood.—Well, Sir, in the month of April; do you know that it had been taken by people from Fort Douglas under the directions of this Mr. Robertson?

Mr. Pambrun.—In April I knew that it had been taken,

but not being there at the time of its being captured, I can not say by whom.

Mr. Sherwood.—When, as a soldier, you go to reinforce a place, you generally try to avoid a superior force, do you not, to avoid being surprised, or coming to battle, till you have effected a junction with the body you are sent to reinforce?

Mr. Pambrun.—Of course, when you go to reinforce a place or troops, you try to join them without fighting.

Mr. Sherwood.—If you meet a superior force unexpectedly, are you not obliged to yield?

Mr. Pambrun.—Yes, if too strong to contend with.

Mr. Sherwood.—And this time you met rather unexpectedly a superior force, and they took you prisoners, was not that it?

Mr. Pambrun.—I do not know about meeting a superior force, and being made prisoner. I was met by a party of ruffians, too strong to contend with, and they robbed me of all my property, and made me a prisoner.

Mr. Sherwood.—Bostonnois Pangman, was he of this party whom you call ruffians? rather a hard name, Mr. Pambrun.

Mr. Pambrun.—Yes, he was one of the ruffians, for I can not call them any else, who robbed me, and treated me as they did. I don't know what else to call them.

Mr. Sherwood.—Be cool—don't get angry—I have a great many questions to put to you. Do you know that Bostonnois Pangman had, in March before, been made a prisoner and robbed? did you ever hear of that circumstance, or any about Fort Pembina?

Mr. Pambrun.—I did hear that Pangman was made a prisoner, but I do not know of his being robbed.

Mr. Sherwood.—Well then, having been taken prisoner himself by your people, the tide had turned, and he made you a prisoner. Aye! well, turn and turn about's fair play. Now, Sir, I want to know a little more about this extraordinary speech of Mr. Macdonell's, in which he talked of *rinsing* the land with blood. Did you understand, Sir, what he meant by *rinsing?* but first tell us what it was that Mr. Macdonell did say, because it is very important to a right understanding of you?

Mr. Pambrun.—I have said it often enough before.

Mr. Sherwood.—Oh no, you have not, you must say it again, and perhaps again after that, for I do not at all com-

pretend this *rinsing* the land with blood. So let us have it again.

Mr. Pambrun.—He said that they were going down to drive away the English again, and although the Indians would not go, that they would.

Mr. Sherwood.—Go on, Sir, you are just coming to that part which I am desirous to hear again, about *rinsing*, perhaps you mean *drench*, as that has appeared in print in your affidavit.

Mr. Pambrun.—He said, if resistance was made he would *drench*; if I said *rinse*, I did not mean it; he said he would *drench* the lands with the blood of the English, with the blood of the settlers.

Mr. Sherwood.—And you are positive that you heard Mr. Alexander Macdonell make that speech?

Mr. Pambrun.—I am confident, or do you think I would say it on my oath?

Mr. Sherwood.—You have since that time, I believe, made an affidavit of the same circumstances, and detailing the speech; before whom did you make it, supposing you to have made one?

Mr. Pambrun.—I did make an affidavit of those and other circumstances, before my Lord Selkirk.

Mr. Sherwood.—Did you draw up the affidavit yourself, or if you did not, tell us who did, will you?

Mr. Pambrun.—I did not write it myself. I do not understand English very well, and did not then so well as I do now; but I told Mr. Miles Macdonell what I had to swear to, and he wrote it down for me to make oath to.

Mr. Sherwood.—Pray, Sir, where was your deposition taken?

Mr. Pambrun.—It was taken at Fort William.

Mr. Sherwood.—At Fort William, was it? how came that? was his Lordship on a visit to the Partners of the North-West Company; was he a guest at Fort William?

Mr. Pambrun.—No, he was not a guest to the North-West Company; he would not be a guest of theirs, you may be sure; he would scorn it.

Mr. Sherwood.—The affidavit that you made before Lord Selkirk, was it printed at your request, or by your approbation?

Mr. Pambrun.—No, it was not at my request, nor indeed with my approbation being asked.

Mr. Sherwood.—Do you know that it was printed?

Mr. Pambrun.—Yes, I do, I have seen it in print.

Mr. Sherwood.—Who was with you when you made oath to your deposition?

Mr. Pambrun.—The Earl of Selkirk and the Gentleman who drew it up for me. It was sworn to before the Earl of Selkirk, as a Magistrate, at Fort William.

Mr. Sherwood.—Pray, Sir, how did Lord Selkirk happen to be at Fort William, taking depositions as a Magistrate, in the house of the North-West Company?

Mr. Pambrun.—Lord Selkirk came to Fort William to look after the murderers of the 19th June, in his capacity of a Magistrate, and being resisted, he took possession of the fort, and I believe it was in that manner he happened to be at Fort William.

Mr. Sherwood.—Was you at Fort William at the time?

Mr. Pambrun.—Yes, I was. I had been brought down from Fort Douglas before Lord Selkirk arrived.

Mr. Sherwood.—And what was done with the Gentlemen belonging to the North-West Company who were at Fort William?

Mr. Pambrun.—They were sent to Canada, I believe, to take their trials. I know they went away.

Mr. Sherwood.—Were you very glad that they were sent away?

Mr. Pambrun.—I do not know that I was glad.

Mr. Sherwood.—Well then, were you sorry that they were sent away?

Mr. Pambrun.—No, I can not say that I was sorry.

Mr. Sherwood.—But you must have been glad or sorry, one or the other you must have been, and I only want to know which?

Mr. Pambrun.—I tell you I don't know that I was glad, nor do I know that I was sorry: do you know better than me what I was?

Mr. Sherwood.—You are not to catechize me. It is not you who are to examine me; it is I who am to examine you, and I ask you again, was you glad or sorry that the North-West Gentlemen were turned out of their houses, and their property taken from them, by your master, Lord Selkirk? now, Sir, instead of asking me a question, answer mine?

Mr. Pambrun.—I do not know that I was glad or sorry of what you say, because I do not know that it took place. I could not but be glad that murderers were brought to justice, and such I considered them.

Mr. Sherwood.—That is your opinion, is it? I dare say you considered Paul Brown and Boucher murderers, as your master did, but a Jury of impartial persons have thought differently. Do you know of any right that Lord Selkirk had to take Fort William?

Mr. Pambrun.—I believe that if he had not taken it, that he and all with him would have been massacred by the North-West people, and that I should think reason enough. When Lord Selkirk first came, he did not take the fort, it was not till he had information that they intended to attack him and his party, that in self-preservation he took it.

Mr. Sherwood.—How do you presume, Sir, to suppose that the North-West Company would have massacred Lord Selkirk and his party, even if they had attempted to get possession of their houses and property?

Mr. Pambrun.—I do believe they intended it, for they gave their words of honour to Lord Selkirk, that they would not attempt any thing against him, nor move any thing. When, after giving that promise, I know that gun-powder was taken away and hid in a swamp behind the house, and that arms were concealed, I can not doubt but that they did intend to massacre the whole party.

Mr. Sherwood.—You were in the habit of dining with these Gentlemen, Sir, when you were at Fort William?

Mr. Pambrun.—I was accustomed to dine at their table.

Mr. Sherwood.—Did you dine with them willingly?

Mr. Pambrun.—I dined with them willingly enough, for there was no where else for me to dine.

Mr. Sherwood.—You were then all of one party, and there was no difference between you at that time?

Mr. Pambrun.—There was a great difference, I think, for they were murderers, and I was not a murderer.

Mr. Sherwood.—How dare you presume to say *those* Gentlemen are murderers?

Mr. Pambrun.—I do not say that *they* are exactly murderers, but I do presume to say that they are accessaries to murder, and a great many more than them.

Mr. Sherwood.—Then, Sir, how came you to dine and associate with them, if that was your opinion?

Mr. Pambrun.—I did it through necessity; there was no other place for me to have my victuals in but at their table. I did not do it from choice, believe me.

LOUIS NOLIN, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Nolin.—I was at Fort Douglas in 1816. I know that it was expected the Settlement was to be attacked; we had received information several times of it from friendly Indians and others. A day or two before the 19th June, two Indians came to the fort, and I interpreted for Governor Semple what they said. They told us that they had made off from a large party of Half-breeds and others, who had come down from Qu'Appelle, and were then at Portage des Prairies, on their way to attack us, and that we should certainly be attacked in the course of a day or two. The report that we were to be attacked, had prevailed a long time. Though the report was very prevalent, Mr. Semple did not give attention to it; indeed he constantly said he could not think that they would hurt the Settlement, and he thought we were safe in the fort; a watch was constantly kept, however, at the fort, so that we might have notice when they came. I was there on the 19th June, and towards evening, an alarm was given that an armed party on horseback were coming down and passing the fort. I was not present when they were first perceived; I was at the river, fishing, and did not see them then; as soon as I heard they were come I went up to the fort. Mr. Semple had gone out before I got there; I went into the fort and found a number of our people in it. I should suppose from fifteen to twenty men were there, and from twenty to twenty-eight must have gone with Mr. Semple. When I heard that Mr. Semple had gone, being afraid something might happen, I sent an Indian to see what took place; before doing so, however, I had myself looked from a bastion, and saw that our people were in line. The man soon returned, and told me that the Governor was surrounded by the mounted party. I did not see them surround him. I did not see any thing after what I mentioned of their being in line. When the Indian told me this, I sent him back again, to see what was done, and shortly after he came and told me that Mr. Semple and several of the English gentlemen were killed, as well as a number of the men, and that the other side had lost only one. I know Cuthbert Grant very well. I saw him for the first time after the battle on the next day at the fort; he came there with a number of persons. I did not see Morain

with them. On the 20th I went to the Plains, and I saw Grant. The bodies of those who had been killed on the 19th were not buried, and I asked permission of Grant to send and bury them. He said I might either send for them away, or bury them there.

Attorney-General.—How long did the people remain at Fort Douglas?

Mr. Nolin.—I asked only four days, but Grant said only two could be allowed. Understanding that an arrangement had been made with Mr. Pritchard on account of our people generally, I did not say much to him about it. I think it was on the 21st, or perhaps on the 22d, that all the people went away.

Attorney-General.—Why did they go away from their Settlement?

Mr. Nolin.—It was all that Cuthbert Grant and his party would agree to. It was the only way they had to save their lives.

Attorney-General.—Had any of the North-West Partners arrived at Fort Douglas before you went away?

Mr. Nolin.—Yes, Mr. Alexander M'Kenzie had arrived.

Attorney-General.—Had you any conversation with him upon what had occurred on the 19th?

Mr. Nolin.—No, I had not any, that I recollect. I did not see Mr. M'Kenzie go to the ground where Mr. Semple was killed, but I understood that he went; I was told that he did go. I did not see any presents given by Mr. M'Kenzie to the people who had been engaged in the affair of the 19th June. I was present about ten minutes after Mr. M'Kenzie arrived, and saw him with Cuthbert Grant and Alexander Fraser. They had a long conversation together, but it was in English, except a few words now and then in French; and as I do not understand English very well, I can not say what they were talking about; but from the little I did understand, I have no doubt of its being about the affair of the 19th June.

Attorney-General.—Did you see the whole of the prisoners at the Forks, or which of them did you see?

Mr. Nolin.—I do not recollect that I saw Dr. M'Laughlin, but I think I did see all the others.

Attorney-General.—How did they appear; contented with what had happened, or did they express regret, and appear sorry for this melancholy occurrence?

Mr. Nolin.—No, I can not say they appeared sorry for

it. They appeared to me to be pleased with it. "*Ils m'ont "parus bien contens.*"

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood.—Do you know who fired first on the 19th June?

Mr. Nolin.—No, I do not, I was not present.

Mr. Sherwood.—Did you, Sir, at the time hear who fired first, or was you not on the next day told who fired first? was you not on the next day told that the Hudson's Bay people fired first, or that Lord Selkirk's people fired first?

Mr. Nolin.—Next day I did hear that Lord Selkirk's people fired first. Lord Selkirk's people and the Hudson's Bay I consider the same.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General.—Who was it told you that the Hudson's Bay or Lord Selkirk's people fired first; was it the North-West people?

Mr. Nolin. The North-West people told me so; they said Mr. Semple's party fired first.

Attorney-General.—Did you always hear that account?

Mr. Nolin.—No, I also heard they fired both together. The accounts given were different, very different, but that is what I heard in various ways, though I can not say any thing about it, as I was not there.

FREDERICK DAMIEN HEURTER, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Heurter.—In the spring of 1816, I was in the service of the North-West Company, having been engaged at Montreal. I left Montreal in company of Mr. Alex. M'Kenzie, and a number of Partners of the North-West Company. Mr. M'Leod joined the party at Coteau du Lac, and proceeded with us up the country to Red River. The first intelligence we received of the destruction of the Colony, and Governor Semple's death, we got from the settlers who had left Fort Douglas. We met them in Red River; I think it was on the 24th June. Mr. M'Leod was with us at that time; he joined us at Coteau du Lac, and he had continued on with us from there. The general report we got from the settlers was, that Governor Semple, with

from twenty to twenty-two persons, had been killed between Fort Douglas and Frog Plains. The accounts of different persons did not agree in every particular, but that was the most general account given by the people.

Attorney-General.—Who was with you in your brigade of canoes, I mean of the prisoners?

Mr. Heurter.—I do not know but that all were there but Siveright. Mr. M'Kenzie, M'Gillis, Fraser, M'Laughlin, and M'Donald were there. It was Mr. M'Leod who commanded our brigade; he was considered as the head. Upon meeting with the settlers they were all ordered to go on shore, which they did. I saw Pritchard and Heden among the persons whom we met. I saw them both on shore there. Mr. Pritchard told Mr. M'Leod that Mr. Semple was killed, together with several officers of the Colony, and in all twenty-two or twenty-three persons, as I understood him at the time.

Attorney-General.—At the time Mr. Pritchard made this communication to Mr. M'Leod, did you see Mr. M'Kenzie, or any of the other gentlemen now at the bar, present with him?

Mr. Heurter.—I can not say that I did at that time. We were afterwards sent down to Netley Creek, and detained there about two days, and then proceeded on to Fort Douglas.

Attorney-General.—Were Lieutenants Misani and Brumby of the party who accompanied you from Montreal?

Mr. Heurter.—They were both of them.

Attorney-General.—Did you see any Half-breeds at Netley Creek who had come from Fort Douglas?

Mr. Heurter.—No, I did not see any till I arrived at Fort Douglas.

Attorney-General.—Not at Bas de la Rivière?

Mr. Heurter.—No, I did not see any till I got to Fort Douglas. I saw Cuthbert Grant, Alexander Fraser, and a great number of others at Fort Douglas on my arrival. The fort appeared to be in possession of the North-West Company, at least it was their servants who had it in possession. A dram was given by Mr. M'Leod to all the people upon his arrival; it was given to them in Mr. Semple's room.

Attorney-General.—Did you ever hear any account from the parties engaged in the affair of the 19th June, of the death of Mr. Semple?

Mr. Heurter.—I heard from these persons a number of different reports of that circumstance. I did not hear the

Partners give any account of the matter. I know that a council with the Half-breeds was held the day after our arriving at Fort Douglas, for I was present at it. Mr. Archibald Norman M'Leod was at the head of the council, and he made a speech to the Half-breeds. He thanked them for their assistance, and said he had brought them some *habillements*, and was sorry that he had not brought them more, but that he had not expected to have found so many of them at Red River, and that those who most wanted them must take these, and that the others should have an equal proportion in the autumn. Mr. Alexander M'Kenzie was there. The Half-breeds enquired of him if Lord Selkirk had any right to establish settlers at Red River, and he told them no; that he had no right, for that the land all belonged to them, and that they had done well to defend their own lands. Cuthbert Grant, Bostonnois Pangman, and Seraphim Lamarre made the division of the clothes among the Half-breeds.

Attorney-General.—How many Half-breeds do you suppose you found at Fort Douglas upon your arrival there?

Mr. Heurter.—I can not say that they were all Half-breeds, but I should think there were about sixty persons there altogether, and the greater part were Half-breeds. I saw Cuthbert Grant there, and he told us in what manner the people and Governor Semple were killed. I do not recollect that he ever said that he had killed Governor Semple himself. I never could learn positively who began the fire. Grant shewed how the parties were placed, but always said he could not tell who began the fire, but that he believed it was very near together.

Attorney-General.—Did you ever hear from Cuthbert Grant what was the object of this party coming to Red River? Did you ever hear that it was to carry provisions to meet your party from Montreal?

Mr. Heurter.—No, I never did hear any thing of that kind.

Attorney-General.—Were your party in want of provisions, so that you expected to meet them at that time or place?

Mr. Heurter.—No, I can not say that I think we were in want of provisions, and I never heard that they were expected to be met there. At Bas de la Rivière I was directed by Mr. M'Leod to prepare a number of cannon cartridges for some field-pieces that were there. I was then told that the party were going to take Fort Douglas. I had before frequently heard it spoken of, but never so unreservedly.

On that occasion I stated that our party was too weak for such a purpose, and that I did not, from the description of Fort Douglas, think that it could be taken by so small a party. Mr. M'Leod told me that there was a party coming from Portage des Prairies, and that another party was to come from above, through the Lake Winnipic, and the three were to unite, and then they would be strong enough. This was stated as the reason for our going and taking the cannon which I was to have charge of.

Attorney-General.—I will now ask you, Sir, did you make, or cause to be made, cartridges for the ordnance, and who furnished you with the materials for preparing them?

Mr. Heurter.—I did make them. The gun-powder and ball were obtained from the stores, and the flannel used was given me by Mr. M'Leod, who had brought it with him.

Attorney-General.—I will repeat a question I have before put to you; did you hear any thing of a party being expected to meet you with provisions from Qu'Appelle, or Portage des Prairies; or was your want of provisions such as to render it necessary that you should receive a supply? were you short of provisions?

Mr. Heurter.—I never heard that any were expected. I always heard that the party from Portage des Prairies were expected to join us, and help in the attack that was to be made on Fort Douglas.

Attorney-General.—Except the giving out of dresses, do you know of any act, on the part of any of these Gentlemen, that appeared like giving approbation to the Half-breeds who had been engaged in the affair of the 19th June?

Mr. Heurter.—I can not say that I do. Mr. M'Leod made the speech, saying he had not expected so many, but that the suits that were there must be taken by those who had most occasion for clothes, and that the others who did not obtain them at that time should have them in the autumn. It was Grant, Bostonnois Pangman, and Lamarre, who divided them among the Half-breeds after Mr. M'Leod's speech.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood.—In whose service are you, Sir, at present; in that of the Earl of Selkirk, or of the Hudson's Bay Company?

Mr. Heurter.—I am in neither the one or the other's employ.

Mr. Sherwood.—Were you never in the employ of either?

Mr. Heurter.—No, I never was.

Mr. Sherwood.—Who brought you up here? you came from Montreal, I believe; do you come at your own expence?

Mr. Heurter.—I did come from Montreal. I am under subpœna to appear here, and I came at my own expence.

Mr. Sherwood.—Do you mean to swear that you bear your own expences at the present moment?

Mr. Heurter.—No, I do not. At the present moment they are borne for me. I have been detained for a long time as a witness, and must of course have subsistence found me.

Mr. Sherwood.—When you were accompanying Mr. M'Leod to the Indian Territory, you were in the service of the North West Company, I believe. How long did you remain so?

Mr. Heurter.—I was in their employ about a year.

Mr. Sherwood.—How long was your engagement for?

Mr. Heurter.—My engagement was for three years.

Mr. Sherwood.—So you left them before your engagement was closed?

Mr. Heurter.—I did, because I was wanted to do what I thought wrong.

Mr. Sherwood.—I am not asking you *why* you left. Pray, did you not receive equipments? do not all the servants of the North-West Company receive clothing? was it extraordinary, on the arrival of the canoes with supplies, that the servants who wanted clothing should seceive them?

Mr. Heurter.—I did get equipments, but not such as them; they were understood to be presents, and not the regular equipments.

Mr. Sherwood.—How came you to understand that?

Mr. Heurter.—Shaw, a Half-breed, in the service of the North-West Company, told me they were presents.

Mr. Sherwood.—Was you in the Meuron regiment, and what countryman are you? was you ever in the French service, in the service of Buonaparte?

Mr. Heurter.—I was in that regiment. I am a German, and was formerly in the French service.

Mr. Sherwood.—A number of your former comrades of that regiment enlisted into the service of the Earl of

Selkirk, did they not? but you say you was not among the number?

Mr. Heurter.—Some of my former comrades did enter into the service of Lord Selkirk, and were to become settlers, but I did not enter his service.

Mr. Sherwood.—Did you never receive money for your subsistence from a certain person on account of Lord Selkirk?

Mr. Heurter.—I certainly have received money for my subsistence. It is not to be supposed but I must have a living found me by somebody, as I have been upwards of two years under detention as a witness.

Mr. Sherwood.—Did you not make a long journey with Lord Selkirk from Red River through the Mississippi, round by Washington, and through the United States, to Canada?

Mr. Heurter.—Yes, I did accompany his Lordship.

Mr. Sherwood.—In what capacity did you travel with him; was you his valet, or what?

Mr. Heurter.—I did not travel as his servant.

Mr. Sherwood.—In what capacity did you travel with his Lordship; was you his companion, if not his servant?

Mr. Heurter.—I was not Lord Selkirk's servant. I travelled with him as a companion; I certainly was not his servant. I went in his company.

Mr. Sherwood.—What rank had you in the army, Sir? I do not mean under Buonaparte, but among the De Meurons?

(*Mr. Heurter not immediately answering the question*), was not you a Serjeant only?

Mr. Heurter.—I was a Serjeant.

Mr. Sherwood.—So then, the travelling companion of the great Lord Selkirk turns out to be a recruiting serjeant of the mercenary De Meuron regiment, which was formerly in the service of Buonaparte: he was a servant to the North-West Company, and deserted from them to become his Lordship's travelling companion—

Attorney-General.—I really, my Lords, consider such remarks highly illiberal and unjustifiable. The witness does not represent himself as the *companion* of Lord Selkirk, but that he was in his company, or rather accompanied him. It being insinuated that he was a servant, he said he did not travel with Lord Selkirk in the capacity of a servant, but that he accompanied him; with reference to his military services, he was clerk to the regiment, and is a very decent respectable man.—Was not you clerk to the Meuron regiment?

Mr. Heurter.—I was clerk to the regiment.

Attorney-General.—You do not mean you was the particular companion of Lord Selkirk, but you travelled in his company, and not in the capacity of a servant?

Mr. Heurter.—That is what I mean.

Attorney-General.—That is the case on the part of the Crown.

It being ten o'clock, P. M. the Court adjourned till nine o'clock, A. M. to-morrow.

Saturday, 31st October, 1818.

PRESENT:

His Lordship Chief Justice POWELL,
The Honourable Mr. Justice BOULTON.

The Court being opened in the usual form, and the Jury called over, the trial which commenced yesterday was resumed.

Mr. Sherwood.—Before I enter upon the Defence of these Gentlemen, there is a point to which I am desirous of calling your Lordships' attention, because it is one which it appears to me indispensable that I should not misapprehend your Lordships' opinion. It is, my Lords, as to the right of the Jury to decide upon the evidence before them upon the whole case, one branch of which is, *where* the offence was committed. I submit, my Lords, that whether the offence was committed within or without the Province, is a point that could not be argued in abatement, from its being a matter of fact, and therefore of right belonging to the Jury to decide, and to the Jury only. I conceive that, upon a point of law so well established, I should be unnecessarily trespassing upon your Lordships' time, were I to refer to authorities. I will merely mention, that in Tremayne's Pleas the question is fully considered. To be within the jurisdiction of this Court under the Act upon which these trials are taking place, we know it must be committed "in the Indian Territories, not within the limits of either of the "Provinces of Lower or Upper Canada, or either of them, "or of the jurisdiction of any of the Courts established in "those Provinces, or within the limits of any civil government of the United States of America." Relative to the

United States of America, or the Lower Province, I do not intend to say any thing. I shall confine my observations to the boundaries of the Upper Province. The constitution of Upper Canada tells us its boundaries precisely, so that there can be no difficulty in following them, though there may be difficulty in determining what was commonly called or known by the name of Canada, which must be defined before the limits of Upper Canada can be accurately ascertained. The boundaries are "to commence at a stone "boundary on the north bank of the Lake St. Francis, at "the cove west of Point au Bodet, in the limit between the "township of Lancaster and the seigneurie of New Lon-"gueil, running along the said limit in the direction of "north thirty-four degrees west to the westernmost angle "of the said seigneurie of New Longueil; thence, along the "north-western boundary of the seigneurie of Veaudreuil, "running north twenty-five degrees east, until it strikes the "Ottawas River, to ascend the said river into the Lake "Tomiscanning, and from the head of the said lake by a "line drawn due north until it strikes the boundary line of "Hudson's Bay, including all the territory to the westward "and southward of the said line, to the utmost extent of the "country commonly called or known by the name of Ca-"nada." What constitutes Canada at the present moment, and what constitutes the Province of Upper Canada particularly, can not, I conceive, be decided till it is settled what was the country formerly called or known by the name of Canada. Now if Canada before included all this country between Lake Winnipic and Red Lake, then the spot at which the offence is said to have been committed is in Upper Canada, because all the country to the westward and southward of a certain line, to the utmost extent, commonly called or known as Canada, is included in this Province. I do not say that this country was so considered, but Mr. Attorney-General has not shewn that it is not a part of Upper Canada; and I contend, before he can ask for a verdict against the Defendants, it is his bounden duty to establish the offence to have been committed within the jurisdiction of the Court. The question might be started, is it not in the United States? It therefore is incumbent upon the Attorney-General to shew where the crime was committed, because, if it was committed within the limits of the United States, we have not, according to the Act itself, any power of holding a Court, or taking cognizance over an offence committed therein. It is one of the special provisions of the Act, that it

shall be out of the limits of the United States that the offence is committed, before the right of jurisdiction can be exercised.

Chief Justice.—The words of the Act are not, "within "the limits of the United States," but "within the "limits of any *civil government* of the United States of "America."

Mr. Sherwood.—These are the words, my Lord, certainly. Now for the fact; I believe, my Lords, the extent of Canada has not yet been ascertained, and till His Majesty's Government define what are the limits of Canada, I do not see how jurisdiction can be said to exist. The very spot where this offence was committed may be within the Province of Upper Canada. I really believe that it is within the limits of Upper Canada. By the Treaty of Paris we know, that the line of boundary was fixed to run from the north-westernmost point of the Lake of the Woods in a due west course to the River Mississippi, and thence along the course of that river, and so forth. The Treaty of London, in 1794, declares it to be uncertain whether the River Mississippi extends so far to the northward as to be intersected by a line drawn *due west* from the Lake of the Woods in the manner mentioned in the Treaty of 1783, and provides for a survey to take place under Commissioners duly appointed to ascertain the point. No step, however, had ever been taken upon this subject, and the boundary to the westward of the Lake of the Woods remains completely unsettled, as the Treaty of Ghent takes no notice whatever of the boundary line in this quarter. Until a line is drawn to the source of the Mississippi, it is, I consider, almost impossible to decide what are the limits of the United States of America; and were that done, it might appear that neither this Court, nor England herself, possesses any jurisdiction over the offence charged to have been committed. The very first question, I take it, is this, is the place within our jurisdiction? for if not, we are only wasting time in proceeding with the trial. To ascertain whether it is or not, we see at once the importance of having established boundaries.

Chief Justice.—I do not think this a proper time to discuss a question relative to jurisdiction; and it will be a matter of serious consideration to the Prisoners' Counsel, whether it may be proper to move it at all.

Mr. Sherwood.—I believe, my Lords, that the present is the proper time for me to introduce the subject to your Lordships' notice. Your Lordships are aware that I could

raise no question of jurisdiction in arrest of judgment, and that I could not argue it in demurrer, it being a matter of fact, and one which I consider the Attorney-General bound to satisfy the Jury on, before he is entitled to ask for a verdict of guilty. But, as I do not think it will be necessary, I shall not press the question. Abandoning, therefore, all discussion on the topic of jurisdiction, I remark, that the difference can not be too frequently adverted to between the situation of these Defendants at the present moment, and what it would be, had any principal felon been convicted, because this Jury have to recollect, that no evidence can be adduced against accessaries till they are satisfied of the guilt of the principals. The first question is, has a murder been committed by Cuthbert Grant or Louis Morain? that must be answered affirmatively, before any evidence can be considered as bearing against any accessary.

Attorney-General.—I beg, my Lords, to interrupt this discussion, as its object is too apparent to escape detection. The Learned Gentleman is well aware that he is not entitled to address the Jury, and certainly these observations can be considered in no other light, as they have no reference to any point of law. On them, undoubtedly, the Learned Gentleman is entitled to address your Lordships, but this is a direct address to the Jury, which I am confident the Court will not permit.

Mr. Sherwood.—I have no desire to address the Jury, or to do any thing which is irregular, any more than the King's Attorney-General. I was merely opening to the Court my line of Defence; I consider the question of jurisdiction highly important, but I shall defer it, and proceed to call my witnesses.

DEFENCE.

JAMES TOOMEY, sworn.

Examined by Mr. SHERWOOD.

Toomey.—I was in the Hudson's Bay Company's service in 1814, under the command of Mr. Miles Macdonell. I know of a Proclamation being issued by Mr. Macdonell. I did not read it myself, but I heard Mr. Vicker read it,

and explain the tenor of it. It was to prevent pemican going out of the country about the Red River.

Mr. Sherwood.—Were the people generally satisfied with it, the Half-breeds and the hunters?

Toomey.—No, they were very much dissatisfied with it indeed.

Mr. Sherwood.—What did the Proclamation say was to be done, if the provisions were attempted to be taken out as usual?

Toomey.—That it was to be seized and taken to Fort Douglas. I know of two train-loads being seized by our people from some of the North-West Company's servants in the spring of the year 1814, for I was one of the party.

Mr. Justice Boulton.—You are not obliged to answer any questions that may lead you into difficulty. If any such are put, you may refuse answering them; and if they would, by being answered, bring you into trouble, the Court will protect you.

Mr. Sherwood.—Do you know where these people obtained the dried meat called *pemican*, which your party seized?

Toomey.—I was told by a person named M'Cauley, that they had bought it of the freemen, not the people of the Settlement at Red River, but of the freemen, or the people that hunt.

Mr. Sherwood.—Do you know if, previous to 1814, the North-West Company had been accustomed to obtain pemican from these freemen, as you term them?

Toomey.—Yes, I know that they had been in the habit of trading with the Company.

Mr. Sherwood.—But shortly after this Proclamation, you know that they were prevented, and their pemican was seized?

Toomey.—Yes, it was. We were sent to seize it under the command of Mr. Warren from Fort Daer, where Mr. Miles M'Donell commanded, and we did seize it under his orders, and those of Michael M'Donell. Early in spring time, about the middle of March, we were sent for by Mr. Miles M'Donell, and told to be ready to go when the snow was off, a number of miles, on the Plains, to search for provisions amongst the freemen, and that we were to be furnished with arms and ammunition. The next day we were supplied with them, and a party of fourteen or fifteen of us went with Mr. Warren; Mr. Miles M'Donell saying he would not be long in following us. Two or three nights

after leaving Fort Daer, we slept in the tents of some freemen, and met there with Mr. Michael M'Donell, a clerk of the Hudson's Bay Company, and also some of the servants of the North-West Company. The next morning we saw them load two or three trains with provisions; we were then ordered to load our muskets with ball, and fix our bayonets; having done so, we were put into rank by Michael M'Donell, and being armed, we stopped it from being taken by the North-West Company's servants. We were all armed. When they were going to take it away, we were drawn up in rank with fixed bayonets, and they, finding no way of escape with it, were obliged to put it back on a stage from which they had taken it to load the trains. At the time of stopping it we expected Captain Miles M'Donell every minute, but I was sent for him by Mr. Michael M'Donell, and to tell him what he had done. He sent word to Mr. Michael M'Donell to keep them in his possession till he should come himself, which he did. There were two train-loads, if not three; I am sure there were two, and I think three.

HUGH SWORDS, sworn.

Examined by Mr. SHERWOOD.

Swords.—I was in the Hudson's Bay Company's service the whole of the year 1814. I heard of a Proclamation issued by Mr. Miles M'Donell in that year. I never saw the Proclamation; I only heard of it. I know of one boat-load of provisions being seized by the Hudson's Bay Company's people; the provisions were on shore, and not in a boat; but they were about a boat-load in quantity; it was not in any body's possession in particular at the time we took it. A party of us were sent by Captain Miles M'Donell to go and look for provisions, which he suspected were being sent away. We went armed. I had a gun and bayonet, and ball cartridges. A place was pointed out to us where the North-West Company had hid a quantity of provisions, and we went to it, and found about ninety-six or ninety-seven bags of pemican, which we took, and sent to Fort Douglas. The bags are made of skins, and weigh, when packed, about ninety pounds each. I have no knowledge of any other seizure of provisions being made. I know that cannon were planted, under the orders of Mr. Miles M'Donell, on the banks of the Assiniboin River. They were placed there to prevent the North-West canoes

and boats from passing into Lake Winnipic, and so into the interior, or below, as they might have occasion.

Mr. Sherwood.—Is this the source from which the North-West traders had been accustomed to draw their provisions?

Swords.—Yes, it is; they always used to get them there.

Mr. Sherwood.—Do you know of any other place where they could get them than about the Red River?

Swords.—No, I do not. I do not think there is any other, at least for a great distance.

WILLIAM WALLACE, sworn.

Examined by Mr. SHERWOOD.

Wallace.—I was in the service of the Hudson's Bay Company the whole of the year 1814. I know of a Proclamation being issued by Mr. Miles M'Donell in that year. I heard it read by Governor Auld at the fort at the Forks of Red River. It was to forbid provisions being taken away, upon pain of their being seized. Governor Auld, at the time of reading the Proclamation, told us we were not to think our own thoughts, but to obey our masters, right or wrong. Some of the people, upon hearing that provisions were to be stopped, expressed an unwillingness to be employed in stopping them; and then Doctor Auld said it was not for us to think our own thoughts, but it was our duty to do whatever our masters ordered us, whether right or wrong.

Mr. Sherwood.—Do you know of any provisions being stopped and taken possession of by your people?

Wallace.—Yes, I know of a quantity of pemican.

Mr. Sherwood.—How do you know of it; was you one of the party sent to take it, and do you remember what quantity there was?

Wallace.—No, I was not sent to take it. I was working at the time at a fort that was building, so as to prevent the North-West canoes going down the river, but I know that about ninety-six or seven bags, of about ninety pounds each, were taken, and brought to Fort Douglas, for I helped to carry it up to the store.

Mr. Justice Boulton.—Is this the same lot that was sworn to have been stopped and taken by the last witness, or is it another transaction?

Mr. Sherwood.—It is the same fact, my Lord. Was you, Wallace, ever at the Saskatchawan River, or do you know

if buffalo are taken between the Red River and Saskatchawan?

Wallace.—I never was at the Saskatchawan; but I have always heard that they were not met with after leaving the Red River country for a very great distance.

Mr. Sherwood.—You have been at Hudson's Bay, I believe; are the buffalo met with between the Red River country and Hudson's Bay, to your knowledge?

Wallace.—I have been at Hudson's Bay; but there are none between it and the Red River country.

Mr. Sherwood.—Then, if the traders in those parts do not obtain supplies from there, I suppose they can not get them at all.

Wallace.—That is the only place I ever knew them to be got from; they always used to get them from there.

JAMES PINKMAN, sworn.

Examined by Mr. SHERWOOD.

Pinkman.—I was in the service of the Hudson's Bay Company in 1814, and had been for a good while.

Mr. Sherwood.—Did you in that year hear any thing of a Proclamation of Mr. Miles M'Donell, usually called in that country Governor M'Donell?

Pinkman.—I believe it was in 1813 that I heard of it. I heard of it at Pembina.

Mr. Sherwood.—Do you know of any provisions being taken at Pembina by the Hudson's Bay people?

Pinkman.—I do not at Pembina; but at the fort near Brandon-house I do. I was one who went for it. I and four others went with Mr. Spencer to the North-West fort near Brandon-house, and cut down the pickets, and drew the staples of the locks, and took away about five hundred bags of pemican. We cut the pickets, and destroyed the locks, because those who were in the fort refused us admittance. We asked, that is, Mr. Spencer did, to be let into the fort, which was refused, and we cut the pickets.

Mr. Justice Boulton.—All this is of no manner of consequence to the charge against the prisoners; what if five hundred bags of pemican were taken, is that any justification to go armed, and take the lives of people, because they had done wrong?

Mr. Sherwood.—I think, my Lord, that this testimony is highly important. I should think, if I heard that a man yesterday killed another, and that it was likely he would attack me, it would furnish very good ground for my going armed Our going armed was to protect our property, which had been frequently attacked, and taken from us; and I think, with great deference certainly, that I am not exceeding the necessary limits of evidence, in examining the witnesses to the fact of our property having been taken from us by the most violent means. Do you know of a quantity of pemican being seized by your people, a very large quantity, and under what circumstances?

Pinkman.- I know that there was a very large quantity, as much as five hundred bags, taken from the North-West fort at Brandon-house to the Hudson's Bay fort. Mr. Spencer, myself, and I think four other persons, went to the fort; but first Mr. Spencer went, either alone or only one person with him, leaving us at the Hudson's Bay fort, called Brandon-house; and on his return, a messenger was sent to Fort Douglas with a letter to Mr. Miles M'Donell; and on the return of the messenger we all went to the North-West fort, and demanded admittance, which was refused. We then cut down a number of the pickets, and got into the fort. We asked where the provisions were kept; but they not telling us, we broke into the store, by drawing the staple of the lock, and found about five hundred bags of pemican, which we took away.

Mr. Sherwood.—You have resided in that country some time; had the North-West traders been accustomed to draw their provisions from thence?

Pinkman.—I know that as long as I have been there, and before, they were accustomed to draw their provisions from that country; and I do not think they could get them any where else.

Mr. Sherwood.—Did you hear any thing about raising a troop of cavalry, or a company of horse?

Pinkman.—I heard Mr. Miles M'Donell say he would raise a troop of cavalry, and scour the Plains; and that he expected they would soon be strong enough to drive those damn'd North-West out of the country.

Mr. Justice Boulton.—When did you hear Mr. M'Donell say this?

Pinkman.—In the winter of 1813.

Mr. Justice Boulton.—Was every thing quiet then?

Pinkman.—Every thing was quiet in 1813, and during

the winter, till the Proclamation. There was no disturbance till the Proclamation appeared, and was acted upon.

(Mr. Sherwood stating that he had finished with Pinkman, the Court inquired of the Attorney-General if he had any questions to put to the witness).

Attorney-General.--Not any, my Lords; I consider all the questions on the examination in chief as completely irrelevant, and therefore do not put any questions in cross-examination, nor do I intend to put any to any witness on the subject of seizing provisions.

Mr. Sherwood.—I entertain a directly contrary opinion to that of the Attorney-General, for I consider them very relevant, and very important, highly important, to the substantial justice of the case.

MARTIN JORDAN, sworn.

Examined by Mr. LIVIUS SHERWOOD.

Jordan.—I was in the Indian country in 1814. I know that there was a battery at a distance of about three miles from the fort; it was on one bank only, and not on the banks of the river; it was on the north side of the river that they were placed; there was no particular battery more than the cannon were placed there, and men were kept to watch that the boats belonging to the North-West Company did not pass.

Mr. Livius Sherwood.—Do you know of any arms having been taken from the North-West Company by your people?

Jordan.--Yes; I know that a box of arms was taken. I saw them in the canoe, and afterwards at our fort in the store.

Mr. Livius Sherwood.—Was there a battery below Fort Douglas?

Jordan.—Yes; there was one at the distance of about two or three hundred yards below it, on the north side.

Mr. Livius Sherwood.—Do you know of any body being taken prisoner?

Jordan.—Yes; I know our people took a person prisoner; Mr. House, I believe, prevented him from going away: I understood it was Mr. House, and he was in the service of the Hudson's Bay Company.

Mr. Livius Sherwood.—Had you occasion at any time to hear Mr. Miles M'Donell drink any particular toast?

Attorney-General.—I object to the witness being permitted to answer that question. It certainly can have no bearing upon the case; and the only purpose for which it can be put, is to place a very serious subject in a ludicrous point of view.

Mr. Livius Sherwood.—I beg the Attorney-General to permit us to put our own questions; the present, however ludicrous it may appear to him, will expose a circumstance that shews the wish entertained for our destruction; and trifling as such a circumstance may at first appear it will turn out one of those trifles which powerfully shew the real disposition of a person, and that is my object. Mr. M'Donell acted as Governor to this famous Settlement, and was the great cause, in our opinion, of all the melancholy train of events that have occurred in that country. We commence to-day our Defence with his Proclamation, which he says, and the witnesses on the part of the Crown say, was dictated only by regard to the interests of the Colony, and to prevent them from starving; we, on the contrary, say, that the object and effect of that Proclamation being enforced, would be to have starved us, and consigned us to destruction. I put this question to the witness to shew, and his answer will shew, that the wishes of Mr. M'Donell for our destruction were so hearty, that he could not refrain from giving it in toasts. I now ask the witness the question again. Did you hear Mr. M'Donell at any time drink any particular toast relative to the North-West Company?

Jordan.—Yes, I heard him drink destruction to the North-West Company. He drank it in his own language, which is Gaelic. I am sure I heard him drink it.

Mr. Livius Sherwood.—I hope the answer has satisfied the Court of the importance of the question, as it completely establishes, as we think, the spirit of hostility which, we say, dictated the sure means of our destruction. I shall not, however, detain the Court with any remarks on the evidence. Do you know of any person being sent to Qu'Appelle from Fort Douglas with the intention of taking Mr. M'Donell and his people?

Jordan.—I cannot say whether any were sent or not. I was not one that went, if any were sent.

Mr. Livius Sherwood.—Do you know whether Fort Gibraltar was taken?

Jordan.—I fancy it was taken, for I was there at the time. It was in March 1816 that it was taken, but it was not destroyed then; that took place after.

Mr. Livius Sherwood.—You are sure it was taken in the March preceding the battle of the 19th June: do you know if it was destroyed before the battle?

Jordan.—Yes, it was. It was taken down, and sent to Fort Douglas before the battle.

Mr. Livius Sherwood.—Do you know of any goods being taken away from Fort Gibraltar, at the time it was taken?

Jordan.—Yes, they were loading goods at the fort, which were afterwards taken to Brandon-house by Mr. Lemoine, who obtained leave to trade there. Mr. Lemoine, I believe, belonged to the Hudson's Bay Company.

Mr. Livius Sherwood.—Do you know of any bales of furs being taken by your people, and what quantity?

Jordan.—No, I cannot say that I do. I know of some furs being there; I went out, and when I returned I found they were gone, but I cannot say where they were taken to. I heard they were taken.

FRANCOIS TAUPIER, sworn.

Examined through the Interpreter, by Mr. SHERWOOD.

Taupier.—I know that Fort Gibraltar was taken in March, 1816, from the North-West Company by the Hudson's Bay Company's people, for I was in the fort at the time. The Hudson's Bay people came to the fort about seven or eight o'clock, one Sunday evening, in March, and got in. They bent the bolt of the gate, and so got in. They had guns with bayonets, pistols and cutlasses. They rushed directly to the great house, in which Mr. Cameron, who commanded at Fort Gibraltar, lived. Mr. Cameron was a Partner of the North-West Company. I remember it was in March, and of a Sunday. I was in a small house near to Mr. Cameron's, and hearing a great noise, I went to see what it was, and finding it was in Mr. Cameron's house, I went into his apartment, and saw, as I was going in, Bourke, Heden, Alex. M'Lean, and others, belonging to the Hudson's Bay people; they were using their arms in a menacing way, presenting their pistols to him, and threatened that if he moved they would take his life. When they saw me in the room, two of the men belonging to the party, but whose names I do not know, beat me with the butt-end of their guns, and turned me out of the room. I know Mr. Siveright; he was a clerk to the North-West Company, and was at the fort when it was attacked.

Mr. Sherwood.—Did you see the behaviour of the party to Mr. Siveright at that time?

Taupier.—No, I had no opportunity, as he was in the great house, and they would not let me remain there.

Mr. Sherwood.—Have you a personal knowledge of an express, conveying letters from the North-West posts, being seized?

Taupier.—Yes, I have a personal knowledge that Henry Poitras, and another man by the name of Planté, were seized, under the orders of Mr. Robertson, and these letters, taken from them.

Attorney-General.—My Lords, I can not, consistently with my duty, refrain from soliciting your Lordships' decision, whether testimony of this nature is within the rule that was intended to guide our proceedings? If this is within the limits of your Lordships' indulgence, I am at a loss to conceive how they can be exceeded. Every circumstance, however trivial, if calculated to excite the least unpleasant sensation, may, according to the course now proceeding in by the Learned Gentleman, be brought forward, and considered a provocation continuing that exasperated state of irritation which alone the lenity of the law admits as an alleviation of the crime of murder to manslaughter, but not as a justification. I pray the interference of the Court to stop this, to my mind, most unwarrantable use of the indulgence granted by your Lordships.

Mr. Sherwood.—I feel, my Lords, well assured that this is not a moment at which your Lordships will consider it necessary to interpose your authority, and limit the indulgence which was so appropriately granted the other day, and continued to the present. I had thought that nothing more aggravated, nothing more immoral, could have been produced than the conduct of the Hudson's Bay Company in taking of our forts, and plundering of our provisions and property wherever they could be found; but, my Lords, the sacking of our forts, the plundering of our pemican, the seizure of our furs, are but as dust in the balance compared to this unheard-of (I was almost going to say) atrocity of stopping our express, and robbing him of our letters. Why, my Lords, were we permitted to take, with your Lordships' sanction, the course we are now proceeding in? Because we said it was essential to the substantial justice of the case, that we should shew that outrage and aggression came so fast and thick, that the whole population of that country was in a state of excitability that does away the charge, even suppos-

ing the Crown to sustain its facts, which it has not done. How, my Lords, did we endeavour (sanctioned by your approbation) to support our assertion? We proved the razing of our forts, the seizure of our provisions, the detention or robbery of our property, and, having gone so far, shall we be prevented from shewing an outrage, compared with which, unparalleled as many of them have been, they are absolutely insignificant? The injustice of publishing the affidavits which were taken by Magistrates, I say the flagrancy even of that step, sinks into comparative unimportance—

Attorney-General.—I beg the Learned Gentleman's pardon for interrupting him, but that on both sides the evidence has been made as public as printing presses and newspapers could make it, is matter of such public notoriety, that it is almost a waste of time to advert to it. The depositions of witnesses on the part of the Crown and on the part of the prisoners have, with extreme injustice to both, been given to the Public. I do not stand here to apologize for, far less to vindicate, such conduct in any man or body of men; no, it deserves the severest reprobation, and from me it has it. But, my Lords, what possible effect can all this legally have upon an indictment for murder? how is the alleviation or justification to be made out or inferred from evidence of these mutual improprieties? I say not at all, and I again feel it my duty humbly to solicit your Lordships to interfere, and put a stop to proceedings so irregular, and to questions so totally irrelevant to the defence of the persons now at the bar.

Mr. Sherwood.—My Lords, with the greatest deference, I claim from your Lordships the right of going on exactly in the course I was travelling when my Learned Friend interrupted me. That these are sore points, I know, but nevertheless they must be brought to view. What is the criterion by which our offence will be estimated? the enquiry will be, is the *malus animus* proved to exist, or rather have we disproved it? (The Crown always alleging, in the Indictments for murder, and the law always contemplating it to exist, until disproved). I say, if we are allowed to go on we shall do so; we have nearly accomplished it at present, and shall most triumphantly finish it, if we are but allowed to avail ourselves, without interruption from the Attorney-General, of the rule laid down for the conducting of these trials by your Lordships. What were we proving at the moment that Mr. Attorney-General interrupted the examination? we were proving a circumstance of outrage so gross in its

nature, that it might well keep alive the ill-will unhappily prevailing in that country. We shall go on to prove that such was the high state of excitement in which these parties were respectively, that they were always ready for conflict. We have proved that this began at the redoubtable Proclamation, and we think it important to go on, and bring it down to the moment of the 19th June. This we shall, with your Lordships' permission, go on and do. If, in the performance of my duty, the private feelings of persons who have trampled upon all law and all social feeling are hurt, with them let it rest. I shall not, therefore, refrain from speaking the truth, or producing it in evidence. The truth ought always to be spoken. One word relative to publishing the King's evidence, and thereby (to use his own most correct definition) doing such extreme injustice to both the Crown and the accused. I beg to mention that part of the charge belongs only to Lord Selkirk; we never had ingenuity enough to get the King's evidence, and be enabled to publish such parts of it as we thought proper, and keep back what we did not approve. How any man should be able, or any man who is able, should dare to do it, is a question not unworthy of enquiry. I need, however, not refrain from publishing, though it may scarcely obtain credence, an action so base, so immoral, as that of robbing an express, sent at imminent hazard, and great expence, across a wilderness; it is, indeed, the climax of turpitude. I wish that Mr. Attorney-General should be allowed to conduct the prosecution, but I also wish him to allow me to conduct the Defence. This, I think, I am entitled to, and I expect not to be interrupted again. To your Lordships' authority I am ready at any moment to bow, but not to that of the Crown Officers. I shall, however, dispute the ground, inch by inch, with Mr. Attorney-General, upon the subject of my privilege, under the liberal and highly equitable principle upon which we have so satisfactorily acted heretofore. In referring to the trial of last week, I find every thing clear and distinct, forming a most valuable precedent in trials under this Act, from the solemnity of the decisions, resembling, as I have said before, the dignity of a trial at bar rather than a session of assize. If, my Lords, we were to be stopped here, your Lordships would be surprised into an inconsistency of conduct, such as I am sure must be very much regretted, and which Mr. Attorney-General can not, I am sure, contemplate with satisfaction. In commencing my Defence, by putting in the Proclamation of Mr. Miles M'Donell, although it in-

volves in it the conduct of a third person, I do not wish thereby to cast any reflection upon Mr. M'Donell. No doubt he thought it his duty to do so. Believing his commission to be valid, he was duly fulfilling, with firmness, the duties of the trust reposed in him. But it was this belief which occasioned all the disasters. It is from this assumption of power that all the evils have flown. We do not charge upon Mr. M'Donell, or the other Gentlemen occupying similar situations, any dereliction of duty, according to their conception of what was their duty; but we say, from misconceptions of their authority, or rather from attempting to exercise powers which they did not possess, all the mischiefs and calamities have sprung which have desolated that country. From this misconception of their powers, they have gone on, step by step, till they arrive at the most base and flagrant act, the stoppage and robbery of an express, an outrage such as never was heard of among any people. In civilized nations couriers have ever been held sacred, even in time of war. It was left for those professing a superior attention to the dictates of humanity, to resort to these nefarious means of supporting an illegal assumption of power.

Mr. Justice Boulton.—This is certainly not to a point of law you are addressing the Court; it is to the public feelings that you are directing yourself, and you can not be permitted to do so.

Attorney-General.—I beg leave, my Lords, to mention, that I did not interrupt the Learned Gentleman, though fully aware that the course of argument taken by him was extremely objectionable. I did not interrupt him, because I have considered that, for the last five hours, it has been equally exceptionable. What has been the evidence produced by the Learned Gentleman? what his object in producing it? He has been endeavouring to shew that hatred and ill-will existed between the Hudson's Bay and the North-West Companies. Admit that it did exist to the utmost extent which it is wished to establish, and I say, so far from its justifying or excusing the offence, it ought to aggravate it, as it shews at once the very spirit which constitutes the foundation of the charge brought in this Indictment. It is to my mind, my Lords, the most singular defence that ever was attempted in a case of murder, to produce evidence of the existence of malice, which is the very essence of the crime. I perfectly agree with the Learned Gentleman, that nothing can be more indecent, nothing can be more flagrant, than the outrages which have mutually distinguished this contest

between these hostile parties; but I would ask, my Lords, was it ever before heard of, that former unjust and flagrant actions could soften or justify the commission of greater crimes? Certainly not. Admit that principle in relation to the Indian Territory, and I much fear, my Lords, that the humanity of passing an Act of Parliament to punish offences committed therein will be rendered unavailing, as there probably could be few enormities attempted to be brought to punishment, that a precedent might not be found for in the conduct of the opposite party. I much fear, my Lords, that the consequence of establishing the rule contended for by the Learned Gentleman, will be to encourage crime, by increasing the already great difficulties attending the bringing to justice offenders in the Indian Territories. The extent to which this principle might be carried is dangerous in the extreme. Is it, I would ask, or ought it, to be allowed to be pleaded in justification for attempting to murder me three months hence, that I, three months before, had attempted the same, or actually did murder a person? It certainly would not be allowed in an ordinary case. I do not see why we should deviate from the ordinary course of criminal trials. I shall rejoice as much as their Counsel, if these Defendants can substantiate their innocence; but it must be done by legal evidence.

Mr. Sherwood.—I am, my Lords, rather at a loss to conceive what Mr. Attorney-General considers *legal evidence*, if that which we are producing does not correspond with his idea of it. We are, my Lords, proving, link by link, the very same chain of testimony which your Lordships have, on the former occasion, declared you considered we had a right to prove.

Mr. Justice Boulton.—This declamation is really calculated to produce very pernicious innnovations upon the regular practice of criminal jurisprudence, and must be put a stop to. It is a deviation exceedingly blameable, and likely to produce equal inconvenience to the parties as to the Court.

Mr. Sherwood.—I beg pardon, my Lords; but with respect to declamation, I do not think it a charge that can be sustained against me; though, from frequent interruptions from Mr. Attorney-General, I have been reluctantly compelled to trespass repeatedly and at length upon your Lordships' attention, and notwithstanding that remark, must still continue to do so. We think, my Lords, we have a right to go into evidence of every thing calculated to prove the state

of excitement under which they laboured in this country; and the unparalleled measure of stealing an express we introduce as a circumstance eminently calculated to produce a spirit of irritation, or to feed it if already in existence.

Mr. Justice Boulton.—I always feel extremely sorry when compelled to decide against a Gentleman, who, from sense of duty, proposes to pursue any particular course, but this does appear to me so extremely objectionable, that I should think it criminal to allow it to be pursued. In the eye of the Public, we should be trying other people who have no opportunity of answering or explaining their conduct. The stoppage of an express was unquestionably a very flagrant act, but is a distinct transaction from this, and can not be allowed to be gone into, as it can not, by possibility, be any defence to a charge of murder.

Solicitor-General.—Neither can the seizure of pemican; and the admission of evidence relative to such transactions must be equally wrong.

Mr. Justice Boulton.—The admission of evidence relative to the seizure of pemican was allowed, after an argument on a dry point of law, viz. that they had a right to shew that their being armed did not necessarily indicate malice prepense. But to extend this enquiry to the detention of an express, would be to carry us much beyond what was intended, or what can be necessary, even upon their own statement of what they consider requisite.

Solicitor-General.—I really, my Lords, can not see the difference between the two. I think the admission of evidence as to the seizure of pemican, and the stoppage of an express, equally irrelevant and objectionable. What is the course that the Gentlemen pursue by proving the seizure of pemican? They shew, they say, a state of excitability created by these outrages; but, my Lords, I should humbly contend, that it is not shewing that they allowed themselves to be worked up into a state of passion, and kept themselves so, will bring them within that humane principle of law which considers the mind under the influence of passion as incapable of judging of the rectitude or criminality of its impulses, but, on the contrary, that by that very course they exhibit incontrovertible proof of revenge being the ruling feeling. The course taken, is nothing but a trying to shew that these parties were in such a state of mutual hostility, that they were ready, whenever they met, to cut each other's throats; but, my Lords, so far from a proof of that state of mind exhibiting a defence, I should think it ought to be re-

ceived as positive evidence of that *animus* which the law contemplates as the *quo animo* of the crime of murder, viz. the existence of malice aforethought.

ANTOINE PELTIER, sworn.

Examined by Mr. SHERWOOD, *by the Interpreter.*

Peltier.—In the spring of the year 1816, I was in the service of the North-West Company, and was at their fort on Qu'Appelle River.

Mr. Sherwood.—Do you know any thing of a council of Indians and Half-breeds being held there?

Peltier.—No, I do not know that any council was held. I do not think there was any, as if there had been, I think I must have known it.

Mr. Sherwood.—You are sure you do not know of a council being held, at which Mr. Alexander Macdonell made a harangue of a very particular description?

Peltier.—No, I know of no council being held at all. I do not know of any extraordinary harangue. I know that Mr. Alexander Macdonell made an ordinary harangue, but I do not know what it was about; but it was not at a council, or any meeting of the Indians and Half-breeds that it was made, and it was not about any thing particular, or a council would have been held as usual. Qu'Appelle was not my usual post.

Mr. Sherwood.—Is it any thing uncommon for the Bourgeois to harangue the Indian and Half-breed servants?

Peltier.—Not at all, it is very common to do so.

Mr. Sherwood.—In what language was this harangue made by Mr. Macdonell, of which you speak?

Peltier.—It was made in Indian.

Mr. Sherwood.—Do you understand the Indian language in which the speech was delivered?

Peltier.—I understand it a little; I understand it pretty well.

Mr. Sherwood.—Do you understand it enough to comprehend, if any thing very particular was said in a harangue, what was meant by it?

Peltier.—Yes, I do. If any thing of that kind was said, I should know what was meant. I went with the North-West people from Qu'Appelle as far as Portage des Prairies.

Mr. Sherwood.—While at Portage des Prairies, did you hear Mr. Alexander Macdonell make a speech to the Half-

breeds and Indians about drenching the land with the blood of the English, or any thing like that; any thing of that import?

Peltier.—No, I did not hear any thing of the kind; I heard nothing that could be said to bear that import.

Mr. Sherwood.—Did you hear a speech made by Mr. Macdonell at the Forks of Qu'Appelle in French, and interpreted into Saulteux Indian, in which any thing of that kind was said?

Peltier.—I understand very little Saulteux, only a few words, and I did not hear any speech of that kind.

Mr. Sherwood.—Did you see a Mr. Pambrun at the Forks of Qu'Appelle?

Peltier.—Yes, I saw Mr. Pambrun there; he was on the ground, but not close when the speech was made.

Mr. Sherwood.—Then he had no better chance of hearing than you, had he?

Peltier.—No, I should think I had as good a chance as him, for I was close to them.

Mr. Sherwood.—And you heard nothing in French or Indian, like drenching the grounds of the Indians with the blood of the English, if they made resistance?

Peltier.—No, I have no knowledge of any thing of that kind. It was Primeau who interpreted, and I heard the whole of the speech, but I did not hear any expression like that of drenching the ground with blood.

Mr. Sherwood.—Is it customary, upon holding a harangue with the Indians and Half-breeds, to give them rum and tobacco?

Peltier.—It is always done on those occasions; they look for it. I was at Portage des Prairies when Cuthbert Grant and his party set off, and I saw them start. I was present when they went away, and the instructions given to the people were, to keep as far as possible from Fort Douglas, and to pass it at as great a distance as we could, for fear some insult should be offered to us. We had some carts with provisions, which were to be taken to meet the canoes which were expected from Montreal, and which would require provisions.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General.—If you was present at the harangue, how happens it that you did not hear it all?

Peltier.—Because I was not there all the time the speech was making. I was on the ground, but did not hear all.

Attorney-General.—Mr. Pambrun is a very respectable young man. He has served as an officer in the army, and his testimony is not at all contradicted by this witness, though he did not hear the expressions sworn to by Mr. Pambrun. I will, however, put one more question to him on this point. You say you had as good a chance of knowing what passed as Mr. Pambrun, and that you know as well as him what was said; you mean, I suppose, that *what* you actually did hear, you understood as well as he did?

Peltier.—Yes, that is what I mean to say; that I understood what I heard as well as Mr. Pambrun, and that I had as good an opportunity to hear.

Attorney-General—Can you tell how it happened that Mr. Pambrun should have heard more than you of that speech, because he heard about drenching the ground with the blood of the English?

Peltier.—I can not conceive how he heard more than me, but I did not hear that, nor any thing like it.

Attorney-General.—Is it usual for you to have harangues made to you upon meeting a party?

Peltier.—Yes, it is customary; it is common.

Attorney-General.—How many carts with provisions had you, do you recollect?

Peltier.—There were two carts.

Attorney-General.—Though you heard these general orders given, might not Cuthbert Grant have received orders, of which you do not know, or which you did not hear?

Peltier.—I was present all the morning that they started, and I know nothing of any other orders being given than those I have related.

WILLIAM MORRISON, sworn.

Examined by Mr. SHERWOOD.

Morrison.—I was at Portage des Prairies when a party of young men set off to carry provisions. Portage des Prairies is about sixty miles above Fort Douglas. Cuthbert Grant and Mr. Alexander Macdonell were both at Portage des Prairies. There were instructions given among them I know; they were to keep as far from Fort Douglas as possible, and to give the Gentlemen of the canoes notice where we had left the remainder. I was one who went. The object of our going down, was to meet the canoes from

Montreal, and furnish them with provisions. That was our only object; we had no other. I do not know why we carried arms. It is very customary to carry arms there; almost every body carries his gun at all times. We came to Portage des Prairies by water, but could not go any farther, because the river was blocked up against us by the Hudson's Bay Company's servants, and we could not with safety go except by land.

Cross-Examination by the ATTORNEY-GENERAL.

Attorney-General.—Do you know how long the provisions you took down with you would last sixty or seventy men?

Morrison.—No, I can not say that I do. Our allowance is a pound a day each.

Attorney-General.—Did you take all you brought down in the canoes in the carts?

Morrison.—No, we did not take all.

Attorney-General.—You had, I think you say, two carts; how many bags did you take in each?

Morrison.—There were nine or ten bags in each cart.

Attorney-General.—What does a bag of pemican generally weigh?

Morrison.—From eighty-four to ninety pounds each.

Attorney-General.—As you had orders to avoid Fort Douglas, how happened you to make direct to the Settlement, if you had no hostile intention?

Morrison.—It was our road to where we wanted to go.

Re-examined by Mr. LIVIUS SHERWOOD.

Morrison.—We received instructions to pass the fort, but we had no orders to avoid the Settlement, and it was in our way to where we wanted to go.

FRANCOIS FIRMIN BOUCHER, sworn.

Examined by Mr. SHERWOOD.

Boucher.—I was at Portage des Prairies in 1816; I was there in June 1816. A Partner of the North-West Company, of the name of Alexander Macdonell, was there; he had come from Qu'Appelle. I was a servant of the North-West Company at the time. I know of provisions being sent from Portage des Prairies at that time, and Cuthbert Grant as well as myself were of the party that took them.

They were designed for the supply of canoes expected from the interior and from Lower Canada. The object of going by land was to avoid Fort Douglas; the passage of the river also was obstructed, and we understood they watched for us at Fort Douglas. The orders given by Mr. Macdonell were, to go past the fort at as great a distance as possible, so as to avoid being seen and having difficulty. Those orders were strictly obeyed. We went as far back as we possibly could; we could not go farther, for there was a swamp, in which it was impossible the carts could get on, as the horses sunk up to their bellies; but we passed the fort at as great a distance from it as we could. After we got by the fort, about two miles, we observed Mr. Semple and an armed party coming towards us, at which we were much surprised, and we stopped. They came up in a line, as if they were prepared to attack us, and we thought they intended to do so. Some of our party said, that as I spoke a little English, I had better go up and speak to them, and see what they wanted, that they came after us. I went according to their desire. I rode up quickly, and before I got close up to Mr. Semple, I asked what they wanted, that they pursued us. I told him that we were afraid he meant us harm, by following us, and some other words passed. He had laid hold of my bridle on my coming up, and he then laid hold of my gun. I told him I had not come out to fight. Upon my saying this, Mr. Semple called out to his people to take that rascal prisoner. Some of them then came up to me, armed with guns and bayonets, in a threatening manner, and I cried out to them, "*Prenez "garde de ne me faire du mal.*" At this time my people came up. Seeing our people advance, some of them cried out, "We are all dead men!—My God, we are all dead men!" There had not been any firing at this time, on either side.

Mr. Sherwood.—Upon this expression of his people, that they were all dead men, what did Mr. Semple say?

Boucher.—He called out, "you damned rascals, this is "no time to be afraid," and immediately two guns were fired from Mr. Semple's party.

Mr. Sherwood.—Were those two guns fired at you?

Boucher.—I do not know whether the first was or not; they were let off very close together, and the second must have passed very near me, as I heard it hiss close to me. I then threw myself from my horse, which was very much frightened by the shots, and run the distance of gunshot

without stopping, and remained where I stopped till the battle was ended. The battle lasted about a quarter of an hour, and I staid at the place where I first stopped till it was over. I was lying the whole time flat on my belly in the grass, which was very high. After the two first shots a volley was fired directly; but, as the firing became general, I can not say positively by which party, but I think it was by the Hudson's Bay people.

Mr. Sherwood.—Do you know how many volleys were fired by either of the two parties?

Boucher.—No, I can not tell that, it is impossible, as immediately after the two first shots the firing became general.

Mr. Sherwood.—Had there been any injury done to the Hudson's Bay people before the assault committed on you, and theirfiring the two shots you have spoken of?

Boucher.—No, not that I know of. Indeed I know that there had not, for I was present all the time, and I have told all that passed before the firing became general.

Mr. Sherwood.—Have you any knowledge of any injury being done to them after the battle, when, I believe, from their own account of the matter, they were entirely in your power, that is, in the power of your party?

Boucher.—I do not know of any injury being done to them. They were entirely in our power after the battle, and I know there was no injury done to them whatever.

Mr. Sherwood.—When the servants of the Hudson's Bay Company and the settlers went away, was an escort given them, to see them safe from any attack that they were afraid might be made upon them?

Boucher.—At the time they went away there was a good deal of confusion, and some of them came and asked me to protect them against the Half-breeds, and I conducted them as far as the Frog Plains, when I returned, and they continued their route. I did not see any cannon in the engagement, but I saw one afterwards, belonging to the Hudson's Bay party. We did not bring any with us, I am confident.

Mr. Sherwood.—You are quite certain that it was pemican, and not cannon, that you had in the carts that accompanied you?

Boucher.—Yes, I am sure it was pemican.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Was you at Fort William after the 19th June?

Boucher.—Yes, I came down there some time after.

Attorney-General.—You have sworn to-day, that the only object you and your party had in coming from Portage des Prairies was to conduct in safety some provisions to meet canoes which were coming from the interior, and from Montreal; have you never given any other account of your object?

Boucher.—I may, when I was not under oath.

Attorney-General.—Did you never say that your object was to destroy the Settlement, and the way you proposed to effect it was by starving the colonists?

Boucher.—I might have said so when I was not under oath; I may have told persons so.

Attorney-General.—Did you ever tell any body that your object was to take Fort Douglas?

Boucher.—I do not know that I ever told any body so, but I might have said so.

Attorney-General.—Had you no intention to offer violence to any person, but simply to conduct your provisions?

Boucher.—I never had the slightest intention to do any body any harm; I was sent with the provisions.

Attorney-General.—Did you not hear it mentioned that you were to take Fort Douglas?

Boucher.—No, I never heard any thing of the kind. I heard that they intended to retake Fort Gibraltar, if it it was not given back to them, but I heard nothing of taking Fort Douglas.

Attorney-General.—Did they go down avowedly to retake their fort, as you say, or to take Fort Douglas?

Boucher.—All I heard was, that while down, they would get their fort again, and the provisions which had been taken from them; but I do not know what was their object, unless it was to take the provisions.

Attorney-General.—Did Mr. Grant never communicate to you what his intentions were?

Boucher.—No, he never did. I know that his directions from Mr. M'Donell were to go below some distance, and wait there for the arrival of the canoes.

Attorney-General.—And if you had not been attacked, you really believe Mr. Grant would have stopped there?

Boucher.—Yes, I certainly believe he would have followed his orders, by stopping till canoes came, either from above or below; I have no reason to think otherwise.

Attorney-General.—Do you know, as these were his intentions, how it happened that, before any notice of the approach of Governor Semple and his party, your people made prisoners of some of the colonists?

Boucher.—No, I do not know how it happened.

Attorney-General.—But you know, I presume, that prisoners were made before your people saw Governor Semple's party?

Boucher.—Yes, I know there were prisoners made, because I saw them, but I do not know by whom they were made so. I saw two women and one man. I can not positively say they were prisoners, but I understood they were. I saw one at a freeman's house, who is now here, and can tell you more about it.

Attorney-General.—I ask you again, was you not told, before you went away, that the party were going to make prisoners of the colonists, and thus break up the Colony?

Boucher.—No, I was not told so. I never heard that they were going to take prisoners.

Attorney-General.—Have you never told any body so?

Boucher.—I never told any body so.

Attorney-General.—Do you recollect what you said upon this subject when you was before Mr. Mondelet?

Mr. Sherwood.—I will not let him answer that question, or give any information of what passed before Mr. Mondelet. Indeed I am rather surprised, after the opinion of the Court, expressed on the trial of Boucher and Brown, when this same Declaration was attempted to be made evidence, and withdrawn by Mr. Attorney-General, that he should desire to examine Boucher upon it, for the purpose of making that same Declaration evidence against the Accessaries, which he was prevented from using against the Principal who actually made it. Nothing that passed before Mr. Mondelet shall be made evidence here.

Attorney-General.—Did you never to any body say, that the intention of your party was to reduce the fort by famine?

Mr. Sherwood.—If you ever said any such thing to Mr. Mondelet, you have no occasion to tell; indeed you must not mention any thing you may have said before Mr. Mondelet.

Attorney-General.—I ask you if, in the presence of any

other person than Mr. Mondelet, you have not said that the intention of your party was to reduce it by famine?

Boucher.—I was once asked by Mr. Stuart at the same time——

Mr. Sherwood.—The witness is improperly led to mention the name of Mr. Stuart. I have the highest respect for that Gentleman. His name ought not to be called in question. I object to the indelicate course taken by the Crown in this part of the cross-examination.

Attorney-General.—Did you never, in the presence of any other person, say that the object of your party on the 19th June was to starve the fort into a surrender?

Boucher.—I do not believe I ever said so.

MICHEL MARTIN, sworn.

Examined through the Interpreter, by Mr. SHERWOOD.

Mr. Sherwood.—Was you at Portage des Prairies in June 1816, when the party set off to carry provisions to meet the canoes, which at that season are expected from Montreal and the interior?

Martin.—Yes, I was there; I was one that went. Our orders were to go by Fort Douglas, at as great a distance from it as possible, and we did so.

Mr. Sherwood.—Why were you told to pass at a distance from Fort Douglas? do you know of any reason?

Martin.—It was to prevent our losing the provisions we had with us, and to avoid being insulted. We had two cart-loads of provisions for our Gentlemen, whom we were to wait for below. I was in the battle of the 19th June with the Hudson's Bay people. The Hudson's Bay people fired first; they fired two shots before we fired any, for I saw them. I did not hear Boucher ordered to go, but I saw him as he was going, and I saw him when he had got up to Mr. Semple; and whilst he was very near Mr. Semple, I heard and saw a gun fired, and I know it was by the Hudson's Bay party, because I saw the smoke.

Mr. Sherwood.—Had you any intention to do any harm to the Settlement when you set off from Portage des Prairies?

Martin.—None whatever; we did not think of it.

Mr. Sherwood.—Afterwards, when the settlers were in your power, did you do them any harm?

Martin.—No, I am sure we did not.

Mr. Sherwood.—Had you any intention of attacking the Settlement, or Mr. Semple, if he had not attacked you?

Martin.—No, that I am sure we had not; if he had not come out to us, we should not have gone to him.

Mr. Sherwood.—You are a Christian, I presume, and have been baptized, have you not?

Martin.—I am a Christian, and was baptized in Lower Canada.

ROBERT HENRY, Esquire, sworn.

Examined by Mr. SHERWOOD.

Mr. Henry.—I left Montreal, as soon as the ice broke up in 1816, in company with Mr. M'Leod, Mr. M'Kenzie, Mr. Misani, and Mr. Brumby, to go to Fort William. From Fort William we were to go into the interior; our object in going there was to secure provisions for our traders and servants, as we had great reason to apprehend that they would be taken from us, or be attempted to be taken from us, as they had been in 1814. We had the usual assortment of goods taken up into that country with us; amongst them were some *equipments*, of course. We got a piece of ordnance at Bas de la Rivière, where we stopped on our way up, as we usually obtain our provisions there.

Mr Sherwood.—Did you get them as usual this time?

Mr. Henry.—No, and so we were determined to take all the people we could muster, and go up and ascertain the reason. We had to pass Fort Douglas on our route from Bas de la Rivière, and having heard that we were not to be allowed to go by it, we took these precautions to protect ourselves. Our object was to avoid hostilities, if possible, but at all risks to defend our property and our persons, if attacked. We had no wish to interfere with Fort Douglas, but we were determined not to be prevented from passing it, and pursuing our commerce. If they would not let us do it peaceably, it was their fault if any thing happened. We intended to pass by day-light, and to go by Fort Douglas singing; and if they did not molest us, we had no wish to say any thing to them; but if they did, we were determined to defend our persons and property to the last.

Mr. Sherwood.—Did you, Sir, on your route, meet any

of the Defendants? Mr. M'Kenzie, I believe, accompanied you from Montreal?

Mr. Henry.—Mr. M'Kenzie went with us from Montreal, and in the course of the route, I met most of the other Gentlemen; I believe all.

Mr. Sherwood.—I will not question you, Sir, at all about the affair of the 19th June, but I will ask you if, after that time, you saw a Mr. Pambrun in company of those Gentlemen?

Mr. Henry.—Yes, I often saw Mr. Pambrun at table with those Gentlemen; I have seen him frequently.

Mr. Sherwood.—Did you, Sir, consider those Gentlemen, or any of them, as accessaries to murder?

Mr. Henry.—No, that I did not; I should have been sorry to have been in their company if I had done so.

Mr. Sherwood.—Mr. Pambrun has told us *he* does consider them so. Pray, Sir, did you see any reluctance in Mr. Pambrun to partake of the hospitalities of your table along with those Gentlemen?

Mr. Henry.—No, certainly not. If he had had any objection, nobody would have forced him to dine with them.

Mr. Sherwood.—Do you happen to know whether the North-West Company ever granted this Mr. Pambrun any favours, as he considered them at the time?

Mr. Henry.—I know that he received many favours from the Company, for which, at the time, he appeared grateful. I know the Company exerted themselves relative to his half-pay, and I believe it is owing to their exertions that he now receives it.

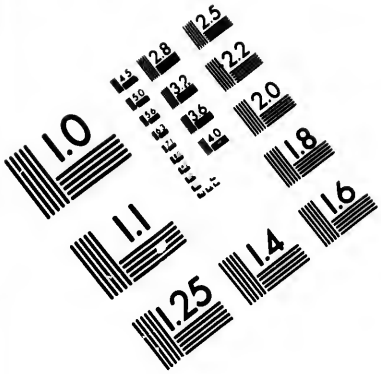
Mr. Sherwood.—And he evinces his gratitude by presuming you are a set of murderers, or accessaries to murder, and says he considers himself disgraced by sitting at the same table with his benefactors.

Cross-Examination by the SOLICITOR-GENERAL.

Solicitor-General.—I think you said, Sir, that neither you, nor the party with you, had any intention to molest Fort Douglas?

Mr. Henry.—I have said we had no intention to molest it, nor had we any design of doing so.

Solicitor-General.—Have you any recollection of ever writing a letter, in which a very different sentiment was expressed, but expressing your satisfaction at finding it *already*



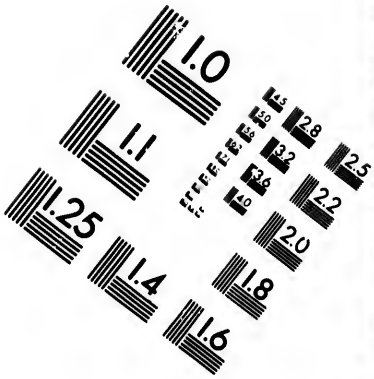
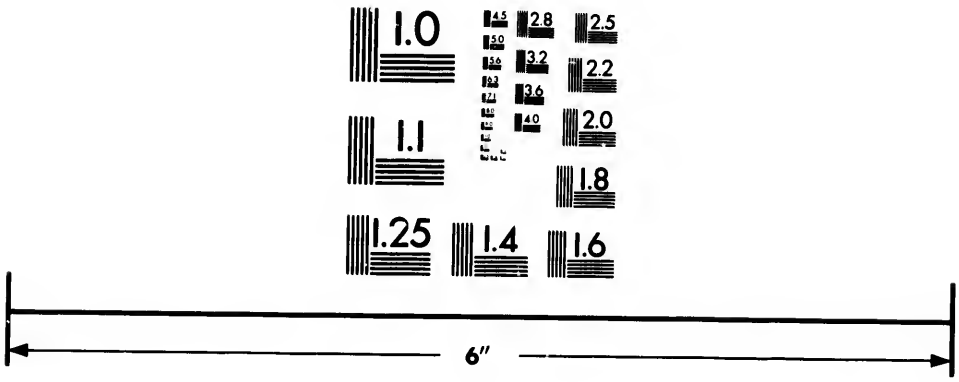
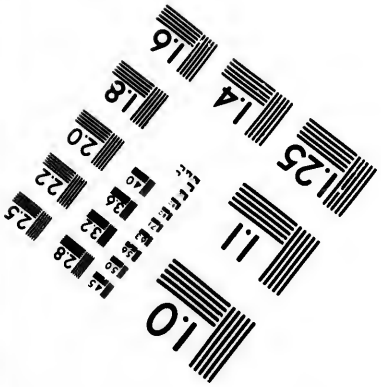
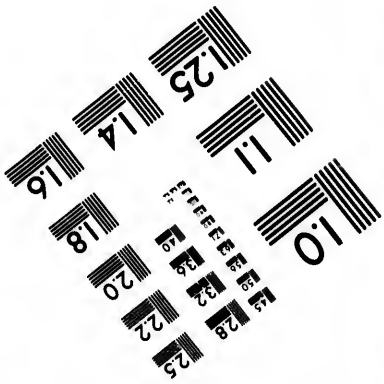


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

taken? Do you recollect writing such a letter to a Mr. Henry?

Mr. Henry.—I do not recollect that I did, but I may have said to Mr. Henry in a letter, that I was glad it was *already* taken; I will not say that I have not.

Solicitor-General.—But you are quite sure that you and your party had no intention of attacking it?

Mr. Henry.—If they did not attack us, we had no intention of molesting them; but if they did interfere with us, we were determined to defend ourselves to the last.

Solicitor-General.—You appear to have been prepared for an attack?

Mr. Henry.—The impression upon my own mind, and I believe upon others too, was, that we should not be permitted to pass without being attacked, and therefore I thought it best to be prepared: but it never was our intention to molest them, though we were prepared to resist any outrage committed upon us; and it might be in this way, if I did write it, that I said I was glad that Fort Douglas was taken already. I might have forgotten to explain myself fully. It was confidently expected that we should be attacked at Fort Douglas, and Mr. Henry living at a distance, I might, in writing hastily to him, have said that I was glad it was already taken, meaning I was glad we had no difficulty.

Solicitor-General.—Do you recollect, when at Fort William, writing to a person at Fond du Lac, to raise the Indians in that quarter, to march to Red River, to meet you there upon your arrival?

Mr. Henry.—I did write such a letter, and my reason for doing so was, that, if our provisions were taken from us, and we were not permitted to carry on our trade, they too would suffer as well as ourselves; and I thought, if a strong party, capable of defending ourselves, and carrying our point, were seen by the Hudson's Bay people, it might prevent our being attacked; and if it did not, we should be better prepared to defend ourselves.

Solicitor-General.—This was before Lord Selkirk took possession of Fort William, I presume?

Mr. Henry.—Yes, it was.

Re-examined by Mr. Livius Sherwood.

Mr. Livius Sherwood.—Though before Fort William had been taken, it was not before Fort Gibraltar had been

taken, I believe, nor before the express had been stopped, and his letters taken from him, that you wrote to Fond du Lac?

Mr. Henry.—It was after we had heard that Fort Gibraltar had been taken, and that our express had been made a prisoner and robbed of his letters; and from these, apprehending that further aggressions would be committed, and that our provisions would be prevented from coming down the Assiniboin River, we did this; and although we went up with a strong party, and with arms, they were only to act in self-defence.

Re-examined by the SOLICITOR-GENERAL.

Solicitor-General.—Are not you, or were not you, indicted for this offence at Montreal, or in the Province of Lower Canada?

Mr. Henry.—I do not know that I am. I believe not.

JAMES LEITH, Esquire, sworn.

Examined by Mr. SHERWOOD.

Mr. Leith.—On the 13th June, 1816, a number of the North-West Gentlemen came to my post at Rainy Lake, and amongst them some of the present Defendants.

Mr. Sherwood.—You, Sir, I believe, are a Partner of the North-West Company, and are acquainted with the nature of their trade?

Mr. Leith.—I am a Partner, and have a knowledge of the mode in which the business is conducted.

Mr. Sherwood.—You have, Sir, in your employ a great number of servants of different grades. Do you clothe them all, or furnish them with what, I believe, you are accustomed to call equipments?

Mr. Leith.—They are all furnished with what we call equipments, by the Company, and some with double equipments; but all, whether clerks or voyageurs, have equipments found them by the Company.

Mr. Sherwood.—What number of equipments do you dispose of annually?

Mr. Leith.—I can not say; but they amount to some hundreds.

Mr. Sherwood.—Did you go on with these Gentlemen to Red River, and take with you what people you could spare?

Mr. Leith.—Yes, I did accompany them, and my people and a number of Indians went also.

Mr. Sherwood.—You doubtless knew their intentions well; will you please to tell us what their objects were?

Solicitor-General.—This Gentleman may tell us what influenced him; but what they might tell him their intentions were, can be no evidence.

Mr. Sherwood.—Have the goodness, Sir, to tell us what led you and your party to go to Red River.

Mr. Leith.—In March or April, I received letters informing me that Mr. Duncan Cameron and Seraphim Lamarre were taken prisoners, and that the general report was, that Fort Gibraltar was to be attacked in the spring. I forwarded the information by express to the Agents and Partners of the Company. I afterwards learned that Colin Robertson and a party had taken it, and also that we were not to be permitted to pass up the Assiniboin and Red Rivers. Knowing that hundreds of our servants must be starved if this was submitted to, we determined to go in considerable force, and see whether we were to be prohibited trading or not, and also to make the necessary arrangements for preventing disappointment in future. We had, undoubtedly, no other intention than to go quietly, if we were not molested; but we were determined not to submit to any attempts to hinder us from passing quietly, and we were in hopes, that by taking a large force we should induce them not to molest us in our passage. We stopped in our way at Bas de la Rivière, and there two of the boats took in a piece of ordnance each, and we then proceeded on our route, wishing to meddle with nobody, but determined not to be prevented from proceeding up the river, which we considered, as the great highway of the country, we had a right to. If we were obstructed, we determined to defend our right at the risk of our lives.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Solicitor-General.—There were cannon at Bas de la Rivière, which you took with you?

Mr. Leith.—Yes, we took two pieces of ordnance.

Solicitor-General.—Do you know where they came from to Bas de la Rivière?

Mr. Leith.—No, I do not. I only know that they were there, and that we took them with us.

Solicitor-General.—Have you no knowledge that they had been taken from the Colony at Red River?

Mr. Leith.—I can not say whether they were, or were not. I know nothing about them.

The Hon. WILLIAM M'GILLIVRAY, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—You, Sir, are, I believe, the senior Partner of a very extensive commercial establishment, called the North-West Company, trading into the Indian country?

Mr. M'Gillivray.—I am a senior Partner of that Company.

Mr. Sherwood.—Is it the duty of the Gentlemen stationed in the interlor, to give you notice if any thing particular occurs near their respective posts?

Mr. M'Gillivray.—It is their duty to do so.

Mr. Sherwood.—In the early part of 1816, did you, Sir, receive any information from the Red River country?

Mr. M'Gillivray.—About the end of March, an express arrived at Montreal with letters from Red River, brought by one La Gimonière. Their contents were public enough, viz. that Fort Gibraltar, one of our stations on the Red River, had been taken by Lord Selkirk's people in October, 1815; that Mr. Duncan Cameron, one of our Partners, and a clerk, had been taken prisoners; and threats were made use of, that all the rest of our posts should be taken.

Mr. Sherwood.—Will you relate ny measures of precaution tha: were taken, to prevent or counteract the inconveniences threatened by this and similar conduct?

Mr. M'Gillivray.—To do so will lead me into rather a long statement, as there are a variety of circumstances connected with the transactions of that time, that it will be necessary to explain, so as to enable the whole to be understood.

Mr. Sherwood.—It is very important, Sir, that we should have the information you refer to. Will you therefore give us a succinct narrative of what measures were taken in consequence of the communication you received from Red River, or, indeed, any information which you may consider calculated to throw a light upon the transaction of the 19th June, 1816?

Mr. M'Gillivray.—In the early part of 1816, and par-

ticularly after receiving the information I just now alluded to from Red River, we became apprehensive that the same game would be played again which had been played in 1814; for, owing to these seizures, and the enemy being in possession of the communication from Upper Canada, which prevented the Agents of the North-West Company from forwarding provisions as usual, our stock had been reduced so low at the depôts, that we were left greatly dependent on the quantity to be collected in the interior country, and the securing it became an object of the greatest importance to us.

Mr. Sherwood.—It was in 1814 that your provisions were seized in various places, and under the assumed authority of Mr. Miles M'Donell, I believe?

Mr. M'Gillivray.—They were taken in that year principally, and it was to that I referred; for their captures, in conjunction with the circumstances of the war with the United States, had reduced our stock very low, indeed so low, that, unless considerable precaution was used, many of of our most distant posts might be exposed to starvation. After numerous consultations among our Partners, it was determined to send an Agent, and as many of our Partners, and of the clerks, as could be spared, into the interior, in order to protect the provisions in case they should be attacked. My fear was, that the plan laid some time before for our destruction, by depriving us of our supply of provisions, might be carried into effect; and also that, unless our people farther in the interior than Red River received timely notice of the capture of Fort Gibraltar, our furs might also be stopped.

Mr. Sherwood.—Had you, Sir, any communication with Government on the subject of affairs in the Indian country?

Mr. M'Gillivray.—I had. Upon receiving information officially from His Excellency Sir Gordon Drummond, of the intention of the Government to furnish Lord Selkirk a body-guard from the military, I remonstrated against it, and pointed out what, in the exasperated state of the country, I feared would be the consequence of such a step. I should, with my knowledge of the Indian country, have thought myself highly criminal, if I had not called the attention of Government to what was going on, and what I foresaw would be the result of the measures which were pursuing; but unfortunately my representations were not attended to in time.

Mr. Sherwood.—Upon the subject of military protection

or countenance being given, did you make any representation to Sir Gordon Drummond?

Mr. M'Gillivray.—I did, and my reason for doing so was this: I knew what the consequence would be to the traders in the Indian country, if once the Indians were persuaded that one Company was peculiarly protected by Government, or had any exclusive privileges; and I was fearful that the circumstance of a body-guard being furnished to his Lordship, might be used so as to induce the Indians to believe that the exclusive protection of Government was given to his party.

Mr. Sherwood.—Did you, Sir, apply to Government to nominate some person to go into the Indian Territory and report the state of affairs?

Mr. M'Gillivray.—I did. We had been accustomed to protect our own trade; indeed, till lately, it was very little protection that it required. Fearing the use that might be made of this military guard, I thought it highly necessary that we also should have some proof of the protection of Government being equally extended to us as to others; and I therefore made application to Sir Gordon Drummond, to give leave of absence to two Officers of respectability, that they might accompany our Partners to the interior country, in order to enable us also to say to the Indians, that we had the protection of Government as well as our opponents. Permission was accordingly given to Lieutenants Brumby and Misani to accompany our Gentlemen, and at the breaking up of the ice, every thing having been previously prepared, they left Montreal.

Mr. Sherwood.—Did you accompany these Officers yourself, Sir?

Mr. M'Gillivray.—No, I remained at Montreal until my usual time of setting out for Fort William. I arrived at St. Mary's on the 17th June, and there I received letters from Mr. Leith and others, giving accounts of the depredations committed at the Red River by Lord Selkirk's people.

Mr. Sherwood.—And for the reasons you have stated, you made the various representations to His Majesty's Government on the subject of Indian affairs?

Mr. M'Gillivray.—Yes, as far as I remember, those were the reasons. With my experience for thirty years in that country, I should have considered myself as inexcusable, if I had not endeavoured to call the attention of Government to what was the actual state of affairs there, and I can only regret that my representations were not earlier attended to.

Solicitor-General.—I am sorry, my Lords, to make any

opposition to Mr. M'Gillivray's relating every thing which he considers important to the Gentlemen in whose behalf he is brought forward as a witness; but the detail of facts, into which the questions of the Learned Counsel have led him, can not be considered, I think, as any way connected with the cause at present under trial, and therefore ought not to be continued.

Mr. Sherwood.—The preliminary questions which, for the purpose of letting the Jury clearly understand the case, I thought it expedient to put to Mr. M'Gillivray, are finished, and I proceed immediately to points that have already been given in evidence. My first object will be to explain how it happened that equipments were given to the servants of a Company who are constantly accustomed to clothe the whole of their very numerous servants; a circumstance about which a great deal of art has been used. I believe, Sir, Mr. M'Leod was among the Gentlemen who accompanied these Officers whom you had so properly applied to Government to allow to visit the interior?

Mr. M'Gillivray.—Mr. Archibald Norman M'Leod was the Agent of the Company who went with those Gentlemen.

Mr. Sherwood.—Have you any knowledge, Sir, of any equipments going up with those Gentlemen?

Mr. M'Gillivray.—There were a quantity of equipments, about thirty or forty suits, as I think.

Mr. Sherwood.—Was that a very extraordinary circumstance, that canoes going to the interior should take up equipments? I am desirous of knowing whether it was a circumstance calculated to excite surprise, and manifesting some improper design, or is it a usual occurrence?

Mr. M'Gillivray.—It is a very common occurrence; so common, that all the canoes that go up take more or less of them.

Mr. Sherwood.—In the very extensive commercial pursuits of this respectable Company, of which you are the head, I presume you have occasion to employ a great number of servants of different descriptions, whom, I believe, you furnish generally with clothing?

Mr. M'Gillivray.—We have a great number of persons in our employ, in different situations, as clerks, voyageurs, and in other capacities, whom we supply indiscriminately with epuipments; they form a part of their remuneration, and are invariably supplied by the Company.

Mr. Sherwood.—Then, Sir, equipments must form a very considerable item of expenditure annually?

Mr. M'Gillivray.—They do. It amounts to a heavy sum.

Mr. Sherwood.—Have you a knowledge of how many hundred, or thousand, suits, (for, so extensive as your concern is, probably they amount to thousands,) are required annually?

Mr. M'Gillivray.—I can not say; but it is a great number, and they are attended with a very heavy expence.

Mr. Sherwood.—What, Sir, is the food principally depended upon for the supply of the traders?

Mr. M'Gillivray.—A preparation of dried buffalo meat, called pemican.

Mr. Sherwood.—Could your trade be carried on without pemican in that country?

Mr. M'Gillivray.—I certainly do not believe that it could.

Mr. Sherwood.—Is it from the Red River country that you have been accustomed to be supplied with pemican?

Mr. M'Gillivray.—It is from there we have always drawn our supplies, as the buffalo abounds on the extensive plains in and about that part of the Indian country.

Mr. Sherwood.—If you were deprived of your ordinary supplies in that quarter, is there any other place from which you could receive them?

Mr. M'Gillivray.—There is another place, but it is at a great distance, and the buffalo are not so plentiful as in the neighbourhood of Red River: we always have been accustomed to get them from here, and it is the most convenient, being near our route.

Mr. Sherwood.—Have you been, till within these few years, accustomed to trade in the Indian country, upon Lake Winnipic, and the rivers leading into it, or out of it, without molestation or interruption?

Mr. M'Gillivray.—We have, to my own knowledge, for upwards of thirty years.

Mr. Sherwood.—Were there, Sir, when you first went into that country, any Hudson's Bay traders accustomed to visit it?

Mr. M'Gillivray.—There were not any established in it, nor for some years afterwards; for at least eight or nine years after.

Mr. Sherwood.—Then to *your* knowledge, to go no farther back, you were accustomed to trade for nine years in the country before these persons came to it, who now want to turn you out of it?

Mr. M'Gillivray.—It was nine years after I had been

used to trade into that country, that I first saw any Hudson's Bay people on the Red River.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Solicitor-General.—Are you sure there was no intention to take Fort Douglas on the part of the Gentlemen who went with these officers you have spoken of?

Mr. M'Gillivray.—It was never dreamt of; they had no such design, I am sure.

Solicitor-General.—For whom, Sir, were these clothes particularly intended which were taken up by Mr. M'Leod?

Mr. M'Gillivray.—They were intended for the Boisbrulé servants of the Company, I believe; but I can not say positively that they were. For the space of two years previous to this period, I knew there had been a contest between the North-West Company and the Hudson's Bay people and Lord Selkirk's agents, who should most attach the Brulés to their interest: these clothings or equipments were therefore given to the Gentlemen going up, to be applied discretionally, as they might best conciliate the engagés or natives, without any restriction whether they should be given to Whites or Brulés.

Solicitor-General.—Have you not a knowledge that they were directed to be given to those who had been the most active in opposing the Hudson's Bay Company?

Mr. M'Gillivray.—I do not know whether any such orders were given or not. I did not hear of any such.

Solicitor-General.—Had you any reason to apprehend such a dreadful occurrence as this, from any thing you had heard on your way to Fort William?

Mr. M'Gillivray.—With the experience I had in Indian affairs for upwards of thirty years, it was impossible not to foresee that some dreadful catastrophe must happen. I made representations to the Government, which unfortunately were not attended to in time, and the melancholy affair of the 19th June took place. As soon as I knew of our fort at Red River being taken in March, which was at St. Mary's, on my way to Fort William, I wrote to Montreal, and it is singular, that at the very time I was expressing my apprehensions of the dreadful consequences to be expected from these outrages, the battle of the 19th June took place, of which I was informed after my arrival at Fort William. In

consequence of my letter from St. Mary's*, Mr. Richardson, at my request, proceeded to the seat of Government at Quebec, with all the information I had been able to obtain upon the subject, and again urged the indispensable necessity of appointing an officer, clothed with sufficient authority to

---

* The following is a copy of the above-mentioned Letter.

St. Mary's, 18th June, 1816.

DEAR SIRS,

I deem the contents of the packet which you will receive herewith to be of sufficient importance to transmit to you by an express. I accordingly send Mr. Dease with it, for the greater certainty, and in order that no time may be lost in coming back.

The violence that has been committed on the persons of Mr. Cameron and several others, as stated in the Letters of Mr. Leith and Mr. Siveright, without even the shadow of any legal authority; the forcible seizure and robbery of the North-West Company's merchandise and effects; the occupying of their houses and stores by the desperado, Robertson, and his associates; and the detention of our couriers with the express from the Northern Departments, and no doubt breaking open all the despatches, public and private—all these are such acts, that I am at a loss to apply appropriate terms to them. God knows what may have taken place in the spring. I almost tremble to learn the truth. Our people will certainly defend their property at the risk of their lives, and there is no knowing what the event may be. And if any attempt be made, as is talked of (which I can scarcely believe), to stop the highway, either at the entrance of River Winnipic, or at the Grand Rapid, the consequence will be serious indeed. From what has already taken place, it is evident that, unless Government interferes, open hostility will be the consequence, not only in the Red River, but in the other Departments, in which case the natives will doubtless get involved in the quarrel. To prevent such a dreadful catastrophe, if possible, by giving the earliest intimation to Government of these transactions, I have determined on sending this express; and I trust Mr. Richardson will be able to spare time to lay a representation of the business in person before His Excellency the Governor-General. The interference of Government at the present critical juncture of affairs, may put a stop to these scenes, at least for the ensuing winter, without which, I am apprehensive, many lives may be lost.

This is the first time that we have troubled Government with our complaints. We have long submitted to the most villainous calumnies on the part of those who themselves were the aggressors, but things have now come to such a length, that we can no longer act entirely on the defensive.

It is needless to trouble you with more of my conjectures on this unfortunate business. If any determination is taken by the Governor-General to put a stop to their violent proceedings, the season still affords sufficient time for sending up some Officer or Commissioner, to act in the King's name, should His Excellency deem it advisable to adopt such a measure.

I expect the canoe will be at Fort William in thirty days from this, allowing the crew to remain a few days at Montreal.

I am,

Dear Sirs,

Yours, &c.

(Signed) W. M'GILLIVRAY.

To the Agents of the N. W. Co. Montreal.

keep the peace in the Indian country, and investigate the state of things*.

Re-examined by Mr. SHERWOOD.

Mr. Sherwood.—How long, Sir, have the Hudson's Bay Company and Lord Selkirk traded in to that country?

Mr. M'Gillivray.—The Hudson's Bay Company were accustomed to trade here before the establishment of the Colony by the Earl of Selkirk.

Mr. Sherwood.—When was this Colony begun?

Mr. M'Gillivray.—It was begun about 1812.

Mr. Sherwood.—Had you difficulties with the Hudson's Bay Company, or did they commence with the establishment of this Colony?

Mr. M'Gillivray.—We had no extraordinary difficulties till the establishment of this Colony in 1812; I do not say there were none, but there were none of any magnitude.

Mr. Sherwood.—Pray, Sir, do you know a Mr. Pierre Pambrun, a half-pay officer?

Mr. M'Gillivray.—Yes, I know something of him.

Mr. Sherwood.—You, Sir, I believe, have admitted him to your table. Did he appear to think himself disgraced or honoured, by being permitted to take his seat there with yourself and friends?

Mr. M'Gillivray.—He certainly did not consider himself disgraced, I should think.

Mr. Sherwood.—Did you ever observe any reluctance in his conduct to sitting with those Gentlemen?

Mr. M'Gillivray.—Assuredly not.

JOHN THEODORE MISANI, sworn.

Examined by Mr. SHERWOOD.

Mr. Misani.—I left Montreal in the spring of 1816, to go to the Indian country, in company with Mr. Archibald

* In consequence of the application made to Government on this occasion, Sir John Sherbrooke issued the Proclamation of the 16th July, 1816, which will be found in the Appendix, Letter P. Printed copies of this Proclamation were immediately sent up by a light canoe to Fort William, which place they reached on the 22d August; but it was then unfortunately in the possession of Lord Selkirk, who refused to let them be sent into the interior; and though afterwards, it is believed, such as were addressed to those Magistrates for the Indian Territories who were connected with the Hudson's Bay Company, were forwarded, those addressed to such as were connected with the North-West Company were detained at Fort William.

Norman M'Leod, Mr. Alexander M'Kenzie, and Mr. Henry. We stopt at Fort William, and we found Dr. M'Laughlin there. We left him at Fort William.

Mr. Sherwood.—Did Mr. Simon Fraser, or Mr. John M'Donald, accompany you?

Mr. Misani.—No, they did not.

Mr. Sherwood.—Where, in your route, did you first see them?

Mr. Misani.—I first saw them on my return from Fort Douglas, at Rivière aux Morts; they had come from their winter quarters.

Mr. Sherwood.—Was it possible these Gentlemen could have come from Red River?

Mr. Misani.—No, because I must have met them in going up, as I merely went to Fort Douglas, and returned immediately.

Mr. Sherwood.—Did you see Dr. M'Laughlin after leaving him at Fort William?

Mr. Misani.—Yes, I found him also at Rivière aux Morts on my return.

Mr. Sherwood.—You, Sir, I believe, in conjunction with another officer, received leave of absence, at the solicitation of the North-West Company, to enable you to go to the Indian country, to report the actual state of affairs, according to your observation?

Mr. Misani.—Myself and Lieutenant Brumby received leave of absence for six months. I know it was in consequence of the application of those Gentlemen, and I saw a letter to Sir Gordon Drummond, applying for leave of absence to be granted us.

Mr. Sherwood.—Do you recollect seeing Mr. Leith on your route? was he with you at Bas de la Rivière?

Mr. Misani.—Yes, I saw Mr. Leith on the 20th June, at Bas de la Rivière.

Mr. Sherwood.—Was Mr. M'Leod with you there?

Mr. Misani.—Yes, Mr. M'Leod accompanied us there.

Mr. Sherwood.—Do you know any thing of a meeting of savages, commonly called a council, and were you and Mr. Brumby present at any such council?

Mr. Misani.—I and Mr. Brumby were present at a council held at Lake la Pluie; Mr. M'Leod and Mr. Leith were also present.

Mr. Sherwood.—Was any speech made to the Indians; by whom was it made; and what was its purport?

Mr. Misani.—Mr. M'Leod made a speech, through the

medium of an interpreter, in which he explained to the Indians the violences which had been committed at Red River, and at Bas de la Rivière. Mr. M'Leod said that they had received news of Fort Gibraltar being destroyed, and that they would hold a council amongst themselves, to consider what was the best to be done, and the result should be communicated to us. Mr. Leith said afterwards, that they had determined, as they knew that cannon had been planted on the banks of the river to prevent any passage, and that the lives of many hundred people in the interior depended upon the provisions they had above, to arm themselves, and go to fetch those provisions; that they would, if not molested, pass the Settlement singing, and return in the same way; but, if attacked, they were determined to defend themselves. The same was afterwards told to me by Mr. M'Leod.

Mr. Sherwood.—Do you know that these Gentlemen did arm in self-defence?

Mr. Misani.—Yes, I know they did.

Mr. Sherwood.—Do you know that the North-West Company have many hundred persons in the wilderness depending upon them for their daily nourishment?

Mr. Misani.—Yes, I know they have an immense number of persons in their employment through the Indian country.

Mr. Sherwood.—You, being well acquainted with their object, did you consider it a justifiable one; and did you, after you knew their apprehensions of being attacked at Fort Douglas, continue willing to accompany them?

Mr. Misani.—Yes, I had no objection. I had said I would go, and I saw no reason for changing my mind.

Mr. Sherwood.—You, I suppose, had no intention of attacking Fort Douglas?

Mr. Misani.—No, I had nothing to do with them.

Mr. Sherwood.—But if they had attacked you, you probably would have defended yourself?

Mr. Misani.—Yes, most certainly, if attacked, I would have done what I could to defend myself.

HUGH BENNERMAN, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Do you know Michael Heden, who has been examined as a witness in this case?

Bennerman.—Yes, I know him very well.

Mr. Sherwood.—Did you ever have any conversation

with him on the subject of the battle of the 19th June, and what did he tell you, and where and when was it?

Bennerman.—I saw him in this town of York last summer, and he told me that Mr. Semple's party fired first.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General.—Where did this conversation take place?

Bennerman.—It took place at Ashley's, and we then went to Hamilton's, and he said he would go to Mr. M'Kenzie, and tell him the whole truth of the business.

Mrs. WINIFRED M'NOLTY, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Are you acquainted with Michael Heden, the same person who has been about the Court for some days, and how long have you known him?

Mrs. M'Nolty.—Yes, I know that Michael Heden, and have known him for upwards of six years.

Mr. Sherwood.—Would you, or would you not believe him upon his oath, from all you know of him?

Mrs. M'Nolty.—No, from his general character, I would not.

Mr. Sherwood.—Have you at any time had any conversation with him relative to the affair of the 19th June; and what did he say to you relative to the conduct of Mr. Semple, and the party that were with him on that occasion?

Mrs. M'Nolty.—He told me these words: "We can "not blame the Half-breeds, for our side fired, first and if "we had gained the day, we should have done the same, "or as bad, to them."

Mr. Sherwood.—You are quite sure this Mr. Michael Heden told you that? repeat what he said, that the Court may distinctly understand it.

Mrs. M'Nolty.—I am quite sure that it was Michael Heden that told me so; he said, "It has been a bad busi- "ness, God knows, but we can not blame the Half-breeds, "for it was our side who fired first at them, and if we had "gained the day, we should have served them the same, or "have done as bad to them."

CHARGE TO THE JURY,

By Mr. Justice BOULTON.

Gentlemen of the Jury,

This is a trial, which must have fastened itself on your minds, I am sure, from the very extraordinary manner in which it has been conducted, and the very extraordinary circumstances that have been brought before you; and I am sorry to say, that the greater part of my duty will be to endeavour to wipe away from your minds, any impression which evidence unconnected with the charge, may have produced. The principal question, indeed the only one for your notice, is, whether this Indictment which I hold in my hand, is, or is not, well founded? It is an Indictment for Murder, charging four persons, as principals, and a number of others, as accessaries, before and after the fact, and thus embracing all the varieties which distinguish the charge of murder. This charge, thus divided, embraces not only different points, but the evidence applies itself to different particulars, and different persons. In that which you have heard, you will find a great deal that does not apply at all, as well as that differs in its application. Before I call your attention to the testimony, it will be necessary to see who you are trying. You have not before you any of the principals, but you have a number of accessaries before and after the fact. By the Indictment, I perceive the first character is John Siveright, who is charged as accessary before the fact, to the murder of this unfortunate Mr. Semple; and there are five after, viz. Alexander M'Kenzie, Hugh M'Gillis, John M'Donald, John M'Laughlin, and Simon Fraser; Mr. Siveright is then, Gentlemen, the only accessary before the fact, and there are six after, for Siveright, I now see, is charged both before and after the fact. The charge against them is that

of murder, in various degrees, by helping one Cuthbert Grant to commit it, or receiving him after he had committed it, knowing he had done so. Having before you the charge and the persons accused, it will be my duty, before we go into the case, to explain to you, as well as I am capable of doing, the Law connected with the right of putting these persons on trial. The Officers of the Crown could not have put them on their trial, against their will, till they had convicted or outlawed some of the principals, as they are called in law; but the accused themselves, it appears, have the right to insist upon having their trials, and they have chosen to have them; but although they have chosen to be put upon trial, they can not be liable to judgment till all the principals are tried or outlawed. If convicted, they must remain in gaol as long as there are any of the persons accused as principals to be tried. I mention this to you, because I wish, as the two principals who have been tried have been acquitted, that, before you return a verdict of guilty, you should be most clearly satisfied of the Indictment having been made out against one or other of the principals, as well as against the Gentlemen who are before you. I wish to impress this strongly on your minds, because, if afterwards the principals should be tried and acquitted, although these persons are found guilty by you, they must be discharged; that is, some of them, the accessaries before the fact, because it is only to murder, as charged in the Indictment, of malice aforethought, or malice prepense, that there can be accessaries before the fact. There are various species of homicide, and instead of murder, it may, on the trial of principals, turn out to have been in self-defence, or there may be other circumstances which may remove the charge of murder, by shewing there was no malice premeditated. Now to judge whether this was murder, or whether it was in self-defence, that these lives were taken, you must bring your minds, as well as you are able, to recollect the evidence on the part of the Defence, which went

to shew that Cuthbert Grant, and the others charged, were not guilty of murder, but that it was in self-defence that this dreadful slaughter took place. Whether they are guilty of murder, or manslaughter, or nothing at all, it being in self-defence that it happened, it will be for you to say by your verdict. And then you will have to recollect, that it is accessaries only that you are trying, and say how far *they* are guilty of the Indictment. Your memory will, I fear, hardly be able to recollect the testimony of so long a trial, and where it has been so contradictory; for it is right I should tell you, that a great deal of contradictory evidence has been offered on both sides. The prisoners' Counsel, with great ingenuity and earnestnesss, endeavoured to prove that it was not malice prepense that occasioned the death of these unfortunate people, and therefore could not be murder; contending, from a variety of circumstances, that a state of confusion and war existed in that country. This may apply to two or three of them, but it will require great care on your part to distinguish, when you come to the main point of this unhappy affair, viz. whether the first fire came from Mr. Semple and his party, or from the other. There is great confusion and difficulty about it, from the very contrary evidence which has been given. First, we have direct evidence that it came from the other party, and that Mr. Holte fell by the first shot, and Mr. Semple by the second; then, on the other hand, we have a string of evidence to the contrary, and they all swear it came from Governor Semple's party. It is the most important thing in criminal trials, to weigh the evidence, because, believing the one side may subject a man to the loss of his life, if in a case of felony; whereas, if credit is given to the other side, the prisoner is acquitted; so that I say the great difficulty in all trials, and particularly in criminal trials, which are so serious, is, which evidence is to be believed when witnesses contradict each other. These observations have taken up a greater share of

your time than I intended, but I hope they will be useful to you. I have no hesitation in saying, Gentlemen, that if you do not consider the evidence distinct, as to the death of this unfortunate Gentleman, from malice prepense, you ought not to convict; and if you think it took place in self-defence on the other side, you ought also to acquit. According then to the evidence, to which we must now look; on the one side, it is said the Bois-brulés, upon seeing Mr. Semple and his party, gallopped up and formed a sort of half-circle round these unfortunate people; and one of the Half-breed party, who was tried the other day and acquitted, (a circumstance which is of no consequence to this trial), came out from among them, and rode up towards Mr. Semple, and some conversation passed, which I dare say you will recollect. At last, by some provocation given by this man, Governor Semple caught hold of his bridle, and the butt of his gun, and was going to make him a prisoner, or called to his men to make him so. Boucher slid from his horse on hearing this, and ran away, and immediately guns were fired from the Bois-brulés party, according to this evidence. If this evidence is believed, if you are satisfied with it, then it is undoubtedly murder. If you are perfectly clear that the Bois-brulés party fired first, it is unequivocally murder. When I say this, I mean it is so, if you pay no attention to the circumstances which have been adverted to so frequently in the course of the trial by the prisoners' Counsel, and relative to which evidence has been given at a very great length. I allude to the animosity said to exist between these two great Companies; for if, on the other hand, you think that the animosity subsisting between these two Commercial Companies extended itself to all belonging to them, and rendered the country in such a state of exasperation, that it was impossible for them to meet without coming to violence, it may diminish the homicide; but the excitement which has been shewn is not close enough

to be a defence, unless you believe that Governor Semple's party fired first. In the great mass of contrary evidence, I am truly glad that it is with you, and not with me, to decide the difficulty. You, I am sure, will weigh well all that has been said by the witnesses on both sides, as being the only way to arrive at a satisfactory decision, upon this very important trial. If, Gentlemen, you find that it is manslaughter that has been committed, you will then discharge these Gentlemen; if, however, you think proper to return a Special Verdict, it is in your power to do so, and then the circumstances connected with your jurisdiction will be fully considered and decided according to law. This verdict will only be returned in case you see a difficulty on the subject of jurisdiction. If, however, the offence in the principals amounts in your opinion only to manslaughter, then these Defendants must be discharged, because there is in law no such thing as accessary to manslaughter.

Solicitor-General.—I beg your pardon, my Lord, but after the fact, there can be accessaries to manslaughter as well as murder.

Chief Justice.—We know there can be accessaries after manslaughter; but the charge on the present Indictment is that of accessary to principals in murder; and if it is only manslaughter that Grant has committed, they can not, on this Indictment, be accessaries after the fact, because the fact charged is murder, and as to accessaries before the fact, there can be none to manslaughter.

Mr. Justice Boulton.—There is, Gentlemen, no such thing as accessary to manslaughter upon this Indictment, which charges the prisoners with being accessary to murder, and therefore it is no matter what the law is upon the subject. I was only endeavouring to give you as correct an account as I could, of what was the Law upon the case that you have to try. I will, in this place, say a word to you relative to the testimony against Mr. M'Leod, as given by Mr. Heurter.

His evidence goes this length; that in 1816, he left Montreal in company with Mr. M'Leod, and the other prisoners, to go to the Indian country; that going along, they met the settlers coming from Red River, and got intelligence of the death of Mr. Semple and his people; that upon this, Mr. M'Leod ordered them all to go on shore, which they did; and Mr. M'Leod, being a Magistrate, an examination took place into the circumstances of the transaction, and a number of the survivors were sent to Montreal to give evidence upon the trial of different persons; the party then pursued their way to Red River, and when arrived there, they made more enquiries, and it appears Mr. M'Leod gave all the people a dram of liquor, and a quantity of clothing to a part of them. It is not possible to suppose that these Gentlemen, coming from Montreal, could know any thing of what had happened at Red River, and therefore, if they are guilty at all, it must be from what they did afterwards, for they could not have known, by possibility, of what was going on at Red River, when they were at Montreal; and what they did afterwards is supported by the most slender of all possible testimony, and will probably go for nothing, except as you may think Mr. M'Leod's speech important, as shewing the disposition of the party afterwards. Before I read to you the evidence, or give you an outline of it, I will call your attention to the nature of the jurisdiction under which you are empowered to try offences which, like this, are committed in the Indian Territory. Certificates under the Great Seal of the Lower Province, you will recollect, were put in during the trial, as it is only under such an authority that you can have the power, and the whole is brought about under a British Act of Parliament, passed in the 43d year of His present Majesty's reign, which gives power to the Government of Lower Canada to transmit, under the Great Seal of that Province, offences committed in the Indian Territories, to any Court of this Province for

trial, if it shall appear to him that the ends of justice may be more conveniently attained in Upper than in Lower Canada. Under this solemnity then it is, that you have been empannelled to try these Gentlemen; and I will now give you an outline of the evidence, which has been very confused and indistinct, so much so, that I am sure you must have had great difficulty and trouble to have understood it; but I shall endeavour to make it as plain as I can, and I hope you will then understand it better.

The first witness called was Michael Heden, who swears that they had received information that they were to be attacked, and were much alarmed about it. He says that they constantly kept a watch, or look-out, to give notice of any danger that might approach, and that on the 19th June, about six or seven o'clock in the evening, an alarm was given that the Half-breeds were coming, that is, that they were going towards the Settlement belonging to the Earl of Selkirk, situated at the Frog Plains, of which you have heard so much in the trial, at a distance of about two or three miles from the fort. Mr. Semple, the witness says, went to some commanding position of the fort, and with a spy-glass looked at this party, to see who or what they were. Mr. Semple was accompanied by some of his people, and ascertaining that they were an armed body of men, mounted on horseback, he directed about twenty of his people to get their arms and follow him, which they immediately did. They went on, Heden says, for some distance, and saw at first only a few. As they went along, they met some settlers running, and crying the Half-breeds were come with carts and cannon. Shortly after they saw a much larger number of horsemen, and Governor Semple sent back to the fort for a cannon; the person who was sent, having been examined as a witness, I need not detain you, by remarking at present upon his evidence, farther than to remind you that the cannon did not reach the party. They

went on, Gentlemen, for some little distance farther, when the mounted party suddenly turned back upon Mr. Semple's party, and dividing themselves into two separate divisions, they surrounded them, and completely cut off their retreat. It is now coming nearer every moment, Gentlemen, to the very important part of the evidence, and you will of course give particular attention to it. Having formed a sort of circle or half-moon, one Boucher, a man who has been indicted as a principal, but who was acquitted the other day after a long trial, advanced towards Mr. Semple's party, waving his hand, and making signs as if he wanted to speak, and approaching nearer, he called out, "What do you want? "what do you want?" Governor Semple replied, "What "do *you* want?" to which Boucher answered, "We want "our fort," and the Governor said, "Go to your fort." Upon this Boucher made use certainly of very insolent language to the Governor, telling him he was a damned rascal, and had destroyed their fort. Upon this, Mr. Semple laid hold of the bridle of this man's horse, and of his gun; and almost at the same instant, the report of a gun was heard, and directly after a second report took place; both these shots, this witness positively swears, came from the Half-breed party, and that by the one a Mr. Holte was killed, and by the other Mr. Semple was wounded and fell, though not killed, as appears by subsequent testimony. Here, Gentlemen, you have arrived at the great and important point of this enquiry, viz. who fired first? This man says positively, that the Half-breed party fired these two first shots; whilst, on the other hand, the witnesses on the part of the Defendants deny it, and bring evidence of a directly contrary description. It appears, from all the testimony that has been adduced, that the Half-breed party were armed; and it is a matter demanding your most serious consideration to determine correctly, why they were armed, and whether any justifiable reason has been proved for their being so. It

forms a most important question for your serious consideration, whether it has been proved that their going armed was a consequence of former attacks having been made upon their persons and their property. You will have also to enquire into the correctness of the reasons assigned for this party going by land, when there was the more ordinary route by water. You will have to weigh very distinctly, whether it was for fear of losing their provisions, or whether it was to avoid being seen in passing the fort, and by that means more certainly effect their object of destroying the Settlement, by taking it unawares, or by surprise; and after you have done this, the other question must be determined, who fired first? There has been a great deal of testimony, Gentlemen, relative to the taking of pemican, and that on both sides of the question; with that you have very little to do, except as it may account in some degree for the parties going armed; for you can not consider it any justification for murder, that you are able to prove the person who was murdered, to have committed a robbery on another person, or even on yourself, unless you prove he was in the very act of robbing you at the moment you took his life; and then it is a complete justification, because you are allowed to defend your property at every hazard. I therefore say, Gentlemen, though much has been said about taking pemican, it has very little to do with the case. Indeed you will recollect, that it was a question, how far any evidence upon the subject ought to be received. My Learned Brothers, however, considered that the circumstances might be evidence to a certain extent, and that it was legal evidence for you. It amounts, however, to nothing more than this at last, that a great deal of bad blood existed between these people, and that they were perpetually annoying each other in every way they could think of; and amongst others, by the taking of their provisions from one another. You will remember, the witnesses have described

this pemican as indispensable to the carrying on of the trade in that country, as it will keep for a long time. It is a sort of food which the witnesses represent to be procured from the Plains, and very necessary for their support. The evidence is so confused, from the very great variety of circumstances apparently but little connected with the charge to which it refers, that it is very difficult to determine what is important, and what is not; but you will endeavour to recollect its application as well as you can. But the main point will be for you to try and satisfy yourselves, who fired first. The evidence on the part of the Crown says, that Governor Semple received the first shot, that is to say, his party did, as a Mr. Holte was the first that was killed, from the Half-breed party; and that a second was fired from the same quarter, by which Mr. Semple was wounded, before any shot was fired at all from the other party. This fact is sworn to by different witnesses, some more fully than others; but all unite in saying, either positively or to the best of their belief (and they state circumstances which lead to the belief), that this was the case. On the other hand, without at present referring to particular witnesses, you will recollect that it is sworn, Governor Semple reproached his people for not firing, and that immediately two shots were fired by some of them at Boucher, and that it was not till after them, that any firing by the Half-breeds took place. Here then, Gentlemen, you are placed in a very difficult situation, and ought to use great caution in examining the evidence, as when a little malice exists in the mind of a witness, it is difficult to say to what lengths it may lead him; and in the present instance both can not be correct. If, Gentlemen, you shall, upon investigation, be of opinion that it is proved that the firing commenced on the side of Mr. Semple, then there is a most complete defence, because, although neither party had any right to go about armed in this manner, yet it is very natural that, when they met with

arms in their hands, from the state of mind in which unfortunately it is proved they were, they should come to blows; and if one party fired upon the other, then that which was fired upon would be excusable and justified in using their arms. Both sides swear, and that most positively, that they received the first fire, and that it was not till after a second shot even had been fired at them, that they returned it, and that then the firing became general. I repeat it to you, Gentlemen, that I rejoice sincerely that it is you that are to determine, and by your verdict to say who, in your judgments, have spoken the truth. To assist you, by refreshing your memories as to what each have sworn, I shall now proceed with the evidence; and in proportion as it is tedious to hear, I shall endeavour to point out to your particular attention, parts that might otherwise escape your notice, and which really are material. We had got to that part of this melancholy transaction in which the firing became general, the fatal result of which was, that the greater proportion of Mr. Semple's party were killed. I shall just mention the heads of evidence, and not trouble you by reading the whole. The battle being over, nothing else particular occurred that day, according to Heden's testimony. Next day the dead body of Mr. Semple and others were brought to the fort. Mr. Semple wounded in the left breast, but could not tell whether by musket shot or not, because the body was all over spear wounds. On this day, Grant and others came to the fort, and ordered them away, and they prepared to go, and actually went away on the 23d. They went away in boats—he knows three or four escaped besides himself, but can not say how Mr. Pritchard got off. We now go on to the 23d, when the party went away altogether from Fort Douglas, being guarded as far as the Frog Plains by Boucher; at day-light, on the 24th, they meet a party in nine or ten canoes, headed by Mr. M'Leod, and were made to go on shore, after some enquiries for Mr. Semple and Mr. Robert-

son, who were not there, and for Mr. Pritchard, who you recollect was there, and gave them the history of the melancholy business. He recognizes Mr. M'Leod as being there; also Mr. M'Kenzie, whom he distinguishes by the title of Emperor; he speaks also to Dr. M'Laughlin; he saw Siveright there the next day; he speaks also to Mr. M'Donald's being there, but not to Simon Fraser, or Mr. M'Gillis: he mentions other persons who were there, but as they are not before you, it is of no consequence to notice who they were. Some of the Half-breed party came to Netley Creek while they were there—came from Fort Douglas—some of those who had been in the battle of the 19th June; and the witness says, though he does not know of any presents being made to them, he does know that rum and tobacco were served out to them. He concludes by saying he was sent a prisoner to Fort William, and thence to Montreal. Upon his cross-examination, he says he made a deposition like what he has made here, that is, the same facts. I remark here to you, Gentlemen, that, though very improperly, yet it appears, affidavits made before Magistrates have been printed. It is a very unwarrantable action, and ought to be deeply censured. Witness continues, that he does not know where this party with Mr. M'Leod came from—is sure he saw Mr. M'Laughlin and Mr. M'Donald at Netley Creek, and that rum and tobacco were given to the people who came from Fort Douglas, and, he adds, who had been in the battle of the 19th of June. To an enquiry put in reference to each of the Defendants, he answers, that he did not see any thing like committing a murder, or helping to commit it. He is here questioned as to *how* they were surrounded, and he describes it to be in the shape of a half-moon, but that their retreat to the fort was not cut off completely. In this particular, you will recollect he contradicts himself, as he swore, in his examination in chief, the reverse. He is then examined as to who fired first, and

maintains that the Half-breeds did; that they fired two shots before his party fired any; and asserts, that this is the account that is true, and is the one that he has invariably told. In this he is, you will recollect, contradicted by the woman who was examined, and by another witness, who swear that at different times he has told them that Mr. Semple's people fired first, and deserved all they got; but he swears he never told any body so—he has heard that one man was killed on the Bois-brulés' side. The next witness is one who went to Qu'Appelle with Pambrun, was taken prisoner by Cuthbert Grant—while a prisoner, heard of an expedition against Governor Semple—did not hear a speech made by Mr. Alexander M'Donell to the Half-breeds and Indians at Qu'Appelle, or in going down—a part of the Half-breeds went to Brandon-house—heard the Half-breeds frequently talk of their intention to destroy the Settlement, and the fort at Red River. When he got to Fort Douglas, heard it rumoured there that they were to be attacked, and told them what he knew—goes on to the 19th June, and gives nearly the same account as Heden, with whom he made his escape across the river in an old bateau. He states about their all going away, and recognizes at Netley Creek, Mr. M'Kenzie, and also Mr. M'Laughlin, but not the others. Saw the Half-breeds arrive from Fort Douglas, and that they were well received; but did not see Grant among them, or Morain. Saw Morain afterwards at Point au Foutre—saw nothing on part of prisoners like giving countenance to murder. He also swears, that the Half-breed party, in surrounding them, got between them and the fort, completely cutting off their retreat. There is nothing more in his testimony worth your notice. Mr. Bourke is the next witness; he swears he was store-keeper to this Colony, and gives nearly the same account of the beginning of the business as before—that he was sent for a cannon by Mr. Semple, went back for it, and did not again join the

party—don't know therefore about the fight. In going back he got fired at by some people in bushes, and was wounded, but got back to the fort—had sent the cannon back before, so that it never reached Mr. Semple. Another man who was with him was killed while trying to get away. He also saw Mr. Semple's dead body at the fort the next day, and proves that they were all sent away. Gives the same account of meeting Mr M'Leod's party, and going to Netley Creek. He also gives an account of a conversation between Mr. M'Gillis and Alexander Macdonell, relative to taking the fort; this no doubt you remember, the one being for attacking it at once, and the other for forcing it to surrender from want of provisions. From there, witness states he was sent to Fort William, kept there some time, and then sent to Montreal. Mr. Miles Macdonell proved that the regulations he thought it right to introduce in that country, were directed equally against both parties, that is to say, it was a general order to prevent provisions being taken out of the district; but I do not think there is any thing important in Mr. Macdonell's testimony. He speaks to aggressions committed against their party, but they need not be taken into your notice, as they can not justify additional outrage. Hugh M'Lean gives the same sort of testimony as the two first witnesses, except that he was not at the battle; he was the man who drove the cannon, and went back with it to the fort. Mr. Pritchard gives a very particular account of every thing that occurred; he heard the conversation between Boucher and the unfortunate Mr. Semple, saw him lay hold of the bridle and gun of Boucher, who slid off his horse, and ran some distance before he stopped, but Mr. Pritchard does not say who fired first. He saw Mr. Holte struggling on the ground, and then tried to save himself; all was in great confusion, and thefiring was general; shortly after he saw none of his people, but one Gentleman, left standing, and they threw down their arms, and proposed to give themselves

up. One was killed upon the spot, and with great difficulty, through the prayers of a Canadian belonging to their party, the witness, Mr. Pritchard, escaped with his life. He negociated the terms upon which they were to go away, and some time after they all went away. He had to go several times backwards and forwards to the Frog Plains, and on one occasion owed his life to Boucher, who saved him from some who attacked him; he describes fully his meeting with Mr. M'Leod's party, and besides M'Leod, he recognizes Mr. M'Kenzie, and he believes Mr. M'Gillis, but is not sure as to him—he knows of the arrival of some of the Half-breeds from Fort Douglas, but nothing of their reception, as he was a prisoner. Some letters are proved by Mr. Pritchard to have been the writing of Mr. Semple, and they were put in and read during his cross-examination. Patrick Corcoran was next sworn; he was one of the party who went to Qu'Appelle with Mr. Pambrun, who was also examined. A great deal was said by these witnesses about some harangues or speeches, and about the Indians being painted, and giving the war-whoop, but it is all contradicted by the witnesses for the Defence; it is therefore not necessary to puzzle you with repeating it; you can not but recollect it. This forms the principal evidence for the prosecution. On the part of the prisoners, a great deal of testimony has been given in the beginning to shew the aggressions committed by the taking of this food, the pemican, from them, also the taking and destruction of forts. Evidence is also brought, and a great deal of it too, and by a great many witnesses, to shew that they had no intention whatever to molest or disturb this Settlement. That they merely wanted to take their provisions in safety, and their going armed was a measure rendered necessary by the fear they had of being attacked. They prove the river to have been, in some degree, blocked up against them, and that they were compelled to go by land. In support of their peaceable disposition, they prove the

orders given, and that they obeyed them, going as far as a large swamp would allow them to do, from the fort, wishing to pass them unmolested. They say they thought they had done so, till, as they approached the Frog Plains, they saw they were followed by Mr. Semple and his party. That they then stopped, and got Boucher the Canadian, who spoke a little English, to go and ask what they wanted. The conversation that ensued, you can not have forgotten, as you have heard it so often. Boucher was examined before you; he told nearly the same story as the other witnesses—he did not admit the insolent language, to be sure—but, upon hearing a shot whiz by his ear, which he says was the second that had been fired from Governor Semple's party, he got off his horse, and ran away some distance, and that then the firing became general, and lasted for a quarter of an hour. During that time you will recollect that Boucher was lying on his belly in the grass; making observations, as I suppose. On the subject of the party that was going with M'Leod and these Gentlemen, a great deal of evidence was given. It was admitted that letters had been written to Fond du Lac to raise the Indians, but it was only to go up with them in case they should be attacked, or rather, by taking a strong force with them, to induce the people at the fort not to carry into effect what it was understood they intended to do, viz. prevent them going up past the fort to the posts the North-West Company had beyond Red River. In short, the evidence for the Defence is, that they only wanted to trade; that for their trade this meat, called pemican, which abounded on these Plains, was necessary, and that they wished to secure a supply for their traders. I am afraid I have been tedious, but I hope you now understand the case better. Here then ends, Gentlemen, the evidence on the part of the Defence, as well as the Prosecution. It has taken up a great deal of time, but you now have the whole case before you.

The first question for you to consider will be, has a *murder* actually been committed at all? You are sure that a life has been lost, but although you have that certainty, yet it does not necessarily follow that it was a murder because there was a life lost. There are a variety of degrees of homicide, and to decide to which of them this transaction belongs, is your province. The destruction of a fellow-creature from malice prepense is murder; the taking away life in defence of one's self, or one's property, is justifiable homicide; and if death ensues in a quarrel or passion, it is manslaughter. To which of these three degrees any particular case belongs, it is the province of the Jury, who try the case, to determine.—If in this case you think it was from malice, intentionally with a design to kill, that these people went up to Governor Semple's party, then the charge is made out against the principals, and places you in a situation to consider the guilt or innocence of the accessaries. If, however, you are of opinion that it was in defence of themselves they fired, and after the party with Governor Semple had fired upon them, then a complete justification is made out for the principals, and of course you know there can be no accessaries guilty. But, I fear, Gentlemen, you will not, were you even to take the testimony on the one side only, find such a case as that made out. I am afraid there is no proof of that kind, were you, as I say, (which nevertheless you must not do, for you must weigh the evidence on both sides, and judge impartially between the two), to rest upon the testimony on one side only. It then remains to enquire whether you can, with propriety, consider it manslaughter? In this part of the enquiry, you will remember that these two parties belonged to two Trading Companies, both of great importance, and both employing a great number of servants, who are engaged in constant broils and quarrels with each other, proceeding to acts of violence whenever they met, and

that, in this temper of mind, they saw each other on the 19th June, and immediately the unfortunate engagement took place. This battle did not result from the passion of the moment, there is no testimony of that nature, and the law, in a hundred instances, considers the killing a man, though provocation may have been given, to be murder. So, in this instance, notwithstanding all the evidence which had for its object to prove the existence of that passion, which would reduce the killing to manslaughter, I fear you will not find it. Therefore, if you acquit these persons, it must be on the ground that you do not believe they fired first, or that, from the conduct of Mr. Semple and his party, they were justified to do so; and in either case these Gentlemen are acquitted. Indeed, whichever way you look at the case against most of these Gentlemen, there is, apparently, nothing that can be called evidence to prove them guilty. Some are not even sworn to as being there at all, that is, at any of the places, and others appear to have taken no step at all in the business. Indeed, if you believe all that has been said on the side of the Brulés, the countenance given by any can not be considered as wrong. If you believe they went to carry provisions, that they could not go by water for the reasons stated, that on setting off they received orders to pass at as great a distance from the fort as possible; and lastly, if you believe the reason that they did pass, and the reason they went at no greater distance was because of the morass; these, taken in connection with the fact, that Mr. Semple and his party did go after them; and if you also believe that the Hudson's Bay party fired upon the Half-breeds, then no body that is accused is guilty. But the evidence is so contradictory, that it is hard to say which to believe; and the circumstances which each party, by its witnesses, represent, are so different, that you will have very great difficulty. But you must decide whether it is murder, or manslaughter, or whether it was in self-defence that these lives were lost.

If manslaughter, then, Gentlemen, there is an end to the whole affair; all must be acquitted. If actual murder on the part of Grant, or the other, then you will say whether these Gentlemen have been proved to be accessaries. I believe I have stated to you every thing that is any way important in the evidence, and all that is necessary on the question of law. I have not done it very professionally, because I was afraid, if I did, instead of assisting your judgment, which was my object, I might only confuse and puzzle you; but you now know as much of the law as is calculated to help you, without distracting your attention in considering the question which must first be decided. Has murder, has manslaughter, has self-defence been committed, that is, has it been in self-defence that the lives of this unfortunate Mr. S mple and his companions have been taken? The question must puzzle you to decide. If you are satisfied there was no malice in Grant and Morain, then they can not be guilty, nor can the accessaries. If you believe, from the accounts given of their conduct, that it was murder in those charged as principals, you are then to enquire whether these are accessaries, or any of them? Excepting against Mr. M'Leod, I do not think there is any evidence that can be considered as shewing that countenance was given in any way to the Half-breeds. Against him you must judge what weight the evidence ought to receive, and how far it should be considered as proof of approbation and protection to those who committed the murders. (It was here intimated by the Bar, that Mr. M'Leod was not before the Court, nor included in the Indictment, upon which Mr. Justice Boulton continued his Charge). Gentlemen, I was going to have said, that there was not a scrape or scintilla of evidence, except against Mr. M'Leod, and that against him you would judge of its weight. I had thought that Mr. M'Leod was one of the Defendants before you, but I find he is not. Against the others then there is not a scrape, not a scintilla

of evidence—not of any thing before the fact; and after the fact, only the giving of the usual supply of clothes to their servants. You will, therefore, consider of your verdict.

The Jury then retired, and in about three quarters of an hour returned into Court, and delivered, by their Foreman, a verdict of NOT GUILTY; which, being recorded by the Court, the Jury were discharged.

It will be recollected, that the Gentlemen thus acquitted, were arrested by the Earl of Selkirk at Fort William, in August, 1816, on the charges of High Treason and Conspiracy, as well as Murder, and that the buildings and property of the North-West Company at that place were forcibly seized, and subsequently retained by an armed force under his Lordship's command. The North-West Company represented at the time, that these accusations were merely a pretext set up to palliate the preconcerted plunder of their property and destruction of their trade; while, on the part of Lord Selkirk, it was alleged that the crimes committed by the artners of the North-West Company were so atrocious as to justify his Lordship's proceedings against them; and for some time the public opinion remained in suspense as to the real merits of the case. So far as regarded the seizure of property and the interruption of trade, the point was decided by the Prince Regent's Proclamation of the 3d May, 1817, (for which see Appendix Q,) in consequence of which the North-West Company recovered possession of their property, and re-established their trade; but that Proclamation left the rights of parties, and the crimes alleged against individuals, to be investigated and decided upon by the law; and until such investigation could take place, much uncertainty necessarily prevailed, from the contradictory

statements and affidavits which had been laid before the Public.

The trials at York have, however, decided the point as to the alleged *murders;* and the charge of *high treason* has never been followed up, nor even mentioned, since it served the desired purpose of figuring in Lord Selkirk's warrants as a pretext for seizing and examining the books and private papers of the North-West Company. In regard to the charge of *conspiracy*, the Attorney-General declined proceeding upon it, and his reasons for so doing were, to quote his own words in addressing the Court, (see his Address to the Court, at the close of the trial of Cooper and Bennerman, page 197).

" I found that I had not evidence sufficient to ground a " charge *against those individuals whom alone we are* " *authorized to try;* indeed scarcely a shadow of evidence, " except as we might prove them to have been connected " with those over whom we have no jurisdiction, and whom " we therefore cannot charge; and *this evidence even* went " almost entirely to conduct for which these same persons " have been already put upon their trial in another shape."

The explanation of this is, that the Court had previously decided that they had no jurisdiction except for offences *expressly specified* in the Commissions under the Great Seal of Lower Canada, which remitted the prisoners to this Province for trial. Now the Commissions for remitting the cases of Boucher and Brown for murder, and of Cooper and Bennerman for stealing cannon, and *other offences*, did not specify among those other offences, the charge of *conspiracy*, and therefore the Court could not try them; but the Commissions remitting the cases of the Gentlemen arrested at Fort William, *did* expressly specify the charge of conspiracy, and the Court *had* power to try them; but there was " *not* " *evidence sufficient to ground a charge against them,*" and " *scarcely a shadow of evidence,*" except as they

might have been proved *to have been connected with persons over whom the Court had no jurisdiction* (for the charge of conspiracy); *and this evidence even went almost entirely to conduct for which these same persons had already been put upon their trial in another shape;* " that is," *the only evidence against these Gentlemen, went to connect them with Boucher, Brown, Cooper and Bennerman, in conduct for which these persons had already been tried and acquitted.* The charge of conspiracy, therefore, so far as the Gentlemen arrested at Fort William might have been supposed to be implicated, is abandoned by the Attorney-General as unfounded, and thus all the charges against them are satisfactorily cleared up. And as these charges are the only justification heretofore set up for the Earl of Selkirk's proceedings at Fort William, it remains to be seen, what Defence will now be made for these proceedings, as it is not to be supposed that they can be passed over without some legal investigation.

TRIAL

OF

JOHN COOPER

AND

HUGH BENNERMAN.

At
C
I
a

were
me
ing
at
ple
foll

GE
Jos
Wi
Jos
Pet
Jos

PROVINCE OF UPPER CANADA.

HOME DISTRICT.

At a Session of Oyer and Terminer, and General Gaol Delivery, at York, in the said Home District, on Monday the 19th of October, 1818, *and continued by Adjournments,—*

Tuesday, the 3d November, 1818.

PRESENT:

His Lordship Chief Justice POWELL.
The Honourable Mr. Justice BOULTON.

JOHN COOPER and HUGH BENNERMAN

were put to the Bar, and being arraigned upon the Indictment (*Appendix J.*) against them and others, for stealing cannon in a dwelling-house of the Earl of Selkirk, at Red River, on the 3d of April, 1815, they severally pleaded *Not Guilty;* and after various challenges, the following Gentlemen were sworn as a Jury:

GEORGE BOND,	JOHN M'DOUGALL, jun.
JOSEPH HARRISON,	WILLIAM MOORE,
WILLIAM HARRISON,	ALEXANDER MONTGOMERY,
JOSEPH SHEPHERD,	PETER WHITNEY,
PETER LAWRENCE,	JONATHAN HALE,
JOSHUA LEACH,	MICHAEL WHITMORE.

Counsel for the Crown,

Mr. Attorney-General ROBINSON,
Mr. Solicitor-General BOULTON.

Counsel for Prisoners,

SAMUEL SHERWOOD,
LIVIUS P. SHERWOOD,
W. W. BALDWIN,
} Esquires.

Mr. Sherwood.—I have to move the Court, that the witnesses on the part of the Crown may be directed to withdraw. Ours are all out of Court, I believe; they have been ordered to keep below till they are called to the witness-box.

The witnesses on both sides having retired,

Solicitor-General.—May it please your Lordships,—Gentlemen of the Jury,—The prisoners at the bar, John Cooper and Hugh Bennerman, stand indicted for a capital offence, in assisting, with a number of other persons, to commit a felony, in stealing and carrying away, with force and arms, eight pieces of cannon and one howitzer, the property of the Right Honourable Thomas Earl of Selkirk, from his dwelling-house, and putting in bodily fear of their lives certain persons found therein; or, in more familiar phraseology, they are charged with committing a robbery in a dwelling-house, and putting the inhabitants thereof in bodily fear of their lives. It is unnecessary for me to detain you, Gentlemen, in opening a charge, the nature of which is so well known. All we have to do is, to prove that the prisoners feloniously took away the property set forth in the Indictment, and converted it to their own use, and we sustain the accusation; whilst, on the contrary, if we do not bring evidence of this, the prisoners are entitled to a verdict of acquittal. Mr. Attorney-General will detail to you more fully the nature of the case, and we shall then adduce our evidence in support of the charge, to which I am confident you will give every attention. It will be your duty equally to attend to the defence of the prisoners, and, assisted by his Lordship's charge, there can be no doubt of your returning a verdict such as shall be consistent with the justice of the country.

Attorney-General.—May it please your Lordships—Gentlemen of the Jury,—By the Indictment which you have just heard read, as well as from the observations of the Solicitor-General, you will have perceived that John Cooper and Hugh Bennerman, the prisoners at the bar, are, with a number of other persons, indicted for stealing from out of a dwelling house, nine pieces of cannon, the property of the Right Honourable the Earl of Selkirk, and with putting one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, in bodily fear of their lives. Other persons are accused as principals, as well as accessaries before and after the fact; but with them, Gentlemen, it is almost superfluous

that I should inform you, you have nothing to do. Your inquiry will be confined solely to an investigation of the guilt of the two men before you. It is necessary, Gentlemen, that I present to your notice, that the Indictment contains a second set of counts, leaving out the capital part of the charge, and limiting the accusation to the robbery. In the Indictment, you will have remarked that the property is valued at a certain sum; it will not, Gentlemen, be necessary that we exactly prove that to be the value of the property; it will be sufficient that we satisfy you that it amounts to more than, or is above, the value of forty shillings; and as there can not be any doubt upon that subject, the value will not call for much of your attention. The charge is one of a most unusual nature, although it is one of larceny, but its singularity consists not so much in the nature of the offence, as in the description of property stolen. The property charged to have been feloniously taken away by the prisoners, are nine pieces of cannon, the property of the Right Honourable the Earl of Selkirk. The accusation will sound unusual in your ears, but you are well aware the nature of the property feloniously taken away makes no difference whatever in the charge itself, or in the guilt of the offender; for all our property is alike under the protection of the law: it is therefore completely unnecessary that, in a case so clearly comprehended by you, Gentlemen, who are so frequently called upon to exercise the office of Jurors, I should delay producing the evidence in support of the charge. It will perhaps be advisable that I mention to you, that this, like others which have occupied a considerable portion of our attention during the present Assizes, is a case from the Indian Territories; but whilst I remind you of this circumstance, it is not, Gentlemen, on that account to intimate that the place where the crime has been committed should make any difference in your decision, as to the guilt or innocence of the accused. It is, Gentlemen, no matter where the crime has been committed, so that we prove it was within your jurisdiction that it was perpetrated. If, Gentlemen, any reference should be made to scenes which have unfortunately occurred in that country, I think it can be with little advantage to the prisoners; for it must strike every reasonable man, as being more necessary that the law should be rigidly executed in offences committed in a country where, in addition to its natural difficulties, outrage had attained such a daring height, that it was necessary to resort to the protection of what the Indictment charges to have

been stolen. But it is only of consequence that your attention should be drawn to the place where the offence is charged to have been committed, that you may be satisfied it is not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, but within your jurisdiction, under the provisions of the Act of the 43d of the King.

The branches of enquiry which will present themselves to your consideration are; Whether the place charged in the indictment is within your jurisdiction? Whether the property charged to have been stolen, belonged to the Earl of Selkirk? Whether the nine pieces of cannon, or any of them, were actually stolen, and if you find that they were, whether they amount in value to more than forty shillings, and were stolen out of the dwelling-house of the Earl of Selkirk? It will only then remain to say, whether the felony is brought home to John Cooper and Hugh Bennerman, by the evidence. Having taken the liberty of placing before you these prominent points which will require your consideration, it is only a very brief outline of the case that it will be necessary to trouble you with. The robbery charged in the Indictment was committed at Red River, in the Indian country, where the Earl of Selkirk is establishing a Settlement, and has a variety of houses of different descriptions, and in one of these, it will be proved to you, the nine pieces of cannon had, for a considerable time, lain useless, indeed it was in April, when they were lying frozen up in a sort of out-building, when a large party of persons, among whom were the prisoners, came, and by force took them away, removing them to a fort at some distance belonging to the North-West Company. This, Gentlemen, is the case we have to prove to you, and if we succeed in proving it against the prisoners, they must be found guilty, as all aiding and abetting are, in the eye of the law, equally guilty, though perhaps not morally so, as in this case it may perhaps appear that some who stirred up this proceeding, and induced a number of ignorant persons to commit this depredation, are morally more culpable, yet, legally, all are considered equally guilty. The first witness I shall call is Mr. John P. Bourke.

JOHN P. BOURKE, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Bourke.—In the spring of the year, 1815, I resided

at Red River, in the capacity of a store-keeper to the Colony established by Lord Selkirk. At that time my Lord Selkirk had a number of pieces of cannon there. There were nine pieces altogether. Some were brass and some iron, four of them were brass, and were three pounders, that is, two of them were, and two were swivels. Two of them were field-pieces and two were swivels; there were also four iron swivels and a howitzer. There were only two brass field-pieces and two brass swivels, there were also four metal, or iron swivels, and a howitzer; nine pieces altogether. They were in my charge, and given to me in charge as the property of the Earl of Selkirk. They were in the store when I received them in charge, and I received them from Mr. M'Donell, or Mr. Archibald M'Donald, that is, I received the keys of the stores from one of them, but I can not exactly recollect which. Mr. Archibaid M'Donald was under Mr. Miles M'Donell.

Attorney-General.—What, Sir, might they be worth, at a very moderate calculation? What do you think was their value?

Mr. Bourke.—Indeed I can not say, but they must be very valuable. I do not know the value of such things.

Attorney-General.—It is unnecessary to fix a precise value; do you think they were worth ten pounds each?

Mr. Bourke.—They must certainly be worth that, and the brass ones a great deal more, as I should think. They were generally kept in one of the men's houses. By men's houses, I mean houses where the men lived, but the property of the Earl of Selkirk. One was kept on a block outside of the houses, the others in the men's room, of a house belonging to the Earl of Selkirk. On the 3d of April, 1815, I thought the men collected in unusual numbers to get provisions, and was surprised at observing that most of them had sticks in their hands.

Attorney-General.—Were the men accustomed to get provisions from the store in this way?

Mr. Bourke.—They were accustomed to get provisions from the store, but not to come with sticks for them. It was on the 3d of April, between ten and twelve in the morning, when I saw them assembling in such numbers; I was afraid they meant to break open the store, and I therefore determined only to take them into the store one at a time.

Attorney-General.—Was there any particular time, or limited period, by which their provisions were to be served out?

Mr. Bourke.—There was not. I usually began as early as convenient, and it was generally about this time of day. About twelve o'clock, or between twelve and one, as I was looking out to call some into the store, I saw they had got the cannon on a sledge. I immediately locked the store-door, and went and took hold of the cannon, or one of them, to remove it from the sledge, but was prevented by the Settlers, who took hold of me, and ordered me to let it go. I then tried to get into the great house, where Mr. Archibald M'Donald and some others were, but was prevented by the people with their sticks and clubs. I then tried to get into the store, where I had been serving out the provisions, and whence I could get to the room where Mr. Archibald M'Donald was, but I was again prevented by them, and among others particularly by Hector Gunn, who had a gun, till they got off with the cannon. Then I was let go in by them, and I found they had taken all the pieces of ordnance that were there. The two prisoners were there. I know both of them very well, and they were there. I can not say that I saw them actually take hold of the cannon with their hands, but they were there, and went away with the party which took them away to the North-West fort, in the neighbourhood of the place they were taken from.

Attorney-General.—Did you see the prisoners at the bar before and after the robbery, and did you ever see the cannon after they had been taken away in the manner you have described?

Mr. Bourke.—I did see them, both before and after the robbery. The cannon were taken up to the North-West fort, and the prisoners went along with them. Soon after they got out, I saw Mr. Duncan Cameron meet the people, and encourage them not to be afraid, and they were taken to the North-West fort, where I afterwards saw a part of them. I saw two of the brass-pieces in the North-West fort at the time I went there with Mr. White, Mr. Archibald M'Donald, and a constable, with a warrant from Mr. Miles M'Donell to search for, and demand, the stolen property. There was a large party went, but only the four I have mentioned were allowed to enter the fort.

Attorney-General.—Did you obtain the cannon from Mr. Cameron?

Mr. Bourke.—No, we did not: he said they were in his possession, and he would take good care to keep them, and as there was an armed force drawn up in the fort, we

could not execute the warrant of the Magistrate. I believe I have frequently seen the prisoners afterwards among the North-West Company's people. They deserted our fort at that time, and I never afterwards served them with provisions; they went away altogether. I saw one of the cannon afterwards at a battery lower down upon the river, which had been erected by the North-West people to annoy us.

Attorney-General.—I omitted, I believe, to ask you whether the prisoners were armed? I would also ask if the Settlers, on the morning the cannon were taken away, were generally armed with clubs?

Mr. Bourke.—I can not say that it was clubs that the party generally were armed with, but they had sticks, and I can not say about the prisoners. The Red River country is in the Indian Territory, being situated in the neighbourhood of the Lake and River Winnipic. The Earl of Selkirk had a Colony called the Red River Settlement. I went to it in 1813, and remained there till we were all drove away by the North-West people in 1815. The Red River Settlement was situated near the Forks of the Red River, as they are usually called: the Forks are formed by the junction of the Red and the Assiniboin Rivers. The cannon were taken from Fort Douglas, from the dwelling-house of some of the men, and were taken to the North-West fort, which was about half a mile distance, to Fort Gibraltar, where they were received by Mr. Cameron, or or rather, he went with them, for he met the Settlers with them, and was accompanied by a number of men.

Attorney-General.—And the cannon, together with the house from which they were taken, were the property of the Earl of Selkirk?

Mr. Bourke.—They were, the one and the other.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—Do you know what Lord Selkirk's possession was? I mean, what right he had to them? How they came to be his property? Because they are rather an extraordinary property for a Nobleman to be possessed of.

Mr. Bourke.—They were given into my care as such; they came to me with his other property, and I took them to be such. I never asked any questions about how he came to have such property.

Mr. Sherwood.—Were they upon carriages, or mounted?

Mr. Bourke.—No, they were not.

Mr. Sherwood.—Had they not been mounted a short time before?

Mr. Bourke.—No, they had not, to my knowledge.

Mr. Sherwood.—Were they not on carriages on Christmas-day, and had they not been for some time before that day?

Mr. Bourke.—I do not know that they were.

Mr. Sherwood.—Do you not know, or I will ask you, were there not carriages there for them?

Attorney-General.—I object to this question, or rather to the course of questions put. What difference does it make, whether there were carriages or not? Would it be less a robbery if the carriages had been there?

Mr. Sherwood.—Though unfortunately not in possession of the advantages which the Crown Officers command, yet I have as good a right as the King's Attorney-General, to select my own mode of conducting the Defence of the prisoners. But the questions I have put are directly in point, as it is not merely a taking away of the property of another which it is necessary to shew, but also the *animus furandi.* In this opinion I am supported by my Lord Hale, p. 508, sect. 3, vol. i. "As it is *cepit* and *asportavit*, so it must be *felonice*, or *animo furandi*, otherwise "it is no felony, for it is the mind that makes the taking "of another's goods to be a felony, or a bare trespass only; "but because the intention and mind are secret, the intention must be judged by the circumstances of the fact." My Lord Hale then goes on to state a variety of instances, so as to elucidate the sound principle, that in the absence of the *animus furandi*, although property is taken away, it is only a trespass that is committed. Amongst the cases put by the Learned Judge, is one completely in point to that at present before your Lordships. "If A. takes away the "goods of B. openly before him, or other persons (otherwise "than by apparent robbery,) this carries with it an evidence only of a trespass, because done openly in the "presence of the owner, or of other persons that are "known to the owner." Upon the shewing of the Crown at the present moment, these cannon were removed publicly. But it is not necessary that I should at this moment explain what is our Defence. Mr. Attorney-General can not know my object in putting these questions, and I do not think

that he possesses any right to impeach my judgment, and tell me in round terms, that if I prove, that though these cannon have been stated to be frozen into the ground, and useless from their not being mounted, yet that there were carriages within the fort upon which they could at any moment be put, that it amounts to nothing; I differ with him, and say it amounts to a great deal, and before this trial is over, so it will appear, or I am much deceived. I think it will go a great way in this charge of robbery, though in an ordinary case it might not. If I go to Scotland, for instance, where the poor are exceedingly numerous, and persuade, by false representation, a number of poor families to abandon their homes, and go thousands of miles upon a visionary idea of establishing a Colony in a climate where, with every industry, they must starve, in addition to their being daily and hourly exposed to the tomahawk of the savage; and when these poor people desire to go away from this dreary and miserable country, to one where they can enjoy the blessings of civilization, and maintain themselves and families in plenty, they are given to understand that the artillery, that was artfully represented to have been taken there for the defence of the Colony, is to be turned against them, to be turned against them by persons employed by me, I think it will amount to great a deal to shew that, if they were not actually in a situation in which they could be used for that purpose, that all that was wanting to render them so was on the spot, or at home. I would remark also to Mr. Attorney-General that, where the obtaining of the whole truth is the object of a prosecution, (or of those who conduct it), too many questions do can not harm, but too few may. If twenty idle questions even are put, it is far better that they should be, than that one essential fact should be concealed, and all I am anxious for in the performance of my duty to those two men is, that no essential fact should be concealed, and if none are, I have no apprehension but the result of this trial will be like all that have gone before, a verdict of acquittal; but I have never been accustomed to this species of interruption which Mr. Attorney-General has so frequently made, and I hope I shall never be compelled to submit to it, or to any thing like official importance.

Attorney-General.—I have not been accustomed to the terms made use of by the Learned Gentleman, nor I hope ever shall be. As to objecting to questions which strike my mind as evidently improper, the only time to object, is at the moment when they are put. I can not know what

the Gentlemen intend them to lead to, but if a question is put which I consider irrelevant or objectionable in any point of view, the time for me to oppose it is, I should imagine, at the moment when it is offered to the witness. My reason for objecting to the question of the Learned Gentleman was, that I considered it a question calculated to create an improper bias with the Jury, and in no way connected with the case. The charge brought against the prisoners is a charge of robbery, a charge of having stolen a number of pieces of cannon. If any individual has gone to Scotland in the manner the Learned Gentleman alludes to, let a proper notice be taken of such conduct; but it can certainly present no answer to the allegation against the prisoners, of stealing cannon, or any justification for so extraordinary a question as, what was done six months before with them, or even who they belonged to six months ago; but so very extraordinary a question as, whether there was some part of them that was not stolen, can certainly have no relation to the direct charge of robbery, nor can I conceive why so extraordinary a question should pe put.

Mr. Sherwood.—I put this extraordinary question, because the Attorney-General has charged the prisoners at the bar with a robbery, which they have not committed, nor ever had any intention of committing, though, from the manner in which the witness, Mr. Bourke, speaks of the cannon, the Jury might be led to suppose that it was impossible they could be made use of, and that the taking of them away was a wanton and felonious appropriation of the property of the Earl of Selkirk to their own use. That the contrary is the fact, is well known to Lord Selkirk, and those who have commenced this prosecution, though perhaps it is not to the Learned Attorney-General. I put the question because I consider it a very important question, and I shall put it again. If I put a question that is improper, I shall be stopped by your Lordships, and feel bound to submit to the correction, but I do not consider that Mr. Attorney-General has the prerogative of stopping me. I think it important, to make this witness prove that there were carriages designed for these instruments of destruction, at the very same place with the cannon. As to stealing them, they had no more intention of stealing them—they had no more intention of committing a robbery in taking away the guns, than they had of stealing the ovens, and bringing them to this town of York, where, happily for themselves, they were able to get, after putting these cannon out of the way of doing them

harm, but where it is not likely they would have reached, had they not taken that precaution.

Solicitor-General.—I submit, my Lords, that the Learned Gentleman ought to state the nature of the answer which he expects to receive. This rule is decidedly laid down in M'Nally, and is a very proper one, I think, because it enables the Court to see whether a question is proper to be put or not. The rule to which I refer, is found in M'Nally on Evidence, vol. 1. cap. 3, page 14. "Counsel ought not "to call witnesses without first opening to the Court the "nature of the evidence they intend to examine them to. "This has been often solemnly adjudged, though not "strictly adhered to in practice."

Chief Justice Powell.—That rule is applicable to examinations in chief, but you are not now examining in chief. In cross-examination the rule is, you must confine yourself to questions put in chief, or more properly speaking, your cross questions must be founded on the answers given to questions put in the examination in chief, and the rule must be observed in this case.

Mr. Sherwood.—Then I will ask it him on the answer which he gave to the question as to whether they were mounted or not? His answer was, they were not. My question is, could they not be mounted? whether the means of mounting them were not at command? *(the question being put,)*

Mr. Bourke.—Two of them could be mounted, but not more.

Mr. Sherwood.—And these cannon you have said were the property of the Earl of Selkirk; now, Sir, upon that answer I ask you if you happen to know how they became the property of that Nobleman, being, and I have before remarked, rather a singular property for a Nobleman to have in his possession?

Mr. Bourke.—No, I do not; all I know I told you before, that they were given me in charge with other property belonging to Lord Selkirk, and I considered them always to be his property. They were included in the list of property given me with the keys.

Mr. Sherwood.—You never heard that any of them had been taken from the North-West Company?

Mr. Bourke.—No, I did not.

Mr. Sherwood.—In point of fact, you do not know how they became the property of his Lordship; he might have got them from his father, for ought you know?

Mr. Bourke.—I do not know but he might. I can not say that he did not get them from his mother.

Mr. Sherwood.—You have said, Sir, they were taken from a house belonging to the Earl of Selkirk, from his dwelling-house. Pray, Sir, did Lord Selkirk live there?

Mr. Bourke.—Lord Selkirk did not live there, but the hosue belonged to him; it was his property, he owned the house.

Mr. Sherwood.—Who lived in it? Men or pigs, or both?

Mr. Bourke.—The people employed in the fort lived in it.

Mr. Sherwood.—And did the hogs belonging to the fort live there? On your oath, was it not a hog-stye?

Mr. Bourke.—No, it was not. It was a dwelling-house.

Mr. Sherwood.—Did any body sleep in it? were there any chambers? any bed-rooms?

Mr. Bourke.—People did sleep in it regularly.

Mr. Sherwood.—And I ask you again, did not pigs sleep in it as regularly? Were not pigs constantly kept there?

Mr. Bourke.—Yes, I believe they were.

Mr. Sherwood.—Was the place in which they were kept, one of the chambers of which you have spoken as being so regularly occupied?

Mr. Bourke.—I do not know exactly where they were kept.

Mr. Sherwood.—But you surely know whether the hogs were in the bed-chamber? Should you put a hog into your bed-room?

Mr. Bourke.—In that country perhaps we might, on a chance.

Mr. Sherwood.—The pigs were not in his Lordship's bed-chamber, were they? They did not sleep together I suppose?

Mr. Bourke.—I do not know whether I am obliged to answer such questions, but I told you before, that Lord Selkirk did not live there, but that the house belonged to him.

Mr. Sherwood.—You said it was his dwelling-house.

Mr. Bourke.—I said it was a dwelling-house belonging to the Earl of Selkirk, and used as such by his people, but I told you distinctly, that he did not live there.

Mr. Sherwood.—And at last we see that this dwelling-house of the Earl of Selkirk was a pig-pen. These people who took away the cannon were, I believe, settlers, and not servants to the Hudson's Bay Company.

Mr. Bourke.—They were settlers sent out by Lord Selkirk.

Mr. Sherwood.—There is a difference, is there not, between his Lordship's settlers and the Company's settlers?

Mr. Bourke.—Yes, there is some difference.

Mr. Sherwood.—Do you happen to know whether these settlers were satisfied with their situation? whether they were satisfied with their provisions, either as to quality or quantity?

Mr. Bourke.—I do not know that they were satisfied; there were some who, I believe, would not have been pleased if they had the best that could be got in York. They always had sufficient good provisions, and might have been satisfied, and I believe generally would have been so, if they had not been stirred up to discontent.

Mr. Sherwood.—That will do upon this subject. I did not ask you whether they ought to have been satisfied, but if actually they were not satisfied. I will now ask you another question. Have you seen any of these good people since you have been in York attending the Court?

Mr. Bourke.—I do not know if they are good people or not, but I have seen some of them at York.

Mr. Sherwood.—Do they appear as well satisfied as they were at Red River, or do they desire to go back?

Mr. Bourke.—I do not know any thing about them, whether they are better pleased or not.

Mr. Sherwood.—You said you were serving them out provisions at the time the cannon were taken. What sort of rations had they?

Mr. Bourke.—They had oatmeal, fat pemican, and potatoes, in sufficient quantities, according to their families.

Mr. Sherwood.—It was in April, I believe, that the cannon were taken away upon sleighs. Was there a good deal of snow and ice in the river?

Mr. Bourke.—Yes, there was a good deal.

Mr. Sherwood.—Do you call it a good climate?

Mr. Bourke.—Yes, I call it a very good climate, as good as this, and better than Lower Canada.

Mr. Sherwood.—You have mentioned that these people had sticks. Is it any thing so unusual in your country for people to walk with a stick, that you were surprised?

Mr. Bourke.—No, not in my own country, but it was extraordinary there, and I certainly thought some harm was meant when I saw them with sticks.

Mr. Sherwood.—Was it before Governor M'Donell's Proclamation that these cannon were taken?

Attorney-General.—Whether my interruption is loudly exclaimed against or not, I must oppose such questions. I do, my Lords, most reluctantly interfere, but I consider them such a deviation from propriety, that I feel it an imperative duty not to permit them to be continued, without expressing my sense of their irregularity. As to the displeasure of the Learned Gentleman, I can not help it; as a matter of course I must expect it, but I do appeal to your Lordships' authority to put an end to such irrelevant interrogatories, which have already extended themselves to a very unjustifiable length.

Mr. Sherwood.—I have no particular wish to press the question; I have done with Mr. Bourke.

Re-Examination by the ATTORNEY-GENERAL.

Attorney-General.—You have been questioned, Sir, in rather a singular manner, as to whether this was in fact a dwelling-house, and the property of the Earl of Selkirk. Will you, Sir, again inform us what it was?

Mr. Bourke.—It was an actual dwelling-house, and belonging to the Earl of Selkirk, but inhabited by his people, who ate, drank, and slept there. Pigs might be kept there for any thing I know; but there were places partitioned off for stores and other purposes, but they were all under one roof.

MILES M'DONELL, Esquire, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. M'Donell.—I was there at the Red River Settlement in 1815, and for some time before. I know of some cannon being there, the property of the Earl of Selkirk. These cannon were sent out by his Lordship in his own hired ship, and arrived at the Settlement in 1812. I know they were his own property, as I saw the account of them, that is, the bill and receipt; the cost of them was specified, but I do not exactly recollect how much it was, and they were kept at the Red River Settlement from 1812 to 1815. In the fall of 1814 they had been put up into a store-house, one end of which served as a dwelling for some of our people.

Mr. Sherwood.—I hope your Lordships have taken down these answers of Mr. M'Donell, as we consider them very important; perhaps Mr. M'Donell will repeat them. *(Mr. M'Donell accordingly did repeat his answers in substance.)*

Mr. M'Donell.—There were nine pieces taken away. When I came to the Settlement there were two brass three-pounders, two brass swivels, one pounders, four iron swivels of from one to two pounds, and a small howitzer, of which I do not know the calibre, but it was a small one. Two of them were field-pieces, viz. the three-pounders; the smaller pieces are generally called swivels.

Attorney-General.—Can you give us the value of them, Sir, either from your own judgment and knowledge of such articles, or from recollection of what they were charged in the account?

Mr. M'Donell.—I do not recollect what the field-pieces were charged. I should suppose they might be worth thirty pounds each; they would be worth more in the Hudson's Bay Territory. The swivels I do not recollect the cost of, nor can I form so good an idea of their value.

Attorney-General.—It is not at all necessary, Sir, that you should value them very accurately. Say any sum that is not over-valuing them. Were the two worth twenty pounds?

Mr. M'Donell.—Certainly they were worth that.

Attorney-General.—Now, Sir, the iron pieces, if you please give us their value, either from your recollection of the account, or your own knowledge, observing the same rule, not to over-rate them.

Mr. M'Donell.—I can not say as to them either, though I recollect that I saw the account; but I should suppose they might be worth from three to five pounds each, hardly so much as five pounds, but certainly they were worth three pounds each. The howitzer was worth ten or twelve dollars. The howitzer and one or two of the iron pieces were given to my charge in Hudson's Bay for the protection of the Settlement.

Attorney-General.—Were they, Sir, in the store in the beginning of April in the year 1815?

Mr. M'Donell.—I should think that they must have been, though, as I was not there, I can not say positively. I left them in the store in January, dismounted, and I found, when I returned to the fort from my journey, that they were gone. Upon my return the circumstances were communi-

cated to me under which they had been taken, as well as the place where they had been taken to. A deposition was afterwards made before me to the same effect, and in consequence, I issued a search-warrant to search the North-West fort near the Forks of the Red River, and sent Mr. Bourke and some others to execute it, and bring them back if they found them. They returned without them, but told me it was admitted by the Partner of the Company in charge at the North-West fort, that they were there, but said he should take care of them, and would not allow the warrant to be executed; indeed he would only permit three or four of our people to enter the fort. I saw two of them afterwards, when the attack was made upon us in that year. A battery had been thrown up at night near the Settlement, and I saw them there in possession of the North-West Company, who had thrown up the battery. I afterwards saw them, one on each side of the door of the house where I was detained as a prisoner.

Attorney-General.—Did these persons know that they were the property of the Earl of Selkirk, and that they had been stolen?

Mr. M'Donell.—Yes, they must have known it, as they received them immediately they were stolen from the store, and also from my warrant for their recovery.

Attorney-General.—How long did you live in the Red River country? Was it long enough to make you acquainted with its geographical situation? Is it, Sir, without the Provinces of either Upper or Lower Canada, and of the United States of America?

Mr. M'Donell.—It is certainly not in either Province, nor in the United States. The whole of the Red River country is beyond the height of land which separates the waters running into Hudson's Bay from those of the Rivers Missouri and Mississippi. From maps I have seen, I should think it to be in between 96 and 97 degrees west longitude, or about 97, and in perhaps 49½ degrees north latitude.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—The people employed about the fort sometimes lived in this house from which the cannon were taken, did they?

Mr. M'Donell.—Not sometimes, but always; it was our permanent quarters.

Mr. Sherwood.—You, I think, said that you were not at

the fort when the cannon were taken away, so that perhaps you can not say whether any body was actually living there or not at the time, or whether it was not used as a hog-stye?

Mr. M'Donell.—All I can say to it is, that when I went away it was, and had for a long time before been, used as a dwelling-house for the people, and there were no hogs in it, as I believe.

Mr. Sherwood.—In what capacity, Sir, was you at Red River country?

Mr. M'Donell.—I was there as Governor of the District of Ossiniboia, in the Hudson's Bay Territory.

Mr. Sherwood.—Did you issue your warrant to recover these cannon in your capacity of Governor?

Mr. M'Donell.—I was also a Justice of Peace.

Mr. Sherwood.—Who appointed you Governor?

Mr. M'Donell.—I was appointed by a Commission from the Honourable Hudson's Bay Company.

Mr. Sherwood.—And a Justice of Peace by the same authority, I suppose, which we consider no authority at all.

Mr. M'Donell.—I was appointed a Justice of Peace by His Excellency Sir James Craig.

Mr. Sherwood.—When, Sir, did you take the oath to act as a Magistrate under the commission you speak of?

Mr. M'Donell.—I took the oath in the year 1816.

Mr. Sherwood.—That was after the period of issuing your warrant; it could not therefore be by virtue of the commission of Sir James Craig, that you acted in 1815, but under the assumed powers of your commission as Governor, which the North-West Company did not choose to acknowledge, and therefore would not allow the warrant to be served. Was you, Sir, ever made a prisoner yourself?

Mr. M'Donell.—Yes, I was made a prisoner by a warrant for a breach of the peace, issued by some of the Gentlemen of the North-West Company.

Mr. Sherwood.—Were the persons who were generally denominated settlers at the colony, satisfied with their treatment?

Mr. M'Donell.—They had, pretty generally speaking, been satisfied up to 1815. I understand that while I was away they became otherwise. I know that great exertions were used, and had been for some time before, to excite discontent among them; and whilst I was away, I was given to understand that these endeavours succeeded, and that the colonists did become discontented.

Mr. Sherwood.—You have said, Sir, that the Red River

Settlement is not within either Province of Canada. Upon what do you found that opinion?

Mr. M'Donell.—Upon the circumstance, that it is beyond the height of land which divides the waters which discharge themselves into Lake Erie and the St. Lawrence, from those which empty themselves into the sea, which I believe to be the boundary of the provinces.

Mr. Sherwood.—Did you ever hear of any Proclamation, making it different to that issued in 1763?

Mr. M'Donell.—No, I never did; I have seen the constitution of 1791, and in describing the boundary, it says the same thing in relation to this country, that it is to extend to the Hudson's Bay Territories.

Mr. Sherwood.—The Proclamation of 1791 does not say to the Hudson's Bay Territory, but to the boundary line of Hudson's Bay, which is a very material difference; and so you consider the house to be the dwelling-house of the Right Honourable Thomas Earl of Selkirk; did you ever know him to put his foot into it?

Mr. M'Donell.—I never knew Lord Selkirk to live in the house. I never intimated such a thing; but I considered it to be his property, and his servants lived in it, and I therefore consider it to be a dwelling-house belonging to the Earl of Selkirk.

ROBERT GUNN, sworn.

Examined by the SOLICITOR-GENERAL.

Solicitor-General.—I wish to tell you, before I examine you, that if I ask you any question that, by answering, may get you into difficulty for any thing you have done relative to taking these cannon, you need not answer.

Mr. Sherwood.—I only wish him to know, that he may answer every question that is put to him; he was one of those poor deluded Settlers, and can not criminate himself if he admits that he took away, or helped to take away, these cannon, so as to prevent them from being used against such as wished to leave this land of milk and honey.

Gunn.—I was at the Red River Settlement in 1815, and at the early part of the spring, whilst the snow was on the ground. I know the prisoners at the bar, they were Settlers at Red River. There were some cannon, but I can not say how many, and I know they were taken away by a party of Settlers. The prisoners were with that party, both of

Solicitor-General.—Whereabouts were they, close to the sleighs?

Gunn.—I can not say exactly where they were, but I do know that they were there with the party who put the guns on the sleigh, but I can not say that they did any thing more than that they were there. I saw them come with the party, but I did not see them afterwards. I saw the two men at the bar along with the party who took away the cannon, but so many came, that I can not say that I saw these two go away. I saw them come, and I saw the cannon go away, but I did not see either of them about the house afterwards.

Solicitor-General.—Did you see one George Campbell among the party?

Gunn.—Yes, I did, he was one that came. I do not know if there were any armed or not, they had sticks generally, but not clubs.

Solicitor-General.—Was there any body in the house at the time the cannon were taken out of it?

Gunn.—There was one Michael Kilbride, and a man who was sick, as I believe, but I could not be sure.

Question by a Juror.—Had they all sticks or clubs?

Gunn.—Yes, they had. Every man had a stick of some kind. I saw the party take out the guns, but there were so many, that I can not say who in particular did it; the prisoners were, as I said before, with the party who took them away, but I can not say what particular person did. I saw Mr. Bourke, he was in the store, serving out provisions, when they began to take them out, and he came and tried to prevent them, but they overpowered him, and took them away.

Question by a Juror.—Did you draw provisions then?

Gunn.—Yes, I did.

Juror.—Is it usual in that country for a man to carry a cane or walking stick?

Gunn.—Some carry them, but not generally.

Solicitor-General.—Do you know what became of these guns afterwards?

Gunn.—No, I do not, I can not say that I do. I did not follow them.

Solicitor-General.—Did you never see them afterwards, or some that you supposed to be them, at Fort Gibraltar?

Gunn.—I did see guns like them at Fort Gibraltar, but I can not say they are the same, because I did not follow the party who took them away. When they were taken, they were lying on the ground, without carriages.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—You, I believe, was one of those unfortunate people who came out to be a Settler at this Colony?

Gunn.—Yes, I was.

Mr. Sherwood.—And you was a good deal disappointed at your situation, was not you, and wished to get away?

Gunn.—Yes, I certainly was, and did want very much to get away if possible.

Mr. Sherwood.—Did you hear any thing said about what was to be done with these cannon if you attempted to better your condition by coming away?

Gunn.—The Hudson's Bay people said, that if the Settlers attempted to go away they would be used to prevent them.

Mr. Sherwood.—What did the Settlers say to that?

Gunn.—They said, to prevent their being used against themselves, they would remove them, and put them out of the way.

Mr. Sherwood.—Where were the Settlers going to?

Gunn.—To this town of York; they had been promised a passage to this place.

Mr. Sherwood.—Then they could, I suppose, have no intent to bring the cannon away to York?

Gunn.—No, they could not, for it was more than a thousand miles to York, and they could not bring them, as they came in bark canoes; besides, the portages would have hindered them, if nothing else.

Mr. Sherwood.—Had they any intention to sell them?

Gunn.—No, for there was no body to buy.

Mr. Sherwood.—Then in fact, as they were desirous to escape from his Lordship's bondage, they thought it best to put these cannon out of the way, for fear they should be prevented, by their being used agreeably to what they had been told.

Gunn.—Yes, that was all.

Mr. Sherwood.—Have you left the Settlement? How came you to come away from such a land of promise?

Gunn.—I came to York myself, and I was very glad to leave that place certainly.

MICHAEL KILBRIDE, sworn.

Examined by the ATTORNEY-GENERAL.

Attorney-General.—Was you for some time in the Red River country, as it is called?

Kilbride.—Sure and I was, Sir, for some years. I was there in 1815 sure, and as good as I remember, there were nine pieces of cannon. Some were brass, four I believe, and four others were iron, and there was another one different to all. I don't know what sorts they might be, but there were nine altogether, I am sure. They were stored in one of Lord Selkirk's buildings belonging to the Settlement.

Attorney-General.—Did any body live in the house, and who?

Kilbride.—Sure, and there were, the servants lived there. I lived there myself.

Attorney-General.—Did any of your wives live there?

Kilbride.—There were no women lived there during the time I was there. There was one Kerrigan and myself who lived there.

Attorney-General.—Was there any intention of removing these cannon from the store, that you know of?

Kilbride.—No; if they had been let alone, they would have stopped there, but they were taken away by a large party of people belonging to the Settlement.

Attorney-General.—Do you know the two prisoners? were they among the party of which you are speaking?

Kilbride.—Yes, these two fellows were there.

Attorney-General.—Now relate to us slowly, all that passed at the time they were taken away.

Kilbride.—It was about the 3d April, 1815, at about one o'clock in the day, that George Campbell came first, then Hugh Bennerman and John Cooper came into the room where the guns were, and with a number of other persons took away the whole of them. Sure they were all alike, for they all helped to put them on the sleigh, and get them away, which they did, and took them to Cameron's fort.

Attorney-General.—Then you saw no particular difference, but they all helped, the prisoners amongst the rest, and took away the cannon to Cameron's fort?

Kilbride.—That's what they did indeed, Sir. We could not have hindered them from taking them, they were so many, and they guarded the doors of the buildings whilst they were taking them away. Some of them had fire-arms, George Campbell had some pocket pistols; he was at the head, and commanded the party. Campbell told me that they were come to take the field-pieces away, and I told him that he must not take them away. I was then told not to stir, and he shewed me a pair of pocket pistols.

Attorney-General.—Were the two prisoners present at the time you are speaking of?

Kilbride.—Yes, they were both there.

Attorney-General.—Did your Gentlemen not try to hinder them from being taken away?

Kilbride.—There were only Mr. Archibald M'Donald, a clerk, and a Mr. White, and Mr. Bourke, there, and Mr. Bourke was not let go to tell Mr. M'Donald, who had charge of the place, and there were not more than thirty men there altogether on our side.

Attorney-General.—Why could not Mr. Bourke let Mr. M'Donald know about it? how was he hindered?

Kilbride.—There were sentries placed at the door of the Government-house, till the guns were got away with safety. They were taken to Cameron's fort, and both the prisoners went with them.

Attorney-General.—Do you know if any use was made of them by the party who took them away, or did they give them away, or sell them?

Kilbride.—Not to my knowledge, I do not believe they did; they took them to Mr. Cameron's fort, and there left them.

Attorney-General. Did you see them there afterwards?

Kilbride.—Yes, I did, but they were mounted then.

Attorney-General.—Then it appears they might be of use, though they were not brought to York. Did you see the party after they got off with the cannon, and did you observe whether or not they were joined by another party?

Kilbride.—Yes, I saw them when near the fort, and they were joined by another party. There was Mr. Cameron there, and about fifteen armed persons, who all came out, upon a signal being given that they were safe out with the cannon; the signal was firing a small arms, and then Cameron's party came out from just by, and joined the people with the cannon; when they got out they set off at a very smart rate. I was by, and I heard Mr. Cameron say, "Well done, my hearty fellows: well done, my "hearty fellows."

Attorney-General.—Were the whole nine cannon taken out of the house, or was any part, and what, outside?

Kilbride.—There were eight pieces of cannon in the house, and one outside. They were afterwards brought to within a quarter of a mile of our fort, for the purpose of making war upon us by the North-West people from Fort Gibraltar.

Attorney-General.—Was you threatened by any of the party who came and took away the cannon, and were the prisoners by?

Kilbride.—I was. I wanted to find Mr. Bourke, and I was threatened not to stir; the prisoners and Campbell were all there at the time, and they went away with their friends with the cannon, and then I was let go.

Attorney-General.—Who lived in the house at the time the cannon were taken out of it, or who were in it?

Kilbride.—There was Kerrigan, who was lying sick, and one Mary M'Lean. I saw two of the brass-pieces afterwards mounted at the North-West Company's fort.

Attorney-General.—Are you confident that you saw the prisoners with the party, and that they went into the house, and helped to take them out, and take them away?

Kilbride.—I am sure I saw them do all that, Sir.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—Did you come out as a settler to this Colony?

Kilbride.—I came out as a servant to the Hudson's Bay Company, and not as a settler.

Mr. Sherwood.—Was it out of the dwelling-house that these cannon were taken, or were they taken from the pig-stye, or from the store?

Kilbride.—It was all the same, they were all one house, only in different parts.

Mr. Sherwood.—You have spoken of pistols; pray where did you see any pistols? who had them?

Kilbride.—It was Campbell that had pistols. I saw them, they were pocket-pistols, he had them in his two fists.

Mr. Sherwood.—You have spoken of a partner of the North-West Company; do you know that Mr. Duncan Cameron is a partner? and how do you know it?

Kilbride.—I do not know that he was, he appeared like a gentleman, and seemed to have command as a partner.

Mr. Sherwood.—Pray, were there any woods thereabouts?

Kilbride.—No, there were not.

Mr. Sherwood.—Whereabouts did Mr. Duncan Cameron's party meet them with his party?

Kilbride.—He met them about twenty yards from the Governor's house, and cried, "Well done, my hearty fellows, well done."

Mr. Sherwood.—He said, well done, my brave fellows, did he?

Kilbride.—Sure and he did, Sir, I heard him, and then he went along with them to the North-West fort.

Mr. Sherwood.—There were some of your own countrymen with them, I suppose, who I believe frequently carry sticks, don't they?

Kilbride.—There was not an Irishman among them, as I believe; some Irishmen walk with sticks, and some do not.

JOHN SMITH, sworn in Gaelic.

Examined by the SOLICITOR-GENERAL, *through Mr.* M'DONELL, *as Interpreter.*

Smith.—I was in the Red River country in April, 1815. I know that in a house belonging to Lord Selkirk, there were a number of pieces of cannon; but as I did not count them, I can not say how many.

Solicitor-General.—Did you ever see any of them afterwards?

Smith.—Yes, I did. I saw one or two afterwards in possession of the North-West Company, at a battery which they had put up on the Frog Plains. I do not know when exactly, but it was after they had been taken away from the Settlement. I believe they were brought there against the Hudson's Bay people; that was what I understood.

Solicitor-General.—How came you to understand that?

Smith.—I was brought there as a prisoner, and then I heard so. I was kept in a room, with a musket on each side of my door.

Solicitor-General.—Do you know Hugh Bennermau, and the other prisoner, John Cooper?

Smith.—Yes, I know them both very well.

Solicitor-General.—Was you one of the settlers of the Colony?

Smith.—Yes, I was.

Mr. Sherwood said he had no questions to put to Smith.

HECTOR M'LEOD, was put in the box. (Upon the book being offered him, he refused to be sworn until he was paid for his attendance, alleging that he had been once to Montreal upon this business, and had never received any thing. The Attorney-General and Court explained to him, that it was his duty to give his evidence, and he was sworn).

Examined by the ATTORNEY-GENERAL.

M'Leod.—I was at the Settlement in the spring of the year 1815. I came out as a settler. I know there were some cannon in a store, and some out of doors. I know that they were taken away, but I can not say the day. There were eight, or seven or eight, in the house, and one outside, but I can not say to whom they belonged. They were taken by a party of settlers. I know both of the prisoners very well, they were with the party who came; but I did not see them assist. I only know that they came with the party who took them. They were carried to one of the North-West forts.

Attorney-General.—To which of them? Fort Gibraltar?

M'Leod.—I can not say, there are so many forts, but it was a fort at a short distance from, and a little way above ours. They were left there, but I cannot say they were left there by the prisoners, nor can I say that I saw them take the cannon away. I saw them with the party who came and carried them away, but they were so many I can not say who were there.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood.—Was you one of the unfortunate people called settlers, upon the Earl of Selkirk's Colony?

M'Leod.—I was one of the persons who came out to settle at the Red River, having engaged with his Lordship's agent.

Mr. Sherwood.—Were you all very well pleased with your situation upon your arrival?

M'Leod.—No, we were all very much dissatisfied, finding that nothing was as had been promised to us.

Mr. Sherwood.—Where did you pass the first winter, after your landing from the vessel in which you sailed for this land of milk and honey?

M'Leod.—We were obliged to remain at Hudson's Bay at one of the forts there for a long time.

Mr. Sherwood.—Had you then to march a long way before you reached the land of promise through a wilderness?

M'Leod.—We had to go above eight hundred miles through woods and a wilderness.

Mr. Sherwood.—When you did arrive, did you find it what you expected, so that you wished to remain?

M'Leod.—No, by no means, nothing like what we were told it would be; not at all what we were led to expect.

Mr. Sherwood.—Did you wish to go away?

M'Leod.—Yes. I should have been glad to have come away if I could. I could not come away, for I was detained.

Mr. Sherwood.—Were there many of your way of thinking, that it would be better to get away if you could?

M'Leod.—Yes, we were all, or very nearly so, wishing to get away, for we were not well used.

Mr. Sherwood.—Do you know why the number of cannon of which you have spoken were taken away; whether it was merely to prevent their hindering you from leaving your bondage or not?

M'Leod.—The cannon were taken away to prevent their being used so as to hurt the settlers who were about leaving. It was, that they might not be used to prevent them leaving.

Mr. Sherwood.—Was there any reason to apprehend that they were intended to be used in that manner?

M'Leod.—The general report was, that if the settlers attempted to go away, they would be fired upon with these cannon.

Mr. Sherwood.—Could the settlers have brought them away to this province if they had wished to do so?

M'Leod.—No, they could not, for they had only canoes to go away in.

Mr. Sherwood.—How did they pass Fort Douglas at the time they went away?

M'Leod.—They went away in bark canoes.

Mr. Sherwood.—Do you know if they came to this town, to the town of York?

M'Leod.—I always understood they did.

Mr. Sherwood.—You have said they had no intention to steal these cannon. I will ask you, could they have made any use of them? were they of any value to them?

M'Leod.—They could not be of any use to them, for it was not possible for them to take them away.

Mr. Sherwood.—Could they have gone away without passing within the range of these cannon, had they remained at the Settlement, and they had been disposed to carry into effect the threat which was made?

M'Leod.—They could not leave that country without passing the fort belonging to the Settlement.

Mr. Sherwood.—I have done with M'Leod.

Re-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Although these cannon might be of no use to the persons who took them away from the Settlement, yet they might be an object to other people, and they appear to have been considered so, and to have been used for purposes that cannot be mistaken. Do you, M'Leod, know of any of these cannon being made any use of after they were left, as you term it, at the North-West fort?

M'Leod.—No, I can not say that I do.

Attorney-General.—Do you know that the Settlement was destroyed some time after these cannon were taken away, and the people compelled to abandon it?

M'Leod.—I know that the houses were burnt down before I came away.

Mr. Sherwood.—I had hoped that upon this trial the differences between the two Companies, or the North-West Company and the Earl of Selkirk, would have been passed by. We, my Lords, have abstained from any thing calculated in the slightest degree to introduce them to notice. If the Learned Attorney-General proposes to defend the conduct of the Earl of Selkirk, or his treatment of these unfortunate settlers, we should be glad to know how it is to alter the present case; how it is to assist in sustaining the singular charge against these men, of stealing nine pieces of ordnance?

Attorney-General.—I do not stand here, either to defend Lord Selkirk, or his conduct to the persons who were by his authority engaged as settlers. My object is merely to shew that the Colonists were forced to go away, and that these very cannon, which it is attempted to be shewn, were taken away to prevent their being used to hinder those settlers from going away who wished to depart, were afterwards used to compel those to depart who wished to remain.

Chief Justice.—The fact of taking is evident; you have only to establish the *animus furandi*. Can this do it?

Mr. Sherwood.—That is the single point, my Lord; was it a felonious taking, a robbery, or was it a trespass?

Attorney-General.—I shall put in the Great Seal Instrument, and on the part of the Prosecutor the case will be closed. The Great Seal Instrument (*Appendix, O.*) was put in and read.

DEFENCE.

Mr. Sherwood.—I wish, my Lord, before I trouble the Court with any witnesses upon the part of the prisoners, to state to the Court, that they have a clear defence on this abstract point of law; that at the utmost, it is a mere trespass which the Crown has made out, and not a larceny, much less a robbery. If, my Lords, there is no felonious intention in carrying away property, if there is no *animus furandi*, then there is no robbery, but only a trespass; and such, I submit to your Lordships, is the utmost length that the Crown have attempted to carry, or succeeded in making out, their case, supposing we bring forward no opposing or justifying evidence. So far from any thing like robbery having, upon the Crown's own shewing, been committed by these persons, it is manifest they merely helped (and the proof even of that is very vague indeed) to remove these cannon; so that a threat which had been made, very much in the spirit which governed the Settlement, that they would be used to prevent their leaving this flourishing Colony, or, in other words, if they attempted to avail themselves of the humanity that would assist them in escaping from the bondage into which they had been seduced by artful misrepresentation. I say that Mr. Attorney-General has shewn no felonious intention, and that in the absence of that, I contend the Crown has not supported its charge of robbery; for if they supposed they were to be used upon them, and under that impression, though wrong——

Attorney-General.—I apprehend, my Lords, that whether we have proved our case or not, is a question for your Lordships and the Jury, and not for the Learned Gentleman, any more than for us to say. If the Learned Gentleman considers that we have not, in a legal point of view, established it, he will leave the case in your Lordships' hands, and you will direct the Jury to acquit the prisoners, if you coincide with him in opinion; but he surely will not be allowed to argue upon a question of fact, which, under your Lordships' direction, it is for the Jury to decide.

MILES M'DONELL, Esquire, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Is it within your knowledge, that the Earl of Selkirk got back the greater part of the cannon

again, or those who acted for him; perhaps he got the whole?

Mr. M'Donell.—I do know that he got the greater part, but I believe not the whole.

Attorney-General.—There can be no occasion to take that answer down, for it is of no consequence.

Mr. Sherwood.—I differ with Mr. Attorney-General; and as it is the answer of the witness to a legal question, I beg that it may be taken down.

Attorney-General.—I beg, my Lords, to submit, that the cannon coming again into the possession of the owner, does not at all vary the case.

Chief Justice.—There is no knowing what use they intend to make of it, but I cannot see its bearing myself; the taking it down can do no harm.

Mr. Sherwood.—The use, my Lord, that I propose to make of it is this, that I think it pretty evident that it is rather a late thought, that the taking away of these cannon should be worked up into a robbery. If my Lord Selkirk or his agents had thought that it was a robbery, then he ought not to have taken them again into his possession, till they had been in due process of law proved to be his. I will not however detain your Lordships, but immediately call my next witness.

JAMES M'COY, on the book being offered to him, objected to take the oath, unless he was paid for his attendance. One or two observations were made, when the Court directed the witness to be sworn, informing him that he was bound, under the circumstances, to give his testimony; he was then sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Was you one of those unfortunate people who were induced to become settlers at the Red River Colony by the Earl of Selkirk or his agents in 1813?

M'Coy.—I was one of Lord Selkirk's settlers, and came out in the year 1813 to Hudson's Bay.

Mr. Sherwood.—Did you reach the Colony that year?

M'Coy.—No, we wintered in Hudson's Bay.

Mr. Sherwood.—And in spring you journeyed hundreds of miles through the wilderness to reach it, did not you?

M'Coy.—Yes, we did, we come up a long way.

Mr. Sherwood.—You had some difficulties in going along, no doubt; but when you got to the Settlement in the land of promise, you, I suppose, were so pleased you forgot it all; were you well satisfied with your situation?

M'Coy.—We were better pleased at first than we were afterwards, for we got dissatisfied, and wished to go away.

Mr. Sherwood.—What made you dissatisfied in such a fine country, such an excellent climate?

M'Coy.—We could not live on the living we were allowed, and we found every thing very different to what we had been told should be our condition.

Mr. Sherwood.—Did you wish to go away, or were you forced away by the North-West Company?

M'Coy.—We were not forced away, we went away of ourselves, and were very glad to be able to get away.

Mr. Sherwood.—Were you present at the taking away of any cannon from the store at the Settlement?

M'Coy.—No, I was not, but I heard of it, and know they were taken, for it was before I came down.

Mr. Sherwood.—Do you know where these cannon were when you came down from that country?

M'Coy.—They were at Fort Douglas at that time.

Mr. Sherwood.—Though not at the taking of them, you may perhaps know why they were taken away?

M'Coy.—They were taken away because Archibald M'Donald, who was in command in the absence of Mr. Miles M'Donell, said that if the settlers attempted to go away, they should be used to prevent their passing down the river.

Mr. Sherwood.—Did any of you expect any benefit from taking away these cannon, beyond that of being able to make your escape to a country where you could get a decent livelihood? Did you expect any reward for taking them away?

M'Coy.—I do not believe that any body expected a sixpence of benefit from it. I am sure, for my part, that I never did.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—How can you speak of what they did, or what were their expectations, if you were not there?

M'Coy.—All I can say is, I never heard of any thing being received by any body, or of any thing being expected, and that I never had, nor ever expected, any thing.

WILLIAM BENNERMAN, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Was you one of Lord Selkirk's settlers who came out by way of Hudson Bay?

Bennerman.—Yes, I was. I came to Red River country by Hudson's Bay.

Mr. Sherwood.—Do you know of any cannon being taken away from the Settlement, and for what reason they were taken?

Bennerman.—I know that there were some, and the reason they were taken was, because Archibald M'Donald had said, that if the settlers attempted to go away, they should be used against us.

Mr. Sherwood.—Who was in command at that time at the Settlement, at the time Mr. Archibald M'Donald said that?

Bennerman.—He was himself, in the absence of Mr. Miles M'Donell, who had gone to some other part.

Mr. Sherwood.—Was there any way for you to get away if you left the cannon there?

Bennerman.—No, there was not, if they chose to hinder us.

Mr. Sherwood.—Is the river narrow or wide?

Bennerman.—Very narrow, completely within reach of cannon.

Mr. Sherwood.—Do you know of their being sold?

Bennerman.—No; to my knowledge they never were. I never had any thing on account of them, nor do I think the others had.

Mr. Sherwood.—Could they have been brought to Canada with you in your canoes?

Bennerman.—No, we could not bring them to Canada; it is more than a thousand miles, and portages and rapids in the way, and we had only bark canoes to come away in.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Are you a brother of Hugh Bennerman?

Bennerman.—No, I am not, nor any relative to the prisoner Bennerman. I have known him.

Attorney-General.—Were there any cannon mounted at the time they were taken away?

Bennerman.—There were not any mounted in the house; there was one on a block outside, and there were some carriages.

Attorney-General.—Were the prisoners in company with thy party who took the cannon away, both of them?

Bennerman.—The prisoners were both in the company at the time of taking the cannon.

Attorney-General.—Where were they taken to?

Bennerman.—They were taken to Fort Gibraltar. I was not there at the time they were taken there, but I heard so, and I saw them afterwards in that fort.

HYMEN SUTHERLAND, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood.—Was you one of Lord Selkirk's settlers at the Red River?

Sutherland.—Yes, I was. I got there, I think, in 1814.

Mr. Sherwood.—Was it before, or after, the taking of the pemican by your people from the North-West Company?

Sutherland.—It was two or three days after, as I was told.

Mr. Sherwood.—Was you satisfied with your condition?

Sutherland.—No, I was very dissatisfied, for I found nothing like what I was told it was to be.

Mr. Sherwood.—Were you permitted to tell your dissatisfaction to your comrades?

Sutherland.—No, I was dissatisfied, but they would not allow me to say that I was.

Mr. Sherwood.—Who would not allow you?

Sutherland.—The Officers of the Settlement would not allow it.

Mr. Sherwood.—Did you express a wish to come away, to the Officers of the Settlement?

Sutherland.—Yes, we did, but they would not allow us to go away.

Mr. Sherwood.—Were persons put under arms to prevent you going?

Attorney-General.—The Learned Gentleman is, I think, my Lord, a little irregular in his questions; he might ask the general question, were they dissatisfied, and did they

wish to get away ; but not questions of the kind he is putting just now.

Mr. Sherwood.—I will just ask him, did they wish to come to York, and were they permitted ?

Sutherland.—We did wish to get to Canada; I do not know for York in particular ; but they would not let us come.

Mr. Sherwood.—How did you get away at last ?

Sutherland.—We asked Mr. Cameron for a passage in the North-West Company's canoes, and he gave it to us.

Mr. Sherwood.—Could you go any way but by water ?

Sutherland.—There was no other way that we could go.

Mr. Sherwood.—Had you, or any of you, any idea of taking these cannon to Canada, or of selling them, or for what were they taken ?

Sutherland.—Certainly not. They were taken away because the report was, that they were to be used against us, if we attempted to leave the Settlement, and we were afraid they would be.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General.—Do you know Mr. Duncan Cameron, and did you never hear him tell these people, or any body, to take these cannon ?

Sutherland.—I never did hear him tell any body to do so.

Attorney-General.—Do you know, Sir, where they were taken from, or whether the place was a dwelling-house, or a place to keep pigs ?

Sutherland.—I do not know where they were taken from, whether it was from a hog-stye or not. I saw them on the sleigh, but did not go with the guns. I saw them afterwards at Fort Gibraltar ; that is all I know about the taking of them.

Attorney-General.—Were the two prisoners in the company that took them, to your knowledge ?

Sutherland.—They were in the company.

Attorney-General.—Are you acquainted with the prisoners, and how long have you known them, and particularly Bennerman ?

Sutherland.—Yes, I know them both, but not much of Cooper ; the other I have known from infancy.

Attorney-General.—Do you consider him a good honest man ?

Sutherland.—Yes, I do. I know nothing against him.

Mr. Sherwood.—My Lords, we have a great number of other witnesses, but we think we may venture, without danger, to stop here, and let the case go to the Jury; this therefore is the prisoners' Defence.

CHARGE,

By Mr. Justice BOULTON.

Gentlemen of the Jury,

You have been during a few hours employed in trying the two prisoners at the bar upon the charge of stealing a number of field-pieces, or cannon, the property of the Rt. Hon. the Earl of Selkirk, from out of his dwelling-house. In considering the case, there are only two points which require your attention: first, whether these two men, John Cooper and Hugh Bennerman, are guilty of stealing or taking away the property of the Earl of Selkirk? and, secondly, and a very nice point it is, whether they were taken with a felonious intention? for, according to the most learned men in our profession, it must be proved satisfactorily, that at the time of taking, there existed what is called a *felonious intent* in English, and in Latin the *animus furandi*, because, although property may be taken away, unless the *animus furandi* is clearly established, it is not a felony, but a trespass, that is committed. The Learned Judge who was referred to in the course of the trial, exemplifies this position in a variety of instances. I will state one that is familiar to you. If a man goes to a field, and takes out of it a horse as his own, though his right to it may be questioned, yet it is not a felonious taking, because he considered he had a title to it; and if he has committed an offence, it is a trespass only, although it should actually be proved that the

horse in reality belonged to his neighbour, or to some other person. The reason it would not be a felony, is, because there was no felonious intention. Apply this principle, which is law, to the case before you. These cannon were taken in broad and open day, by a large party of persons, and not by these two people alone. This is perfectly evident from the whole of the testimony, and I think it as clear that there was not, from the beginning, any intention on the part of any body to steal these cannon, and appropriate them to their own use. It is evident a large body of persons at the Red River country had been agreeing to run away to Canada; that they wanted to get rid of the Settlement, but were apprehensive they would be fired upon from these cannon, and therefore took them away, so that they might not be hindered in going down the river. If you believe the last six men who have been examined, there never was the least intention to steal, but only to prevent the cannon from being used to prevent them going away, or making their escape to the Provinces of Canada. It is, Gentlemen, another of the trials resulting from the misunderstanding, and a very unhappy misunderstanding it is, of these two rival Companies. These people wanted to get away from that country, according to the evidence, because they were unhappy and miserable, and exposed to danger from the quarrel in which the Hudson's Bay and North-West Companies were engaged. They were exposed to danger from the Indians and Half-breeds, as it appears there had for some time been reason to apprehend they might come and destroy them. From whatever cause it might be, is no matter; whether it arose from the quarrel between the two great Companies, or from other causes, is of no consequence; these men, it appears, were unhappy and miserable, and were desirous to escape from their unhappy situation. They had been led to believe, how they came to believe so, is of no consequence, that these cannon might

be used to prevent their getting away, and they determined to remove them out of the way. That they had no intention of purloining them is clear, from their conduct; they carried them to a distance from the place whence they were taken, and there left them. They had no intention of selling them, or of appropriating them in any way to their own use, but merely to hinder them from being used to molest them in their intended escape. It is clear that they could not have, and indeed there is not a scintilla of evidence that proves a felonious intent, or that a robbery was committed, or intended to be committed. So far from a robbery having been committed, though the cannon were removed and were carried away, it is only a high misdemeanor, a high trespass, that they have been guilty of. I will explain to you a little of the law upon the subject. There can be no felony committed without at the same time a trespass being effected; but there may, Gentlemen, be a trespass committed without at the same time committing a felony. This is very satisfactorily explained in the law quoted from Lord Hale by the Learned Gentleman who conducted the Defence. Looking then at the whole case, according as I have it upon my notes, it is so very plain, that there is growing out of it no sort of difficulty whatever. The reading of my notes, which I have taken during the trial, would be a waste of your time, as I am sure it must be better impressed upon your minds from the attention you gave to the examination of the various witnesses who testified to the different parts of the case. It is, therefore, only necessary that I repeat to you, that there appears, from the whole, to be nothing for you to consider but the point of law I have stated to you; because, if there is not a scintilla of proof of a felonious intent, though they did take away the cannon, as I have told you before, it will amount only to a trespass. The whole case is a strange one; the part that the prisoners took has been very loosely proved, amounting to nothing more than

that they were there; if however it has been proved, to the satisfaction of your minds, that they moved one foot towards helping to take away these cannon, it will be for you then to determine, whether they were so taken with the intent to steal them or not. If you believe the last evidences you had before you, there was no intention of stealing them, but, on the contrary, it was only by way of precaution, that they might not be used to prevent their coming away to Canada. You will, however, say what is their offence.

The Jury then retired under the care of Officers, and in some time returned; and the customary forms being gone through, returned a verdict of NOT GUILTY.

Chief Justice.—Have you, Mr. Attorney-General, any other business to bring before the Court, under the Great Seal Instruments from the Lower Province?

Attorney-General.—Nothing, my Lords. Before I had understood it to be the decided and unanimous opinion of your Lordships, that you could not take cognizance of any offences not particularly specified in the Great Seal Instruments of Lower Canada, I had prepared Bills of Indictment against several persons, for offences not specified in the instruments which give us jurisdiction, upon informations which had been placed before me, and under the general words of those instruments, which refer the offenders to this Province for trial, for "*all offences by them committed* "*in the Indian Territories,*" &c. But, as your Lordships are clearly of opinion that you can not try them, I must of course forbear further proceeding upon them, and enter a *noli prosequi.*

Then, besides these Bills, my Lord, there are several others found, for arson, and maliciously shooting, against persons whom we have, by the express words of the Great Seal Instruments transmitted to us, full authority to try, but who are not at present here to be tried, nor compelled to appear here by any recognizance which I can enforce. Against these I have already moved for the process of the Court, which has been awarded, and nothing further can be done at present.

It is, moreover, my Lords, proper that I should remind your Lordships, that the Great Seal Instruments against several of the persons charged with offences committed in

the Indian Territories, directs them to be tried here for *conspiracy*. What kind of conspiracy, whether of a treasonable nature, or otherwise, is not defined; and perhaps the expression is so indefinite, that your Lordships might doubt whether it sufficiently specified the offence to give the Court here jurisdiction. However, no doubt of that kind should have induced me to withhold the charge. I would have preferred the Bill, and left that point for the Court to decide; but the decision which your Lordships have solemnly expressed upon the question of jurisdiction, having clearly excluded from trial for any charge of conspiracy, those very persons whose acts of hostility against the Settlement were manifest, and while unexplained, most unjustifiable and atrocious, and led most clearly to the destruction of the Colony, the object of the conspiracy charged by the informations in my hands, I found that I had not evidence sufficient to ground a charge against those individuals whom alone we are authorized to try; indeed, scarcely a shadow of evidence, except as we might prove them to have been connected with those over whom we have no jurisdiction, and whom we, therefore, can not charge; and this evidence even went almost entirely to conduct for which these same persons had been already put upon their trial in another shape*. I have, therefore, my Lord, nothing further to submit to the Grand Jury; and those Bills they have found, are now disposed of, at least such of them as we are enabled to proceed upon.

Mr. Sherwood.—Before the Court rises, I beg leave to move, that the Honourable William M'Gillivray be discharged from his recognizance. He has been for upwards of two years under security, to appear and answer certain charges of conspiracy and treason, and is now here, in fulfilment of the obligation into which he has entered in the Lower Province. Mr. Attorney-General having declared that he has nothing further to offer to the Court, I have a right to presume, that those who occasioned Mr. M'Gillivray to be held to bail, have as little grounds for so doing, as the present session has shewn they had for imprisoning and holding to bail the various persons who have been acquitted by the respectable Juries who tried them. For a period of upwards of two years, Mr. M'Gillivray has been anxiously

---

* See the observations on this part of the Attorney-General's speech at the close of the trial of Alexander Mackenzie and others.

waiting to be put upon his trial, and most confidently did he hope, that when the authorities of the sister province transmitted him here, that it was only necessary for him to appear, to ensure his being permitted publicly to disprove the imputations which have been cast upon him, and repel the aspersions and calumnies with which he has been assailed. As that is denied to him, by the observations which have fallen from Mr. Attorney-General, I move that Mr. M'Gillivray be discharged from his recognizance.

The Chief Justice informed Mr. Sherwood, that the Court could not receive his motion, because Mr. M'Gillivray was not before it. The Grand Jury had made no presentment against that Gentleman. The Attorney-General has just mentioned, relative to any charge of conspiracy to which he (Mr. S.) might allude, that he did not find himself, from the decision of the Court upon the question of jurisdiction, in a situation which enabled him to prefer the charge to the Grand Jury, and consequently it was impossible that any relief could be afforded to a Gentleman who was in no way before the Court. Mr. Sherwood again complained of the hardship inflicted upon Mr. M'Gillivray, alleging that, as he had been two years with charges hanging over him, so he might remain for ever, unless upon fulfilling his recognizance by appearing in the Court to which he stands bound, the Court have power to discharge him. The Chief Justice again intimated the impossibility of Mr. Sherwood's motion being entertained, and having dismissed the Grand Jury with the thanks of the Court for the attention they had given to their duties, their Lordships retired.

POSTSCRIPT.

SINCE the proceedings at York, in Upper Canada, (the detailed report of which occupies the preceding pages,) at a Court of Oyer and Terminer held there on the 22d February and following days, a Bill of Indictment was preferred, and found by the Grand Jury against,

THOMAS DOUGLAS, EARL OF SELKIRK,
MILES MACDONELL,
JOHN SPENCER,
JOHN ALLEN,
PROTAIS D'ODET D'ORSONNENS,
FREDERICK MATTHEY,
GUSTAVUS ADOLPHUS FAUCHE,
FREDERICK DE GRAFFENRIED,
JOHN M'NAB,
DONALD M'PHERSON,
ARCHIBALD M'DONALD,
JEAN BAPTISTE CHEVALIER DE LORIMIER,
ALEXANDER BRIDPORT BECHER,
LOUIS NOLIN,
JACQUES CHATELAIN,
PIERRE CHRYSOLOGUE PAMBRUN,
JOHN PRITCHARD,
JOHN P. BOURKE,
MICHAEL HEDEN, and
JACOB VITSCHE,

making in all twenty persons, for a *conspiracy* to ruin the Trade of the North-West Company.

The Indictment contained three counts, and amongst the numerous overt-acts therein set forth, supported by documentary and oral evidence, the following were particularly prominent. The engaging and arming a number of disbanded soldiers, (foreigners); the entry by them, with force and arms, into Fort William, in August 1816; retaining possession of the fort till May 1817; sending off as prisoners, the Partners of the North-West Company found there; getting rid of the clerks by subpœnas to appear at York at a period when no Courts are held there, without enquiring of them whether they knew any thing of the matters to which the subpœnas related, and without ever bringing them forward afterwards; stopping of the outfits

from going into the interior, and the returns from coming to Montreal; possessing themselves of all the books and papers of the concern; sending away the principal clerk under a charge of felony without examination, and without having ever followed up that charge; the pretended sale by Daniel Mackenzie of the North-West property, obtained by his Lordship by means of continued duress; tampering with, and debauching the North-West Company's servants, and commanding them in the King's name; writing circular letters to the partners and clerks in the interior country, alleging that the North-West Company were ruined, and advising them to abandon their trust, and to carry the furs to Hudson's Bay; taking possession of Fort Lake La Pluie, and the property there, and stopping the navigation, &c. &c.

Upon this being returned a true bill, the Attorney-General moved the process of the Court against the parties; and Dr. Allen, who was the only one of the twenty within reach of process, was arraigned on the 27th February, and pleaded *Not Guilty*. He stated that the witnesses for his defence being dispersed in various directions, he could not say when he should be prepared to take his trial; whereupon he was bailed to appear at the Court of Assize in October next at York, himself in 1000*l*. and three sureties for 1000*l*. together.

WILLIAM SMITH,

versus

THE EARL OF SELKIRK.

This was a civil action, brought by Mr. William Smith against Lord Selkirk, for false imprisonment.

It appeared in evidence, that the Plaintiff was Under-Sheriff of the Western District, and as such, the bearer of a writ of restitution founded upon a verdict of a Special Jury at Sandwich, in October 1816, and granted by the sitting Magistrates, ordering the restoration of Fort William to the North-West Company; he was also the bearer of a warrant for felony, issued against his Lordship, Dr. Allen, Capt. Matthey, and others, upon an information upon oath before

a Justice of the Peace. Mr. Smith got to Fort William on the 19th of March, 1817, and produced his writ of restitution, with which his Lordship refused to comply; and when the Earl and the others were arrested by Mr. Smith, upon the warrant for felony, his Lordship laid hold of him and pushed him out of doors; and he was afterwards kept in close custody in the fort under a military guard. A circumstance which added much to the grievous nature of the offence, and which was particularly dwelt upon by the Judge in his Charge to the Jury, was, that whilst Mr. Smith was kept in rigorous confinement, Charles De Reinhard, though under an accusation for murder, was at large and keeping a school, though nominally under the surveillance of one or two of his former comrades. The Chief Justice also remarked upon another part of the evidence for the defence, by which it appeared that the only option left to Mr. Smith to obtain his liberty, was that of abandoning his duty, and breaking his oath of office, by a promise not to molest Lord Selkirk: Mr. Smith, however, notwithstanding this proposal, persisted in doing his duty, and was not liberated, until the evacuation of Fort William by his Lordship and his forces, in May 1817.

The Jury, after some deliberation, returned a verdict in favour of the Plaintiff; Damages 500*l*.

DANIEL M'KENZIE,

versus

THE EARL OF SELKIRK.

This was a civil action, for false imprisonment of the Plaintiff, a retired Partner of the North-West Company, by the Earl, at Fort William, where he was thrown into a dungeon, though in a distressed state of mind, without any legal proceedings, (a circumstance which came out in the evidence which was produced for the Defendant), and kept there under a military guard, until he was induced (believing his life to be in danger) to sign various deeds prepared for the purpose, purporting to be sales of the North West Company's property, a bond of arbitration, &c. under colour of which Lord Selkirk retained possession of the fort and its contents, to the value of full one hundred thousand

pounds. The Jury in this case gave a verdict for 1500*l*. Damages.

These proceedings will be followed up by others in Canada and Great Britain, which will equally find their way to the public, and be a permanent record of the events and circumstances which have given rise to them.

S

U
of

m
H
Ju
th
of
or

wh
the
one
me.
ma
me
wel
son
feiti
the
don
killi
conv
misp
reter

APPENDIX.

A.

UPPER CANADA.

SAMUEL SMITH,

ADMINISTRATOR.

GEORGE THE THIRD, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith:

To our trusty and well-beloved the Honourable William Dummer Powell, Chief Justice of our Province of Upper Canada, the Honourable William Campbell, the Honourable D'Arcy Boulton, Justices of our Court, of our Bench, in and for our said Province, the Honourable James Baby, and William Allan, Esquire, Justices of the Peace in and for the Home District of our said Province, or to any two of them. GREETING:

Know ye that we have assigned you, or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any one of you, be one, to enquire by the oath of good and lawful men of the district aforesaid, by whom the truth of the matter may be the better known and enquired of, and by other ways, methods and means, whereby you can or may the better know, as well within liberties as without, more fully the truth of all treasons, misprisions of treason, insurrections, rebellions, counterfeitings, clippings, washings, false coinings and other falsities of the money of Great Britain and Ireland, and of all kingdoms and dominions whatsoever, of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, unlawful assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, malignancies, conceal-

ments, maintenances, oppressions, champarties, deceits, and all other misdeeds and offences whatsoever, and also the accessaries of the same within the District aforesaid, as well within liberties as without, by whomsoever and howsoever, had, done, perpetrated and committed, and when, how, and in what manner, and by what person or persons, to what person or persons, and in what manner, and of all articles and circumstances whatsoever, any or either of them concerning; and the same treasons and other the premises according to the law and custom of England, and the law of our said Province for this time to hear and determine. And therefore, We command you, that at certain days and places, which you or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any of you, be one, for this purpose shall appoint, within and for the space of six calendar months, from the day of the date of these presents, you do concerning the premises make diligent enquiry, and all and singular the premises hear and determine, and other things do and fulfil in form aforesaid, which are and ought to be done, and to justice doth appertain according to the law and custom of England and the laws of our said Province.—Saving to us our amerciaments and other things thereupon belonging: for We have commanded our Sheriff of the said District, that at certain days and places, which you or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any of you, be one, to him shall make known within and for the space of six calendar months from the day of the date of these presents, he cause to come before you, or any two of you, of whom We will you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any of you, be one, such and so many good and lawful men of his bailiwick, as well within liberties as without, by whom the truth of the premises may be the better enquired of and known. And know ye further, that we have also constituted and assigned you, or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any one of you, be one, our Justices our gaol of our said District to deliver of the prisoners within the same being. Therefore, we command you, that at a certain day and place which you, or any two of you, of whom We will that you the said William Dummer Powell, you, the said William Campbell, you the said D'Arcy Boulton, or any of you, be one, shall appoint, you do meet at the Town of York, in the Home District aforesaid, our gaol of our said District to deliver, and to do thereupon what to do justice may appertain, according to the custom of England, and the laws of our said Province. Saving to us our amerciaments, and other things to us thereupon belonging: for we have com-

manded, and do hereby command, our Sheriff of our said District, that at a certain day and place which you, or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any one of you, be one, to him shall make known, all the prisoners in the gaol, or their attachments before you, or any two of you, of whom We will that you the said William Dummer Powell, you the said William Campbell, you the said D'Arcy Boulton, or any one of you, be one, he do there cause to come.

In testimony whereof, We have caused these our letters to be made patent, and the Great Seal of our said Province to be hereunto affixed.——Witness our trusty and well-beloved Samuel Smith, Esquire, Administrator of the Government of our said Province, at York, this twentieth day of July, in the year of our Lord one thousand eight hundred and eighteen, and in the fifty-eighth year of our reign.

S. S.

By Command of His Honour,
(Signed)
D. CAMERON,
Sec'ry.

B.

HOME DISTRICT, *to wit:* } THE JURORS of our Lord the King, upon their oath present that Cuthbert Grant, formerly of a place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or any civil government of the United States of America, and late of the Town of York, in the said Home District, and Province of Upper Canada, Gentleman; Louis Perrault, late of the said Town of York, yeoman, otherwise called Louis Morain; Paul Brown, late of the said Town of York, yeoman; and François Firmin Boucher, late of the said Town of York, yeoman, and divers other evil-disposed persons, whose names are to the said jurors as yet unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the nineteenth day of June, in the fifty-sixth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the Town of York, in the Home District, in the Province of Upper Canada aforesaid, in and upon one *Robert Semple*, then and there being in the peace of God and our said Lord the King, feloniously, wilfully, and of their

malice aforethought, did make an assault, and that the said Cuthbert Grant, a certain gun, of the value of five shillings, then and there charged with gunpowder, and one leaden bullet, which gun he the said Cuthbert Grant in both his hands then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge to, against, and upon, the said Robert Semple; and that the said Cuthbert Grant, with the leaden bullet aforesaid, out of the gun aforesaid, then and there by force of the gunpowder aforesaid, by the said Cuthbert Grant shot, discharged and sent forth as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, the said Robert Semple in and upon the left part of the breast of him the said Robert Semple, giving unto him the said Robert Semple, then and there with the leaden bullet aforesaid, so as aforesaid by him the said Cuthbert Grant, shot, discharged and sent forth out of the gun aforesaid, by force of the gunpowder aforesaid, in and upon the left part of the breast of him the said Robert Semple, one mortal wound of the depth of six inches, and the breadth of half an inch, of which said mortal wound the said Robert Semple then and there instantly died; and that the said Louis Perrault, otherwise called Louis Morain, Paul Brown, François Firmin Boucher, at the time of the committing of the felony and murder aforesaid, then and there feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, abetting, comforting, assisting, and maintaining the said Cuthbert Grant to do and commit the felony and murder aforesaid, in form aforesaid, and so the jurors aforesaid, upon their oath aforesaid, say, that the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, François Firmin Boucher, and the other persons whose names are to the jurors aforesaid as yet unknown, then and there feloniously, wilfully, and of their malice aforethought, in manner and form aforesaid, did kill and murder the said Robert Semple, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Allen M'Donell, late of the Town of York aforesaid, gentleman, John Siveright, late of the same place, gentleman, Seraphim Lamarre, formerly of a place commonly called Red River, and late of the Town of York aforesaid, gentleman, Peter Pangman, late of the Town of York aforesaid, gentleman, formerly of the said place commonly called Red River, otherwise commonly called Peter Bostounois, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, before the felony and murder aforesaid, by the aforesaid Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, in manner and form aforesaid, done

and committed, that is to say, on the nineteenth day of June, in the fifty-sixth year aforesaid, with force and arms at the Town of York aforesaid, in the Home District aforesaid, the aforesaid Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, to do and commit the felony and murder aforesaid, in manner and form aforesaid, wilfully, feloniously and of their malice aforethought, did incite, command, hire, procure, counsel and abet, against the peace of our Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Alexander M'Kenzie, late of the Town of York aforesaid, Esquire, Hugh M'Gillis, late of the same place, gentleman, Simon Fraser, late of the same place, gentleman, William Shaw, formerly of a place commonly called Red River, and late of the Town of York aforesaid, gentleman, and the said Allen M'Donell, John Siveright, Seraphim Lamarre, and Peter Pangman, otherwise called Peter Bostonnois, well knowing the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, to have done and committed the said felony and murder in form aforesaid, afterwards to wit, on the said nineteenth day of June, in the fifty-sixth year aforesaid, with force and arms at the Town of York aforesaid, in the Home District aforesaid, them the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, did feloniously receive, harbour and maintain against the peace of our said Lord the King, his Crown and Dignity.

C.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that George Campbell, formerly of the parish of Montreal, in the District of Montreal, and late of the Town of York, in the Home District, and Province of Upper Canada, yeoman; Cuthbert Grant, formerly of a place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and late of the Town of York aforesaid, gentleman; and William Shaw, formerly of the same place, commonly called Red River, and late of the Town of York aforesaid, gentleman, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit; on the

twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, and in the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, about the hour of ten in the forenoon of the same day, with force and arms, at the Town of York, in the Home District aforesaid, a certain house of the Right Honourable *Thomas Earl of Selkirk*, there situate, feloniously, voluntarily, and maliciously, did set fire to, and the same house, then and there, by such firing as aforesaid, feloniously, voluntarily, and maliciously, did burn and consume, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Duncan Cameron, formerly of the said place, commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories or parts of America aforesaid, and late of the Town of York aforesaid, gentleman, before the committing of the said felony, in form aforesaid, to wit: on the said twenty-eighth day of June, in the said fifty-fifth year of the reign of our said Lord the King, with force and arms, at the said Town of York, in the Home District aforesaid, did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command the said George Campbell, Cuthbert Grant, and William Shaw, to do and commit the said felony, in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Cuthbert Grant, and William Shaw, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, and in the fifty-fifth year of the reign of our said Lord the King, about the hour of ten in the forenoon of the same day, with force and arms, at the Town of York, in the Home District aforesaid, a certain house of one *Alexander M'Lean*, there situate, feloniously, voluntarily, and maliciously, did set fire to, and the same house, then and there, by such firing as aforesaid, feloniously, voluntarily, and maliciously, did burn and consume, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, before the committing of the said last-mentioned felony, in form aforesaid, to

wit: on the said twenty-eighth day of June, in the said fifty-fifth year of the reign of our said Lord the King, with force and arms, at the said Town of York, in the Home District aforesaid, did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command the said George Campbell, Cuthbert Grant, and William Shaw, to do and commit the said last-mentioned felony, in manner and form aforesaid, and against the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

D.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that Paul Brown, late of the Town of York, in the Home District aforesaid, yeoman, on the twentieth day of June, in the fifty-sixth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, in and upon one *Michael Heden*, then and there being, feloniously did make an assault, and him, the said Michael Heden, in bodily fear and danger of his life, then and there feloniously did put, and one blanket of the value of twenty shillings, and one gun of the value of forty shillings, of the goods and chattels of the said Michael Heden, from the person and against the will of the said Michael Heden, then and there feloniously and violently did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity.

E.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that Cuthbert Grant, formerly of a place commonly called Red River, not comprised within any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and late of the Town of York, in the Home District of the Province of Upper Canada, gentleman, Peter Pangman, of the said place, commonly called Red River, and late of the Town of York aforesaid, gentleman, otherwise called Peter Bostonnois; Joseph Brisbois, late of the said Town of York, yeoman, and Paul Brown, late of the same place, yeoman, on the twelfth day of May, in the fifty-sixth

year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the river Qui Appelle, to wit: at the Town of York, in the Home District aforesaid, twenty-two packs of furs of the value of one thousand pounds, sterling money of Great Britain, six hundred bags of pemican, of the value of two thousand four hundred pounds sterling money aforesaid, twenty-four guns, of the value of seventy pounds sterling money aforesaid, and twelve packs of buffalo skins, of the value of fifty pounds sterling money aforesaid, all of the goods and chattels of the *Governor and Company of Adventurers of England trading into Hudson's Bay*, in five boats upon the said navigable river Qui Appelle, to wit: at York aforesaid, in the said Home District, then and there being found, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oaths aforesaid, further present, that the said Cuthbert Grant, Peter Pangman, otherwise called Peter Bostonnois, Joseph Brisbois, and Paul Brown, on the said twelfth day of May, in the fifty-sixth year aforesaid, with force and arms, at a certain place on the navigable river Qui Appelle, to wit: at York aforesaid, in the Home District aforesaid, twenty-two packs of furs, of the value of one thousand pounds sterling money aforesaid six hundred bags of pemican, of the value of two thousand four hundred pounds sterling money aforesaid, twelve packs of buffalo skins, of the value of fifty pounds sterling money aforesaid, and twenty-four guns, of the value of seventy pounds sterling money aforesaid, of the goods and chattels of the said Governor and Company of Adventurers of England trading into Hudson's Bay, in a certain boat upon the said navigable river Qui Appelle, in the said Indian Territories, or parts of America, to wit: at York, in the Home District aforesaid, then and there being found, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

F.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that George Campbell, formerly of the parish of Montreal, in the District of Montreal, and late of the Town of York, in the Home District, and Province of Upper Canada, yeoman; Duncan Cameron, of a place commonly called Red River, not comprised in any parish

or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Lower or Upper Canada, or of any civil government of the United States of America, and late of the Town of York aforesaid, gentleman, Cuthbert Grant, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman; William Shaw, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman; being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, which was in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the eleventh day of June, in the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the Town of York aforesaid, in the said Home District, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot, at one *Miles M'Donell*, one *James Sutherland*, one *Peter Fidler*, one *John Warren*, and one *Duncan M'Donell*, (they the said Miles M'Donell, James Sutherland, Peter Fidler, John Warren, and Duncan M'Donell, then being in a certain dwelling-house of the Right Honourable Thomas Earl of Selkirk, there situate), against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Cuthbert Grant, and William Shaw, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, which was in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the said eleventh day of June, in the fifty-fifth year of the reign of our said Lord the King, with force and arms, at the Town of York aforesaid, in the said Home District, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot at one Miles M'Donell, one James Sutherland, one Peter Fidler, one John Warren, and one Duncan M'Donell, (they the said Miles M'Donell, James Sutherland, Peter Fidler, John Warren, and Duncan M'Donell, then being in a certain dwelling-house of the Right Honourable Thomas Earl of Selkirk, there situate), against the form of the statute in that case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, before the committing of the last-mentioned felony, in form aforesaid, to wit: on the day and year last-aforesaid, with force and arms, at the Town of York aforesaid, in the Home District aforesaid, did wilfully, maliciously,

and feloniously incite, move, procure, aid, and abet, the said George Campbell, Cuthbert Grant, and William Shaw, to do and commit the said last-mentioned felony, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity.

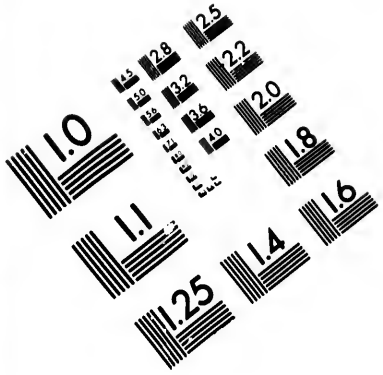
And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Duncan Cameron, Cuthbert Grant, and William Shaw, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, which was in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the eleventh day of June, in the fifty-fifth year of the reign of our said Lord the King, with force and arms, at the Town of York aforesaid, in the Home District aforesaid, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot at one Miles M'Donell, one James Sutherland, one Peter Fidler, one John Warren, and one Duncan M'Donell, in the peace of God and our said Lord the King, then and there being, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Cuthbert Grant, and William Shaw, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the said eleventh day of June, in the said fifty-fifth year of the reign of our said Lord the King, with force and arms, at the said Town of York, in the Home District aforesaid, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot at one Miles M'Donell, one James Sutherland, one Peter Fidler, one John Warren, and one Duncan M'Donell, in the peace of God and our said Lord the King, then and there being, against the form of the statute made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, before the committing of the said last-mentioned felony, in form aforesaid, to wit: on the day and year last-aforesaid, with force and arms, at the Town of York aforesaid, in the Home District aforesaid, did wilfully, maliciously, and feloniously incite, move, procure, aid, and abet the said George Campbell, Cuthbert Grant, and William Shaw, to do and commit the said last-mentioned felony, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity.

G.

HOME DISTRICT, } THE JURORS for our Lord the King,
viz: } upon their oath, present that George Campbell, formerly of the parish of Montreal, in the District of Montreal, and late of the Town of York, in the said Home District, yeoman; Robert Gunn, formerly of the same parish of Montreal, and late of the Town of York, in the said Home District, yeoman; and Hector M'Donald, late of the same parish of Montreal, and late of the Town of York, in the said Home District, yeoman, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, in the year one thousand seven hundred and twenty-three, viz: on the twenty-fifth day of May, in the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdoms of Great Britain and Ireland, King, Defender of the Faith, with force and arms at York, in the Home District aforesaid, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously did shoot at one *Miles M'Donell, Esquire*, one *James White*, and one *James Sutherland*, they the said Miles M'Donell, James White, and James Sutherland, then being in a certain dwelling-house of the Right Honourable Thomas Earl of Selkirk, there situate, against the form of the statute in such case made and provided, and also against the peace of our said Lord the King, his Crown and Dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Robert Gunn, and Hector M'Donald, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the said twenty-fifth day of May, in the said fifty-fifth year of the reign of our said Lord the King, with force and arms at York, in the Home District aforesaid, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot at one *Archibald M'Donald*, he the said Archibald M'Donald, in the peace of God and our said Lord the King, in front of, and near a certain dwelling-house, then and there being, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Robert Gunn, and Hector M'Donald, being ill-designing and disorderly persons, and of wicked and malicious dispositions, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit: on the said twenty-fifth day of May, in the said fifty-fifth year of the reign of our Sovereign Lord George



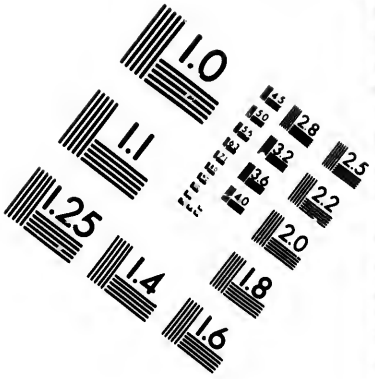
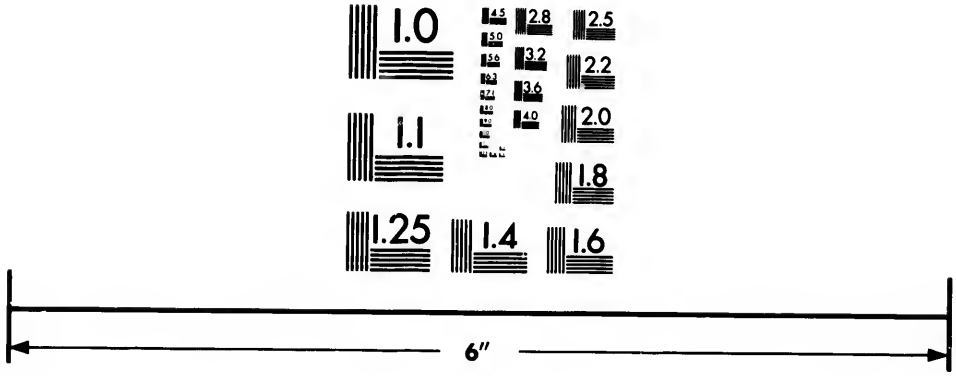
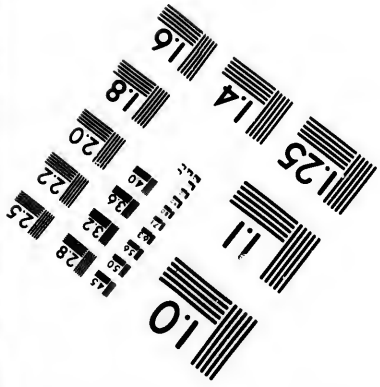
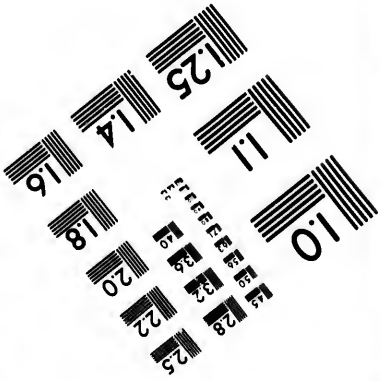


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

the Third, with force and arms at York aforesaid, in the said Home District, with certain guns charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously, and feloniously, did shoot at one *Miles M'Donell, Esquire*, in the peace of God, and our said Lord the King, and in the dwelling-house of him the said Miles M'Donell, then and there being, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, Robert Gunn, and Hector M'Donald, being evil and disorderly persons, and of wicked and malicious dispositions, after the first day of June, in the year one thousand seven hundred and twenty-three, to wit: on the said twenty-fifth day of May, in the said fifty-fifth year of the reign of our said Lord the King, with force and arms at York aforesaid, in the said Home District, with certain guns, charged with gunpowder and leaden bullets, unlawfully, wilfully, maliciously and feloniously, did shoot at one *Miles M'Donell, Esquire*, in the peace of God, and our said Lord the King, and in a certain dwelling-house, then and there being, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

H.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that Cuthbert Grant, formerly of a place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and late of the Town of York, in the Home District, and Province of Upper Canada, gentleman; Louis Perrault, late of the said Town of York, yeoman, otherwise called Louis Morain; Paul Brown, late of the said Town of York, yeoman; François Firmin Boucher, late of the said Town of York, yeoman, and divers others evil-disposed persons, whose names are to the said jurors as yet unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the nineteenth day of June, in the fifty-sixth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the Town of York aforesaid, in the Home District aforesaid, in and upon one *Alexander M'Lean*, then and there being in the peace of God and of our said Lord the King, feloniously, wilfully, and of their malice aforethought, did make

an assault, and that a certain person, whose name is to the jurors aforesaid as yet unknown, a certain gun of the value of five shillings, then and there charged with gunpowder and one leaden bullet, which gun, he the said person, to the jurors aforesaid unknown, in both his hands, then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge to, against, and upon the said Alexander M'Lean, and that the said person, to the jurors aforesaid unknown, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said person, to the jurors aforesaid unknown, shot, discharged, and sent forth as aforesaid, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound the said Alexander M'Lean, in and upon the back of him the said Alexander M'Lean, under the left shoulder-blade of him the said Alexander M'Lean, giving unto him the said Alexander M'Lean, then and there, with the leaden bullet aforesaid, so as aforesaid, by him the said person to the jurors aforesaid unknown, shot, discharged, and sent forth, out of the gun aforesaid, by force of gunpowder, in and upon the back of him the said Alexander M'Lean, one mortal wound of the depth of six inches, and of the breadth of half an inch, of which said mortal wound the said Alexander M'Lean then and there instantly died; and the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, at the time of the committing of the murder and felony aforesaid, then and there feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, abetting, comforting, and maintaining the said person unknown, to kill and murder the said Alexander M'Lean, in manner and form aforesaid, and so the jurors aforesaid, upon their oath aforesaid, do say that the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, François Firmin Boucher, and the said other person, whose name is to the jurors aforesaid as yet unknown, then and there feloniously, wilfully, and of their malice aforethought, in manner and form aforesaid, did kill and murder the said Alexander M'Lean, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Allen M'Donell, late of the Town of York aforesaid, gentleman; John Siveright, late of the same place, gentleman; Seraphim Lamarre, formerly of a place commonly called Red River, and late of the Town of York aforesaid, gentleman, Peter Pangman, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman, otherwise called Peter Bostonnois, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, before the felony and murder last-aforesaid, by the

said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, François Firmin Boucher, and the said other person to the jurors aforesaid unknown, in manner and form aforesaid, done and committed, that is to say, on the said nineteenth day of June, in the fifty-sixth year aforesaid, with force and arms, at York aforesaid, in the Home District aforesaid, the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, to do and commit the felony and murder aforesaid, in manner and form aforesaid, wilfully, feloniously, and of their malice aforethought, did incite, move, procure, command, counsel, and abet, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Alexander M'Kenzie, late of the Town of York aforesaid, Esquire, Hugh M'Gillis, late of the same place, gentleman, John M'Donald, late of the same place, gentleman, John M'Laughlin, late of the same place, gentleman, Simon Fraser, late of the same place, gentleman, William Shaw, formerly of a place commonly Red River, and late of the Town of York aforesaid, gentleman; the said Allen M'Donell, John Siveright, Seraphim Lamarre, and Peter Pangman, otherwise called Peter Bostonnois, well knowing the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, to have done and committed the said felony and murder in form aforesaid, afterwards to wit: on the said nineteenth day of June, in the fifty-sixth year aforesaid, with force and arms, at York aforesaid, in the Home District aforesaid, them the said Cuthbert Grant, Louis Perrault, otherwise called Louis Morain, Paul Brown, and François Firmin Boucher, did then and there feloniously receive, harbour, and maintain, against the peace of our said Lord the King, his Crown and Dignity.

I.

HOME DISTRICT, } THE JURORS for our Lord the King,
s. s. } upon their oath, present that Paul Brown, late of the Town of York, in the Home District, and Province of Upper Canada, yeoman, on the tenth day of May, in the forty-eighth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kindom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the Town of York, in the Home District aforesaid, three packs of furs, containing beaver, martin, and otter skins, of the value of three hundred pounds sterling money of Great Britain, of the goods and chattels of one *William Corrigal*, in the dwelling-

house of the said William Corrigal, there situated, then and there feloniously did steal, take, and carry away, and him the said William Corrigal then and there being in the said dwelling-house, did then and there put in bodily fear of his life, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Paul Brown, on the said tenth day of May, in the forty-eighth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at York aforesaid, in the Home District, three other packs of furs, containing beaver and otter skins, of the value of three hundred pounds sterling money of Great Britain, of the goods and chattels of the *Governor and Company of Adventurers of England trading into Hudson's Bay*, in the dwelling-house of them the said Governor and Company of Adventurers of England trading into Hudson's Bay, there situated, then and there being found, feloniously did steal, take, and carry away, and one William Corrigal aforesaid, then and there being in the dwelling-house, did then and there put in bodily fear of his life, against the form of the statute in such cases made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

J.

HOME DISTRICT, *to wit:* } THE JURORS for our Lord the King, upon their oath, present that George Campbell, formerly of the parish of Montreal, in the District of Montreal, and late of the Town of York, in the Home District, and Province of Upper Canada, yeoman; John Cooper, formerly of the said parish of Montreal, and late of the Town of York aforesaid, yeoman; Hugh Bennerman, formerly of the said parish of Montreal, and late of the Town of York aforesaid, yeoman; Duncan Cameron, formerly of a place commonly called Red River, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or any civil government of the United States of America, and late of the Town of York aforesaid, gentleman; John Dougald Cameron, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman; Cuthbert Grant, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman; William Shaw, for-

merly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman; Peter Pangman, formerly of the said place commonly called Red River, and late of the Town of York aforesaid, gentleman, otherwise called Peter Bostonnois, on the third day of April, and the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the Town of York aforesaid, in the said Home District, four brass cannon, commonly called field-pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, all of the goods and chattels of the Right Honourable *Thomas Earl of Selkirk*, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situated, then and there being found, feloniously did steal, take, and carry away, and one *Michael Kilbride*, one *John Kerrigan*, and one *Mary M'Lean*, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper and Hugh Bennerman, afterwards, viz. on the said third day of April, in the year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, four brass cannon, commonly called field-pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, of the goods and chattels of the said Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situated, then and there being found, feloniously did steal, take and carry away, and one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, did, then and there, put in bodily fear of their lives, against the force of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, before the committing of the last-mentioned felony, in form aforesaid, to wit: on the day and year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, did feloniously and maliciously comfort, aid, abet, assist, counsel, hire, and command the said George Campbell, John Cooper, and Hugh Bennerman, to do and commit the felony last-aforesaid, in manner and form aforesaid,

against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, four brass cannon, commonly called field pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situated, then and there being found, feloniously did steal, take, and carry away, and one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, the said last-mentioned four brass cannon, commonly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid, feloniously stolen, taken, and carried away; feloniously did receive, and have, they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the said goods and chattels last-mentioned, to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, further present, that the said George Campbell, John Cooper, Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, Peter Pangman, otherwise called Peter Bostonnois, on the said third day of April, in the fifty-fifth year aforesaid, with force and arms, at the Town of York aforesaid, in the said Home District, four brass cannon, commonly called field-pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry

away, against the peace of our said Lord the King, his Crown and Dignity, and also against the form of the statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, and Hugh Bennerman, afterwards, to wit: on the said third day of April, in the year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, four brass cannon, commonly called field-pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, of the goods and chattels of the said Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situated, then and there being found, feloniously, did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, before the committing of the felony last-mentioned, in form aforesaid, to wit: on the day and year aforesaid, with force and arms, at the said Town of York, in the Home District aforesaid, did feloniously, and maliciously, comfort, aid, abet, assist, counsel, hire, and command, the said George Campbell, John Cooper, and Hugh Bennerman, to do and commit the felony last-aforesaid, in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms at the said Town of York, in the Home District aforesaid, four brass cannon, commonly called field-pieces, of the value of one hundred pounds, four iron swivels, of the value of forty pounds, and one howitzer, of the value of ten pounds, of the goods and chattels of the said Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously, did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms at the said Town of York, in the Home District aforesaid, last-mentioned, four brass cannon, com-

monly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid, feloniously stolen, taken, and carried away, feloniously did receive and have, they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the said goods and chattels last-mentioned to have been feloniously stolen, taken, and carried away, against the peace of our said Lord the King, his Crown and Dignity.

K.

L. S.

J. C. SHERBROOKE.

PROVINCE OF LOWER CANADA. } GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come, or may in any way concern, GREETING:

Whereas in and by an Act made and passed in the forty-third year of our reign, by and with the consent and advice of the Lords Spiritual and Temporal and Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, intituled, "An Act for extending the jurisdiction of the Courts of "Justice in the Provinces of Lower Canada and Upper Canada, "to the trial and punishment of persons guilty of crimes and of- "fences, within certain parts of North America, adjoining the "said Provinces," it is amongst other things enacted, that from and after the passing of the said Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper Canada and Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada; and that every such offender may and shall be prosecuted and tried in the Courts of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered in relation to such crime or offence in the Province of Upper Canada), in which crimes or offences of the

like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried, under the said recited Act. And whereas, Paul Brown has been apprehended for great crimes and offences by him committed in the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or any civil government of the United States of America, and has been delivered into safe custody in the Province of Lower Canada, charged on oath with having, in company with a number of other persons, on the nineteenth day of June, in the year of our Lord one thousand eight hundred and sixteen, at the Settlement at Red River, feloniously killed and murdered twenty-one men, of whom Governor Semple was one, and also with having, on the twentieth of June, in the year aforesaid, at the said Settlement feloniously taken and robbed from one *Michael Heden*, one blanket and one gun, the property of the said Michael Heden, putting the said Michael Heden in fear of his life, there to be dealt with according to law. And whereas, the said Paul Brown has lately represented to our trusty and well-beloved Sir John Coape Sherbrooke, Knight Grand Cross of the Most Honourable Military Order of the Bath, our Governor in Chief in and over our said Provinces of Upper and Lower Canada, that the witnesses to be produced in his defence, are resident, some in the Indian Territories and others in the Province of Upper Canada, and that the said Paul Brown would have great difficulty, and would be put to a heavy expence in procuring the attendance of any of his witnesses at his trial in this Province. Now therefore, know ye, that having taken the premises into our Royal consideration, and it appearing to our said Governor, that justice may be more conveniently administered in the Province of Upper Canada, in relation to the great crimes and offences alleged to have been so aforesaid committed by the said Paul Brown; We have thought fit hereby to declare the same. And further, that it is our Royal will and pleasure, that the said Paul Brown may and shall, for all crimes and offences by him heretofore committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, be prosecuted and tried in the Court of the Province of Upper Canada, in which crimes or offences of the like nature are usually tried, and where the same would have been tried if such crimes or offences had been committed within the limits of the Province of Upper Canada.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province of Lower Canada to be hereunto affixed. Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the

Most Honourable Military Order of the Bath, Captain-General and Governor in chief in and over our said Province of Lower Canada, Vice-Admiral of the same, &c. &c. &c. At our Castle of St. Lewis, in our City of Quebec, in our said Province of Lower Canada, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventeen, and in the fifty-seventh year of our reign.

(Signed) J. C. S.

JOHN TAYLOR, Deputy-Secretary.

L.

L. S.

J. C. SHERBROOKE.

PROVINCE OF LOWER CANADA. } GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come, or may in any wise concern. GREETING:

Whereas in and by an Act made and passed in the forty-third year of our reign, by and with the consent and advice of the Lords Spiritual and Temporal and Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, intituled, "An Act for extending the jurisdiction of the Courts of "Justice in the Provinces of Lower Canada and Upper Canada, "to the trial and punishment of persons guilty of crimes and of- "fences, within certain parts of North America, adjoining to the "said Provinces," it is amongst other things enacted, that from and after the passing of the said Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper Canada or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Province of Lower or Upper Canada; and that every such offender may and shall be prosecuted and tried in the Courts of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada), in which crimes or offences of the like nature are usu-

ally tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried, under the said recited Act. And whereas, François Firmin Boucher has been apprehended for great crimes and offences by him committed in the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and has been delivered into safe custody in the Province of Lower Canada, charged on oath with having, on the nineteenth of June, in the year of our Lord one thousand eight hundred and sixteen, at the Settlement at Red River, feloniously killed and murdered twenty-one men, of whom Governor Semple was one, there to be dealt with according to law. And whereas the said François Firmin Boucher has lately represented to our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, our Governor in chief in and over our said Provinces of Upper and Lower Canada, that the witnesses to be produced in his defence are resident, some in the Indian Territories, and others in the Province of Upper Canada, and that the said François Firmin Boucher would have great difficulty, and would be put to a heavy expence, in procuring the attendance of any of his witnesses at his trial in this Province. Now therefore, know ye, that having taken the premises into our Royal consideration, and it appearing to our said Governor, that justice may be more conveniently administered in the Province of Upper Canada, in relation to the great crimes and offences alleged to have been so aforesaid committed by the said François Firmin Boucher, we have thought fit hereby to declare the same. And further, that it is our Royal will and pleasure, that the said François Firmin Boucher may and shall for all crimes and offences by him heretofore committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, be prosecuted and tried in the Court of the Province of Upper Canada, in which crimes or offences of the like nature are usually tried, and where the same would have been tried if such crimes or offences had been committed within the limits of the Province of Upper Canada.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province of Lower Canada to be hereunto affixed.—Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, Captain General and Governor in chief in and over our said Provinces of Lower Canada, Vice Admiral of the same, &c. &c. &c.—At our Castle of Saint Lewis, in our City of Quebec, in our said Pro-

vince of Lower Canada, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventeen, and in the fifty-seventh year of our reign.

(Signed) J. C. S.

JOHN TAYLOR, Deputy-Secretary.

M.

L. S.

J. C. SHERBROOKE.

PROVINCE OF LOWER CANADA. } GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come, or in any wise concern. GREETING:

Whereas, in and by an Act made and passed in the forty-third year of our reign, by and with the consent and advice of the Lords Spiritual and Temporal and Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, intituled, "An Act for extending the jurisdiction of the Courts "of Justice in the Province of Lower Canada and Upper Canada, "to the trial and punishment of persons guilty of crimes and "offences, within certain parts of North America, adjoining said "Provinces," it is amongst other things enacted, that from and after the passing of the said Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper Canada or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Province of Upper or Lower Canada, and that every such offender may and shall be prosecuted and tried in the Courts of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada), in which crimes and offences are usually tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the Province where the same shall be tried under the said recited Act. And whereas John Siveright has been accused with aiding and abetting one

Duncan Cameron, and others, in conspiring to destroy the Settlement of our liege subjects at Red River, and for that purpose having levied war against us, and murdered *Robert Semple, Esquire*, and that he the said John Siveright, in the Indian Territories, was guilty of the murder of one *La Pointe*, a Canadian, by lying in wait for the said La Pointe, and intentionally shooting at him, with a gun charged for the purpose, whereby the said La Pointe received a wound from several small balls through the back, of which wound he the said La Pointe died the day following, and for other great crimes and offences by him the said John Siveright committed in the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and has been delivered into safe custody in the Province of Lower Canada, there to be dealt with according to law. And whereas the said John Siveright has lately represented to our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, our Governor in chief in and over our said Provinces of Upper and Lower Canada, that the witnesses to be produced in his defence are resident, some in the Indian Territories, and others in the Province of Upper Canada, and that the said John Siveright would have great difficulty, and would be put to a heavy expence, in procuring the attendance of any of his witnesses at his trial in this Province. Now therefore, know ye, that having taken the premises into our Royal consideration, and it appearing to our said Governor, that justice may be more conveniently administered in the Province of Upper Canada, in relation to the great crimes and offences alleged to have been so as aforesaid committed by the said John Siveright, We have thought fit hereby to declare the same. And further, that it is our Royal will and pleasure that the said John Siveright may and shall, for all crimes and offences by him heretofore committed within any of the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, be prosecuted and tried in the Court of the Province of Upper Canada, in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crimes or offences had been committed within the limits of the Province of Upper Canada.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province of Lower Canada to be hereunto affixed.———Witness our trusty and well-beloved Sir John Coape Sherbrook, Knight, Grand Cross of the Most Honourable Military Order of the Bath, Captain-General and Governor in chief in and over our said Province of Lower Canada, Vice-Admiral of the same, &c. &c. At our Castle of

Saint Lewis, in our City of Quebec, in our said Province of Lower Canada, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventeen, and in the fifty-seventh year of our reign.

(Signed) J. C. S.

JNO. TAYLOR, Deputy-Secretary.

N.

L. S.

J. C. SHERBROOKE.

PROVINCE OF LOWER CANADA. } GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come, or may in any wise concern. GREETING:

Whereas in and by an Act made and passed in the forty-third year of our reign, by and with the consent and advice of the Lords Spiritual and Temporal, and Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, intituled, "An act for extending the jurisdiction of the Courts "of Justice in the Provinces of Lower Canada and Upper Canada, "to the trial and punishment of persons guilty of crimes and "offences within certain parts of North America, adjoining to "the said Provinces," it is amongst other things enacted, that from and after the passing of the said Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper Canada or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada; and that every such offender may and shall be prosecuted and tried in the Courts of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada, and shall, by any instrument under the Great Seal of the Province of Lower Canada, declare the same, then

that every such offender may and shall be prosecuted and tried in the Court of the Province of Upper Canada) in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried under the said recited Act. And whereas John M'Laughlin has been apprehended, charged with the crimes of *treason* and *conspiracy*, and as accessary to the murder of *Robert Semple, Esquire*, and to divers other murders, robberies and felonies, committed in the course of the months of May and June, in the year of our Lord one thousand eight hundred and sixteen, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and has been delivered into safe custody in the Province of Lower Canada, there to be dealt with according to law. And whereas the said John M'Laughlin has lately humbly represented unto us, that the witnesses to be produced in his defence are resident, some in the Indian Territories, and others in the Province of Upper Canada, and that he would have great difficulty, and would be put to a heavy expence, in procuring at his trial the attendance of any of his witnesses resident in Upper Canada: Now therefore, know ye, that having taken the premises into our Royal consideration, and it appearing to us that justice may be more conveniently administered in the Province of Upper Canada, in relation to the great crimes and offences alleged to have been so as aforesaid committed by the said John M'Laughlin, We have therefore thought fit hereby to declare the same. And further, that it is our royal will and pleasure that the said John M'Laughlin may and shall, for the said crimes of treason and conspiracy, and as accessary to the murder of Robert Semple, Esquire, and to the other murders, robberies and felonies, so as aforesaid committed, in the course of the months of May and June, in the year of our Lord one thousand eight hundred and sixteen aforesaid, in any of the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, be prosecuted and tried in the Court of the Province of Upper Canada, in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crimes or offences had been committed within the limits of the Province of Upper Canada.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our Province of Lower Canada to be hereunto affixed.——Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, Captain-General and Governor-in-Chief in and over our Province of Lower Ca-

nada, Vice-Admiral of the same, &c. &c. &c. At our Castle of Saint Lewis, in our City of Quebec, in our said Province of Lower Canada, the seventh day of February, in the year of our Lord one thousand eight hundred and eighteen, and in the fifty-eighth year of our reign.

(Signed) J. C. S.

JNO. TAYLOR, Deputy Secretary.

N. B.—The Great Seal Instruments transmitting Hugh M'Gillis, Alexander M'Kenzie, John M'Donald, and Simon Fraser, correspond with the foregoing one.

O.

L. S.

J. C. SHERBROOKE.

PROVINCE OF LOWER CANADA. } GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To all to whom these presents shall come, or may in any wise concern. GREETING:

Whereas in and by an Act made and passed in the forty-third year of our reign, by and with the consent and advice of the Lords Spiritual and Temporal, and Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, intituled, "An Act for extending the jurisdiction of the Courts "of Justice in the Provinces of Lower Canada and Upper Ca- "nada, to the trial and punishment of persons guilty of crimes "and offences within certain parts of North America, adjoining "to the said Provinces," it is amongst other things enacted, that from and after the passing of the said Act, all offences committed within the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Province of Lower or Upper Canada, and that every such offender may and shall be prosecuted and tried in the Courts of the Province of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situa-

tion of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada, and shall, by any instrument under the Great Seal of the Province of Lower Canada, declare the same, then that every such offender may and shall be prosecuted and tried in the Court of the Province of Upper Canada), in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried, under the said recited Act.

And whereas George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, have been apprehended for great crimes and offences by them committed in the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and have been delivered into safe custody in the Province of Lower Canada, there to be dealt with according to Law. And whereas, at our Court of King's-Bench for the District of Montreal, begun and holden at the Court-house in the City of Montreal, for the cognizance of all crimes and criminal offences, on Saturday, the first day of March, in the fifty-seventh year of our reign, before the Honourable James Monk, Chief Justice of the said Court of King's Bench for the said District of Montreal, and the Honourable Isaac Ogden, James Reid, and Louis Charles Foucher, Justices of our said Court of King's Bench, upon the oaths of Louis Guy, Robert Armour, Arthur Webster, Jean Boutillier, Jean Baptiste Rouville, Joseph Bressé, James Leslie, Pierre de Boucherville, Hercule Olivier, Edward Leprohon, George Platt, Thomas Baron, Honoré Eno, George Hamilton, Samuel Hatt, James Hoofstetter, Philip Luke, and Edward Hubert, good and lawful men of the District aforesaid, then and there charged and sworn to enquire for us, for the body of the said District, it was presented as follows. That is to say, Montreal, to wit:—the Jurors for our Lord the King, upon their oath, present that George Campbell, late of the parish of Montreal, in the District of Montreal, yeoman; John Cooper, late of the same parish, yeoman; Donald M'Kinnon, late of the same parish, labourer; Hugh Bennerman, late of the same parish, yeoman; Duncan Cameron, late of a place commonly called Red River, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, gentleman; John Dougald Cameron, late of the said place commonly called Red River, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of

America, gentleman; Cuthbert Grant, late of the said place commonly called Red River, gentleman; William Shaw, late of the said place commonly called Red River, gentleman; and Peter Pangman, late of the said place commonly called Red River, gentleman, otherwise called Peter Bostonnois, on the third day of April, in the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the Court of King's Bench of our Lord the King, of and for the said District of Montreal, four brass cannons, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds, sterling money of Great Britain, four iron swivels, of the value of forty pounds, sterling money aforesaid, and one howitzer, of the value of ten pounds, sterling money aforesaid, of the goods and chattels of the Right Honourable *Thomas Earl of Selkirk*, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry away; and one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of our Lord the King, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds, of sterling money aforesaid, four iron swivels, of the value of forty pounds, sterling money aforesaid, and one howitzer, of the value of ten pounds, sterling monney aforesaid, of the goods and chattels of the said Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situated, then and there being found, feloniously did steal, take, and carry away; and one Michael Kilbride, one John Kerrigan,

and one Mary M'Lean, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, before the committing the last-mentioned felony in form aforesaid, viz. on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of our Lord the King, of and for the said District of Montreal, did feloniously and maliciously comfort, aid, abet, assist, counsel, hire, and command the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, to do and commit the said felony last-aforesaid, in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, viz. on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds, sterling money aforesaid, four iron swivels, of the value of forty pounds, sterling money aforesaid, and one howitzer, of the value of ten pounds, sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry away; and one Michael Kilbride, and one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant,

William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situate in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of and for the said District of Montreal, the said last-mentioned four brass cannon, or pieces of ordnance, commonly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid feloniously stolen, taken, and carried away, feloniously did receive, and have, they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the said goods and chattels last-mentioned, have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of him the said Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated within the Indian Territories, or parts of America not within the limits of ei-

ther of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of him the said Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Rostonnois, before the said last-mentioned felony was committed in form aforesaid, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of and for the said District of Montreal, did feloniously and maliciously incite, move, procure, aid and abet the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, to do and commit the said last-mentioned felony, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place, commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further

present, that the said Duncan Comeron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, the said last-mentioned four brass cannon, or pieces of ordnance, commonly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid, feloniously stolen, taken, and carried away, feloniously did receive, and have (they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the goods and chattels last-mentioned to have been feloniously stolen, taken, and carried away), against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity. (Signed) GILBERT AINSLIE, Clerk of the Crown.——N. F. UNIACKE, Attorney-General. As by the Bill of Indictment hereunto annexed, reference being thereunto had, will more fully and at large appear. And whereas the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, have lately represented unto our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, our Captain-general and Governor-in-chief in and over our said Provinces of Upper and Lower Canada, that the witnesses to be produced in their defence, are resident, some in the Indian Territories, and others in the Province of Upper Canada, and that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, will have great difficulty, and be put to a heavy expence, in procuring the attendance of any of their witnesses at their trial in this Province: Now, therefore, know ye, that having taken the premises into our Royal consideration, and it appearing to our said Sir John Coape Sherbrooke, our Governor as aforesaid, that justice may be more conveniently administered in the Province of Upper Canada, upon the said Bill of Indictment, found as aforesaid, and hereunto annexed, and in relation to the great crimes and offences alleged to have been so as aforesaid committed by the said George Campbell, John Cooper, Donald M'Kinnon, Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, or any or either of them; We have therefore thought fit hereby to declare the same. And further, that it is our Royal will and pleasure, that the

said George Campbell, John Cooper, Donald M'Kinnon, Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, and each and every of them, upon the Bill of Indictment found as aforesaid, and hereunto annexed, and for all other crimes and offences by them the said George Campbell, John Cooper, Donald M'Kinnon, Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, Peter Pangman, alias Peter Bostonnois, and each and every of them, heretofore committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, be prosecuted and tried in the Court of the Province of Upper Canada, in which crimes and offences of the like nature are usually tried, and where the same would have been tried, if such crimes or offences had been committed within the limits of the said Province of Upper Canada.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province of Lower Canada to be hereunto affixed.——Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, Captain-general and Governor-in-chief in and over our Province of Lower Canada, Admiral of the same, &c. &c. &c.—At our Castle of Saint Lewis, in our City of Quebec, in our said Province of Lower Canada, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventeen, and in the fifty-eighth year of our reign.

(Signed) J. C. S.

JNO. TAYLOR, Deputy-Secretary.

PROVINCE OF LOWER CANADA, } AT His Majesty's Court
DISTRICT OF MONTREAL, *to wit:* } of King's Bench for the District of Montreal, begun and holden at the Court-house in the City of Montreal, for the cognizance of all crimes and criminal offences, on Saturday, the first day of March, in the year of our Lord one thousand eight hundred and seventeen, and in the fifty-seventh year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, before the Honourable James Monk, Chief Justice of the said Court of King's Bench for the District of Montreal, and the Honourable Isaac Ogden, James Reid, and Louis Charles Foucher, Justices of our Lord the King of his said Court of King's Bench.

MONTREAL, } THE Jurors for our Lord the King, upon their
to wit: } oath, present, that George Campbell, late of the parish of Montreal, in the District of Montreal, yeoman, John Coope, late of the same parish, yeoman, Donald M'Kinnon, late of the same parish, labourer, Hugh Bennerman, late of the same parish, yeoman, Duncan Cameron, late of a place commonly called Red River, in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, gentleman; John Dougald Cameron, late of the said place commonly called Red River, gentleman; Cuthbert Grant, late of the said place commonly called Red River, gentleman; William Shaw, late of the said place commonly called Red River, gentleman; and Peter Pangman, late of the said place commonly called Red River, gentleman, otherwise called Peter Bostonnois, on the third day of April, in the fifty-fifth year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the Court of King's Bench of our Lord the King, of and for the said District of Montreal, *four brass cannon*, or *pieces of ordnance*, commonly called *field-pieces*, of the value of one hundred pounds sterling money of Great Britain, *four iron swivels*, of the value of forty pounds sterling money aforesaid, and *one howitzer*, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable *Thomas Earl of Selkirk*, in the dwelling-house of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry away; and one *Michael Kilbride*, one *John Kerrigan*, and one *Mary M'Lean*, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid for our Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and

being within the jurisdiction of the said Court of King's Bench of our Lord the King, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry away; and one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, before the committing of the said last-mentioned felony, in form as aforesaid, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench for our Lord the King, of and for the said District of Montreal, did feloniously and maliciously comfort, aid, assist, abet, council, hire, and command the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, to do and commit the said felony last-aforesaid, in manner and form aforesaid, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the said Right Honourable Thomas

Earl of Selkirk, in the dwelling-house of him the said Right Honourable Thomas Earl of Selkirk, there situate, then and there being found, feloniously did steal, take, and carry away; and one Michael Kilbride, one John Kerrigan, and one Mary M'Lean, then and there being in the said dwelling-house, did then and there put in bodily fear of their lives, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, and William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year last-aforesaid, with force and arms at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, the said last-mentioned four brass cannon, or pieces of ordnance, commonly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid feloniously stolen, taken, and carried away, feloniously did receive, and have, (they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, and William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the said goods and chattels last-mentioned to have been feloniously stolen, taken, and carried away, against the form of the statute in such case made and provided, and against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the aforesaid place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of him the said

Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, of the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of him the said Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, before the said felony was committed, in form aforesaid, to wit: on the day and year last-aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, did feloniously and maliciously incite, move, procure, aid, and abet, the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, to do and commit the said last-mentioned felony, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity. And the Jurors aforesaid, for our said Lord the King, upon their oath aforesaid, do further present, that the said George Campbell, John Cooper, Donald M'Kinnon, and Hugh Bennerman, afterwards, to wit: on the day and year aforesaid, with force and arms at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any

civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, four brass cannon, or pieces of ordnance, commonly called field-pieces, of the value of one hundred pounds sterling money aforesaid, four iron swivels, of the value of forty pounds sterling money aforesaid, and one howitzer, of the value of ten pounds sterling money aforesaid, being the goods and chattels of the Right Honourable Thomas Earl of Selkirk, in the dwelling-house of him the said Right Honourable Thomas Earl of Selkirk, then and there being found, feloniously did steal, take, and carry away, against the peace of our Lord the King, his Crown and Dignity. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, afterwards, to wit: on the day and year aforesaid, with force and arms, at the said place commonly called Red River, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of the said Court of King's Bench, of and for the said District of Montreal, the said last-mentioned four brass cannon, or pieces of ordnance, commonly called field-pieces, four iron swivels, and one howitzer, being the goods and chattels so as aforesaid, feloniously stolen, taken, and carried away, feloniously did receive and have, (they the said Duncan Cameron, John Dougald Cameron, Cuthbert Grant, William Shaw, and Peter Pangman, otherwise called Peter Bostonnois, then and there well knowing the said goods and chattels last-mentioned to have been feloniously stolen, taken, and carried away), against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his Crown and Dignity.

(Signed N. F. UNIACKE, Attorney-General.

(Signed) GILBERT AINSLIE, Clerk of Crown.

P.

By His Excellency Sir John Coape Sherbrooke, Knight Grand Cross of the Most Honourable Military Order of the Bath, Captain-General, and Governor-in-Chief in and over the Provinces of Lower Canada, Upper Canada, Nova Scotia, New Brunswick, and their several Dependencies, Vice-Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Provinces of Lower Canada and Upper Canada, Nova Scotia, and New Brunswick, and their several Dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton, and Bermuda, &c. &c. &c.

A PROCLAMATION.

WHEREAS, in and by a certain statute of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the forty-third year of His Majesty's reign, intituled, "An "Act for extending the jurisdiction of the Courts of Justice in "the Provinces of Lower Canada and Upper Canada, to the "trial and punishment of persons guilty of crimes and offences "within certain parts of North America, adjoining to the said "Provinces:" It is amongst other things enacted and declared, that from and after the passing of the said statute, "all offences "committed within any of the Indian Territories, or parts of "America not within the limits of either of the said Provinces of "Lower and Upper Canada, or of any civil government of the "United States of America, shall be, and be deemed to be, "offences of the same nature, and shall be tried in the same "manner, and subject to the same punishment, as if the same "had been committed within the Provinces of Lower or Upper "Canada."

And whereas, under and by virtue of the above in part recited statute, Justices of the Peace have been duly nominated and appointed, with power and authority to apprehend, within the Indian Territories aforesaid, and to convey to this Province of Lower Canada for trial, all and every person and persons guilty of any crime or offence whatsoever:

And whereas, there is reason to believe that divers breaches of the peace, by acts of force and violence, have lately been committed within the aforesaid Indian Territories, and the jurisdiction of the aforesaid Justices of the Peace:

I have therefore thought fit, by and with the advice of His Majesty's Executive Council of and for the Province of Lower Canada, to issue this Proclamation, for the purpose of bringing to punishment all persons who may have been, or shall be, guilty

of any such act or acts of force or violence as aforesaid, or other crime or offence whatever, and to deter all others from following their pernicious example, hereby requiring all His Majesty's subjects, and others, within the said Indian Territories, to avoid and to discourage all acts of force or violence whatsoever, and all proceedings whatever tending to produce tumults and riots, or in any way to disturb the public peace.

And I do hereby strictly charge and command all Justices of the Peace, so as aforesaid nominated and appointed under and by virtue of the above-mentioned statute, and all Magistrates throughout this Province, and do require all others His Majesty's subjects generally, in their several and respective stations, to make diligent enquiry and search, to discover, apprehend, and commit, or cause to be committed to lawful custody, for trial in due course of law, pursuant to the provisions in the above statute contained, all persons who have been, or shall be, guilty of any act or acts of force and violence as aforesaid, or of any other crime or crimes, offence or offences, within the said Indian Territories, to the end that the laws may be carried into prompt execution against all such offenders, for the preservation of peace and good order therein.

Given under my hand and seal at arms, at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower Canada, this sixteenth day of July, in the year of our Lord one thousand eight hundred and sixteen, and in the fifty-sixth year of His Majesty's reign.

(Signed) J. C. SHERBROOKE.

By His Excellency's Command.

(Signed) JNO. TAYLOR, Deputy-Secretary.

Q.

By His Royal Highness the Prince of Wales, Regent of the United Kingdom of Great Britain and Ireland, in the name and on the behalf of His Majesty.

A PROCLAMATION.

J. C. SHERBROOKE.

WHEREAS, by an Act of Parliament of the United Kingdom of Great Britain and Ireland, passed in the forty-third year of His Majesty's reign, intituled, "An Act for extending the jurisdiction "of the Courts of Justice in the Provinces of Lower and Upper "Canada, to the trial and punishment of persons guilty of crimes

" and offences within certain parts of North America, adjoining " to the said Provinces," it is amongst other things enacted, " that all offences committed within any of the Indian Territories, " or parts of America not within the limits of either of the said " Provinces, or of any civil government of the United States of " America, shall be, and be deemed to be, offences of the same " nature, and shall be tried in the same manner, and be subject to " the same punishment, as if the same had been committed within " the said Provinces of Lower or Upper Canada."

And whereas, by the said Act it is also enacted, " that it shall " be lawful for the Governor, or Lieutenant-Governor, or persons " administering the government for the time being of the Pro- " vince of Lower Canada, by commission under his hand and " seal, to authorize and empower any person or persons, where- " soever resident or being at the time, to act as Civil Magistrates " and Justices of the Peace for any of the Indian Territories, or " parts of America, not within the limits of either of the said " Provinces, or of any civil government of the United States " of America as well as within the limits of either of the said " Provinces, either upon informations taken or given, within the " said Provinces of Lower or Upper Canada, or out of the said " Provinces in any part of the Indian Territories, or parts of " America aforesaid, for the purpose only of hearing crimes and " offences, and committing any person or persons, guilty of any " crime or offence, to safe custody, in order to his or their being " conveyed to the said Province of Lower Canada, to be dealt " with according to law;" and " that it shall be lawful for any " person or persons whatever, to apprehend and take before any " persons so commissioned as aforesaid, or to apprehend and " convey, or cause to be safely conveyed, with all convenient " speed, to the Province of Lower Canada, any person or persons " guilty of any crime or offence, there to be delivered into safe " custody, for the purpose of being dealt with according to law."

And whereas, by the said Act it is also further enacted, " that " every such offender may and shall be prosecuted and tried in " His Majesty's Courts of the Province of the Lower Canada, in " which crimes and offences of the like nature are usually tried, " and where the same would have been tried, if such crime or " offence had been committed within the limits of the Province " where the same shall be tried, under the said Act; that every " offender tried and convicted under the said Act, shall be liable " and subject to such punishment as may by any law in force in " the Province where he or she shall be tried, be inflicted for such " crime or offence; and that such Court may and shall proceed to " trial, judgment and execution, or other punishment, for such " crime or offence, in the same manner in every respect, as if such " crime or offence had been really committed within the jurisdic- " tion of such Court; and to proceed also, in the trial of any

" person, being a subject of His Majesty, who shall be charged " with any offence, notwithstanding such offence shall appear to " have been committed within the limits of any Colony, Settle- " ment or Territory, belonging to any European State."

And whereas, divers breaches of the peace, and acts of force and violence, have lately been committed within the said Indian Territories, and parts of America mentioned and described in the said Act of Parliament, which have arisen from contentions between certain merchants, carrying on trade and commerce in the said Indian Territories, under the names of the *Hudson's Bay Company*, and *North-West Company*, respectively, and other persons, their servants, agents, or adherents, of whom some have entered into and seized, and occupied by force, and with strong hand, lands or possessions, therein taking and by force retaining divers goods, wares, merchandize, and other property, and obstructing the passage of navigable rivers and other natural passes of the country; and others have met together in unlawful assemblies, formed divers conspiracies and confederacies, committed murders, riots, routs and affrays, and appeared, gone and ridden in companies, in military array with armed force, and have rescued themselves and others from lawful arrest and custody.

We do therefore, in the name and on the behalf of His Majesty, publish this Proclamation, hereby calling upon the said merchants, so as aforesaid carrying on trade and commerce in the said Indian Territories, under the names of the Hudson's Bay Company, and the North-West Company, respectively, and upon each and every of them, and upon all other persons, their servants, agents, or adherents, and each and every of them, to desist from every hostile aggression or attack whatsoever: and in order to prevent the further employment of an unauthorized military force, we do hereby require all persons who have been heretofore engaged in His Majesty's service as officers or soldiers, and as such have enlisted and engaged in the service of the said Hudson's Bay Company, or North-West Company, or either of them, or of any of their servants, agents, or adherents, to leave the service in which they may be so engaged, within twenty-four hours after their knowledge of this Proclamation, under penalty of incurring our most severe displeasure, and forfeiting every privilege to which their former employment in His Majesty's service would otherwise have entitled them.

And we do, under similar penalties, hereby require of all and every person and persons whomsoever, whom it doth or shall, or may in any wise concern, the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and

were possessed thereof previous to the recent disputes between the aforesaid companies.

And we do hereby require in like manner, of all and every person and persons whomsoever, whom it doth or shall, or may in any way concern, the removal of any blockade, or impediment by which any party, person or persons, may have attempted to prevent, or interrupt the free passage of traders, or others of His Majesty's subjects, or of the natives of the said Indian Territories, with their merchandize, furs, provisions, and other effects, throughout the lakes, rivers, roads, and every other usual route or communication heretofore used for the purpose of the fur-trade in the interior of North America; and full and free permission for all persons to pursue their usual and accustomed trade, without hindrance or molestation, hereby declaring, that nothing done in consequence of this Proclamation, shall in any degree be considered to affect the rights which may ultimately be adjudged to belong to either or any party, upon a full consideration of the circumstances of their several claims.

And whereas, for the purpose of restraining all offences in the said Indian Territories, and of bringing to condign punishment the perpetrators of all offences there committed, His Excellency Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, His Majesty's Captain-General and Governor in chief, in and over the Provinces of Lower and Upper Canada, Nova Scotia, New Brunswick, and their several Dependencies, Lieutenant-General and Commander of all His Majesty's Forces in the said Provinces, &c. &c. by and with the advice of His Majesty's Executive Council of and for the said Province of Lower Canada, hath nominated, constituted and authorized the Honourable William Bachelor Coltman, one of the Members of the said Council, a Lieutenant-Colonel in His Majesty's Indian Department, and one of His Majesty's Justice of the Peace for the Western District of the said Province of Upper Canada, and John Fletcher, Esquire, Barrister at Law, one of the principal Police Magistrates, and Chairman of His Majesty's Court of Quarter Session for the District of Quebec, a Major in the said Indian Department, and one of His Majesty's Justices of the Peace for the said Western District of Upper Canada, to act as Civil Magistrates and Justices of the Peace for the said Indian Territories, and parts of America aforesaid, as well without as within the said Provinces of Lower and Upper Canada, under and by virtue of the said Act, and also, His Majesty's special Commissioners for inquiring into and investigating all offences committed in the said Indian Territories, and the circumstances attending the same, with power and authority for such purposes.

And whereas, the said William Bachelor Coltman, and John

Fletcher, are immediately about to proceed to the said Indian Territories, in execution of the trust so reposed in them :—

We do hereby strictly charge and command, in the name and on the behalf of His Majesty, all Sheriffs, Bailiffs, Constables and other officers of the peace, and all others, His Majesty's officers, servants and subjects, civil and military, generally, in their several and respective stations, to make diligent enquiry and search, to discover and apprehend all persons who have been or shall be guilty of any such crimes or offences as aforesaid, or any other crimes or offences whatsoever, within the Indian Territories, or parts of America in the said Act mentioned and described, whether without or within the said Provinces of Lower or Upper Canada, and to cause them to be carried before the said William Bachelor Coltman and John Fletcher, or one of them, or such other Magistrates as may hereafter be appointed for the like purposes, or otherwise be invested with competent jurisdiction in that behalf, to be dealt with according to law, and by all lawful ways and means whatsoever, to repress and discourage all such crimes and offences; requiring and directing them, and each of them, as well within the said Indian Territories or parts of America, as elsewhere, to be aiding and assisting to the said William Bachelor Coltman and John Fletcher, in the execution of the duties wherewith they are charged, as such Magistrates and special Commissioners as aforesaid, in all their endeavours for the repression and discouragement of all such crimes and offences wheresoever, or by whomsoever perpetrated or committed; for the detection and apprehension of all such persons as have been, or hereafter shall be concerned or implicated in the perpetration thereof, and for the maintenance and preservation of the peace and of the laws.

In faith and testimony whereof, We, by our express Command, in the name and on the behalf of His Majesty, have caused the Great Seal of the Province of Lower Canada to be hereunto affixed.

Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight, Grand Cross of the Most Honourable Military Order of the Bath, Captain-General and Governor in chief of the said Provinces of Lower and Upper Canada, Nova Scotia, and New Brunswick, Lieutenant-General and Commander of all His Ma-Majesty's Forces in the said Provinces, &c. &c. at the Castle of Saint Lewis, in the City of Quebec, in the said Province of Lower Canada, this third day of May, in the year of our Lord Christ, one thousand eight hundred and seventeen, and in the fifty-seventh year of His Majesty's reign.

J. C. S.

By His Excellency's Command,

JOHN TAYLOR, Deputy-Secretary.

R.

Anno Quadragesimo tertio Georgii III. Regis.

CAP. CXXXVIII.

An Act for extending the Jurisdiction of the Courts of Justice, in the Provinces of Lower Canada, and Upper Canada, to the trial and punishment of persons guilty of crimes and offences, within certain parts of North America, adjoining to the said Provinces.

(11*th* AUGUST, 1803.)

WHEREAS crimes and offences have been committed in the Indian Territories, and other parts of America not within the limits of the Provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the Courts established in those Provinces, or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go unpunished, and greatly increase—For remedy whereof, *May it please your Majesty*, that it may be enacted, and be it enacted, by the *King's Most Excellent Majesty*, by and with the consent and advice of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada.

2d. *And be it further enacted*, That it shall be lawful for the Governor, or Lieutenant-Governor, or person administering the government for the time being, of the Province of Lower Canada, by commission under his hand and seal, to authorize and empower any person or persons, wheresoever resident, or being at the time, to act as Civil Magistrates and Justices of the Peace, for any of the Indian Territories, or parts of America not within the limits of any of the said Provinces, or of any civil government of the United States of America, as well as within the limits of either of the said Provinces, either upon informations taken or given within the said Provinces of Lower and Upper Canada, or out of the said Provinces, in any part of the

Indian Territories, or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence, to safe custody, in order to his or their being conveyed to the said Province of Lower Canada, to be dealt with according to law; and it shall be lawful for any person or persons whatsoever, to apprehend and take before any person so commissioned as aforesaid, or to apprehend and convey, or cause to be safely conveyed, with all convenient speed, to the Province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody, for the purpose of being dealt with according to law.

3d. *And be it further enacted*, That every such offender may and shall be prosecuted and tried in the Courts of the Province of Lower Canada, (or if the Governor, or Lieutenant-Governor, or person administering the government for the time being, shall from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence, in the Province of Upper Canada, and shall by any instrument under the Great Seal of the Province of Lower Canada, declare the same, then, that every such offender may and shall be prosecuted and tried in the Court of the Province of Upper Canada), in which crimes or offences of the like nature are usually tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the Province, where the same shall be tried under this act; and every offender tried and convicted under this Act, shall be liable and subject to such punishment as may, by any law in force in the Province where he or she shall be tried, be inflicted for such crime or offence, and such crime or offence may and shall be laid and charged to have been committed within the jurisdiction of such Court, and such Court may and shall proceed therein to trial, judgment, and execution, or other punishment, for such crime or offence, in the same manner, in every respect, as if such crime or offence had really been committed within the jurisdiction of such Court; and it shall also be lawful for the Judges and other officers of the said Courts to issue subpœnas, and other processes, for enforcing the attendance of witnesses on any such trial; and such subpœnas and other processes shall be as valid and effectual, and be in full force, and put in execution in any parts of the Indian Territories, or other parts of America, out of, and not within the limits of the civil government of the United States of America, as well as within the limits of either of the said Provinces of Upper or Lower Canada, in relation to the trial of any crimes or offences by this Act made cognizable in such Court, or to the more speedy and effectually bringing any offender or offenders

to justice under this Act, as fully and amply as any subpœnas or other processes are within the limits of the jurisdiction of this Court, from which any such subpœnas or processes shall have issued as aforesaid; any act or acts, law or laws, custom, usage, matter or thing to the contrary notwithstanding.

4th. *Provided always, and be it further enacted,* That if any crime or offence charged and prosecuted under this Act, shall be proved to have been committed by any person or persons not being a subject or subjects of His Majesty and also within the limits of any Colony, Settlement, or Territory belonging to any European states, the Court before which such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge.

5th. *Provided nevertheless,* That it shall and may be lawful for such Court to proceed in the trial of any other person, being a subject or subjects of His Majesty, who shall be charged with the same, or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any Colony, Settlement, or Territory belonging to any European state as aforesaid.

FINIS.

London: Printed by B. M'Millan, Bow-Street, Covent-Garden.

ms or
f this
have
usage,

f any
ll be
not
the
any
shall
eing

l for
ng a
with
hall
ony,
as