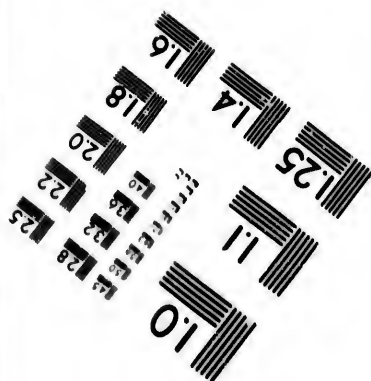
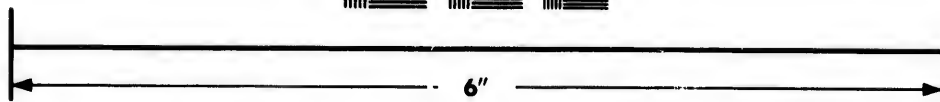
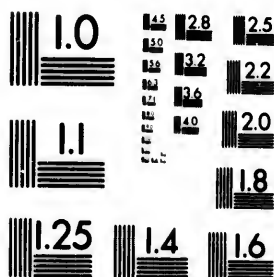


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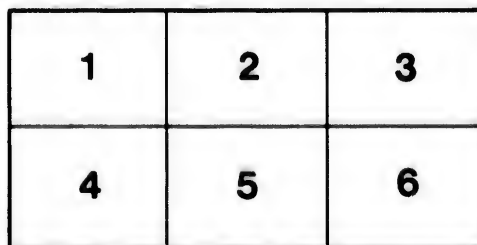
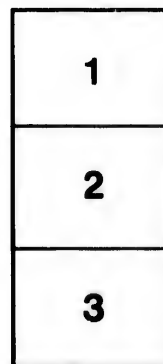
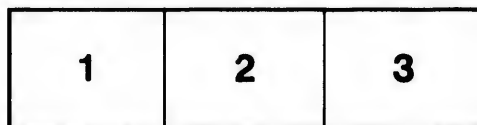
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# PETITIONS AND REPLY

TO THE

## CHARGES PREFERRED AGAINST

THE

HON. E. B. WOOD, C.J.,

PROVINCE OF MANITOBA.

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PRINTED BY ORDER OF PARLIAMENT.

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OTTAWA:

PRINTED BY MACLEAN, ROGER & CO., WELLINGTON STREET.

1882.

*In re*

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## PETITIONS

*In reference to the charges preferred against the Hon. Edmund Burke Wood, Chief Justice of the Province of Manitoba—and a Copy in full of the Answer to the said Petitions by Chief Justice Wood.*

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*To the Honorable the House of Commons in Parliament assembled.*

The Petition of the undersigned inhabitants of the Province of Manitoba, humbly sheweth :

That a Commission was issued by His Honor the Lieutenant Governor under the Great Seal of the Province of Manitoba on the 28th of October last, under which an enquiry was instituted into the administration of justice in that Province, as to infants' lands and estates.

That a large amount of evidence was taken before the Commissioners so appointed.

That a learned counsel was retained by the Attorney General of the Province, to marshal the evidence before the said Commissioners and report upon the same.

That, accordingly, an exhaustive report was made by the said learned counsel to the Attorney-General upon the proceedings and evidence taken under the said Commission:—

Your Petitioners most respectfully allege that the grossest mal-administration of justice has been committed by the Hon. Edmund Burke Wood, Chief Justice of the Province of Manitoba as proved in the evidence before the said Commissioners.

Your Petitioners, therefore, humbly pray that your Honorable House will cause an enquiry to be made into the truth of their allegation, and adopt such means as to your Honorable House may seem meet to preserve the integrity of the Bench of Justice in our Province, that it may possess the confidence of the community, and be above suspicion as one of the greatest blessings to be enjoyed by any people, especially by those inhabiting a new and sparsely settled Province.

And, as in duty bound, will ever pray.

EDWARD ELLIOTT.

W. GIBBENS.

W. F. McCREADY.

March 6th, 1882.

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## CANADA.

*To the Honorable the House of Commons of the Dominion of Canada in Parliament assembled.*

The Petition of the undersigned living or having interests in the Province of Manitoba, most respectfully sheweth to your Honorable House :

That the conduct of the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, residing at Winnipeg in the said Province, is and has been for years past characterized by very serious misconduct and injustice and by acts of a nature to completely destroy all confidence in him as Judge of the Court of Queen's Bench, of suitors and all other classes of people in the said Province of Manitoba, to wit :

That the said Hon. Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, did deliberately and in a most illegal and unjust manner in the case of the Queen vs. Louis Riel *et al.*, without the knowledge or consent of the Clerk of the Crown of the said Court of Queen's Bench or of the defendant's counsel, alter and change the dates in certain documents and records of the said Court of Queen's Bench, then in the custody of the Clerk of the Crown and Prothonotary of the said Court, and did thereby procure an illegal outlawry of Louis Riel and others.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, at the City of Winnipeg, in the said Province, in the month of August, A. D. 1874, did, deliberately, corruptly, illegally and personally, prepare, assist others in preparing and cause to be prepared, a list of names of French half breeds to serve as petit jurors at the then next approaching term of the said Court of Queen's Bench to be held in October, 1874, at which Court one Ambroise Lepine and others were to be tried on indictment for murder; and the said Hon. Edmund Burke Wood illegally and corruptly selected and placed, and caused to be selected and placed on such list the names of such French half breeds only as were well known to be the declared enemies of the said Lepine, and the others who were to be tried for murder as aforesaid; and the said Hon. Edmund Burke Wood did himself hand such list so illegally selected and prepared as aforesaid to the Sheriff of the Province of Manitoba, and ordered him to summon as many as he could find of the persons whose names were on said list and such order was obeyed, and the said Lepine was tried by a jury composed of his enemies, empanelled from said list so illegally prepared, and was found guilty of murder, and upon such finding was sentenced to death by the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba.

That your petitioners do not pretend to say whether the said Lepine was innocent or not of the murder for which he was to be tried; your petitioners pretend only that his trial should have been a legal, fair and impartial one such as all have confidence in obtaining before a British Court of Justice.

That the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, is so notoriously partial, dishonest and unjust in his judgments and decisions that suitors in the said Court know and feel that their rights are not safe, and the people of the Province of Manitoba have no confidence in, or respect for, the judgments and decisions of the said Hon. Edmund Burke Wood, and have lost all confidence in, and respect for, the administration of justice in the Province so long as the said Chief Justice Wood shall continue to preside in any of the Courts of Justice of the said Province.

That the said Hon. Edmund Burke Wood is in the constant habit of introducing local and Dominion politics into his charges to Grand Jury, and of taking an active part in politics, local and Dominion, and did so more conspicuously than usual during the last local election at Winnipeg when, in a barber's shop, in the presence of a number of people, the said Hon. Chief Justice Edmund Burke Wood made a most violent attack on the character of one of the candidates then seeking election.

That the said Hon. Edmund Burke Wood, in his charges to the Grand Jury for the Province of Manitoba, at the Spring Assizes of 1880, declared that he had no confidence in the oath of any of the French native population of the Province, and as a natural consequence of such a declaration a large and important class of the population of the Province of Manitoba has lost all confidence in the impartiality of the Chief Justice and can entertain no hope of fair or impartial justice before him.

That the suitors of the Province of Manitoba have lost all confidence in the administration of justice by the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the said Province, by reason of the evident and notorious partiality of the Hon. Chief Justice in the exercise of his judicial functions in favor of certain members of the Bar of Manitoba practising before him, some of such members of the Bar being his own near relatives, a partiality so very notorious and so clearly proved in the eyes of the public that a large number of litigants abandoned their own attorneys, and in self-defence felt compelled to employ the said members of the Bar so favored by him, or retained in addition to their attorneys so favored by him, admitting openly that they so acted, because those members of the Bar had full empire over the Judge and that he made them gain their cases.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, is in the constant habit of receiving at his own private house in Winnipeg, persons who go to him to ask for his legal opinion and advice in matters affecting their interests and which must naturally come afterwards



before the said Hon. Chief Justice Wood as a Judge of the Court of Queen's Bench for trial; that he gives his opinion and even recommends such persons so consulting him as to what attorney they should retain and warns them against retaining other attorneys who are not his favorites.

That the said Hon. Edmund Burke Wood, Chief Justice for the Court of Queen's Bench for the Province of Manitoba, is in the constant habit of using the most abusive language towards both suitors and members of the Bar of Manitoba, in open Court and in Chambers, and of displaying such uncontrollable infirmities of temper and bursts of passion whilst acting as a Judge, and to disgust all parties who are so unfortunate as to be compelled to submit to his abuse, insults and injustice.

That the said Honorable Edmund Burke Wood is in the habit of taking the unsworn statement of persons on the streets or at his private residence in preference to the sworn testimony of sworn witnesses in Court and of giving such unsworn statement more credence than the testimony of sworn witnesses, and that he did so more particularly in the case of *Sinclair vs. McDonald et al.*, in October, 1880, and was exposed through the public press for so doing.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, was guilty of gross injustice and partiality towards the Defendant's in the case of *Hogan vs. Manning et al.*, in which case the Plaintiff was represented by the said Chief Justice's own son and his nephew Messrs. Biggs & Wood, attorneys and barristers of Winnipeg, and prevented the Defendant's having any chance of appealing from his decision by preventing the short-hand reporter from taking the evidence, so that the Defendant's had only his, the Chief Justice's notes of the evidence to rely upon in a matter involving about five thousand dollars.

That the said Honorable Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, in his character of Judge of the County Court of Manitoba, illegally and deliberately caused to be summoned *McDonald et al.*, in the case of *McAdams vs. McDonald et al.*, at eleven o'clock in the forenoon of a certain day in October, 1879, and in defiance of all law and usage gave judgment against the Defendant's, and caused an execution to issue against the said Defendant's before one o'clock in the afternoon of the same day, and the bailiff of the County Court was in the act of removing Defendant safe from their office within three hours after the pretended service of the summons to appear, thereby very seriously damaging the credit and standing of the firm of McDonald, Manning & Co., who were and are contractors for the construction of Section (16) of the Canadian Pacific Railway.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, has therefore been charged by the Government of Manitoba with degrading the administration of justice by his unseemly conduct and gross exhibition of intemperance while in circuit as a Judge of the County Court, on the road and at Portage LaPrairie, in the County of Marquette, in the said Province of Manitoba. That the charge hereby referred to was solemnly made by the Lieutenant-Governor in Council of the said Province, and was duly forwarded to the Minister of Justice for Canada.

That by the aforesaid acts of injustice, conspiracy, partiality and arbitrariness by the aforesaid changing and alteration of a record in the custody of the Crown Office and a record of the Court in a very important, serious and criminal proceedings in which the life and liberty of the parties implicated might depend, and by the corrupt preparation or packing of the petit jury list to try men for murder, and by his degradation of the administration of justice, the said Hon. Edmund Burke Wood has completely destroyed all confidence and respect in his regard, and that he has rendered himself entirely unworthy of exercising any longer the honorable, sacred and august functions of Chief Justice of the Court of Queen's Bench of the Province of Manitoba.

Your petitioners declare and pray you to believe that it is most painful to them to be obliged in the interests of justice to adopt this mode of proceeding, as it must be always very painful to British subjects to acknowledge, much more

to expose, the fact that there is corruption on the Bench. The suitors, members of the Bar and people of the Province of Manitoba know the facts, and yet have been deterred from preferring charges for fear of the vengeance of the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, should he succeed in escaping the charges made against him. The facts aforesaid, if they are not all within the personal knowledge of your petitioners, are most of them matters of public notoriety, and have come to the knowledge of your petitioners in such a manner as to render them worthy of credit and belief.

That your petitioners are in a position to prove that all the facts and complaints above set forth are susceptible of undeniable proof.

Wherefore your petitioners pray your honorable House to take this their petition into favorable consideration and deal therewith in conformity to law and justice and the interests of the pure administration of justice and the public service.

And your petitioners as in duty bound will ever pray.

HENRY J. CLARKE, Q. C.  
W. BOYLE, Farmer, South Dufferin.  
T. J. BRADLEY, J. P.  
J. E. COOPER.

WINNIPEG, MAN., January 3rd, 1881.

## RETURN

(106)

To an ADDRESS of the HOUSE OF COMMONS, dated 13th February, 1882:—

For a Copy in full of the Answer of Honorable Edmund Burke Wood, Chief Justice of the Province of Manitoba, to the Petition of Henry J. Clarke, Q. C., of Winnipeg, and others, presented to the House of Commons 4th March, 1881, said Answer being reputed to contain fourteen chapters.

By Command,

J. A. MOUSSEAU,

Department of the Secretary of State,  
24th March, 1882.

*Secretary of State.*

## INTRODUCTION.

16th August, 1881.

To the Governor General in Council.

May it please Your Excellency in Council,—

I have examined the charges preferred against me in my official capacity as Chief Justice of Manitoba, in a petition purporting to be subscribed by Henry J. Clarke, Q.C., F. T. Bradley, Johnson E. Cooper and William Boyle, a copy of which has been transmitted by the Hon. Secretary of State for Canada, for my perusal and observation in the order in which they are presented in the petition.

The petition naturally divides itself into fourteen paragraphs, and I have accordingly, in considering it, separated it into fourteen chapters, making each chapter the subject of separate observations.

I have endeavored to be as brief as a full exposition and explanation of each substantive accusation would, in my judgment, admit. The gravity of the charges, and the importance to myself personally, and the vast considerations involved in a public point of view in this petition, as affecting the independence of the Judiciary and of the Bench, and the free, impartial and pure administration of justice in all Canada, must be my excuse for the length at which my observations have extended.

It has occurred to me that it would be in the public interest that Your Excellency in Council should, at once, have my answer, with all the papers annexed (with a proper index, making easy reference to salient points and to documents in different parts of my observations) ready to be distributed to members in the Houses of Parliament, and that the same should, on the meeting of Parliament, be promptly transmitted to both Houses for their consideration, along with the petition. I make this suggestion, however, with deference, feeling confident that Your Excellency in Council will receive it in the spirit in which it is offered, and fully appreciating that to Your Excellency in Council, in a pre-eminent degree, belongs the protection of an independent and pure administration of justice in an enlightened system of jurisprudence, which is the greatest interest of man on earth, and which underlies the frame work of human society, and forms the ligament that binds and holds civilized communities and civilized nations together.

In my view, the interests of society in general in this matter so far transcend all considerations of individuals, as to imperatively demand that the petitioners should establish the allegation of facts in the petition by irrefragable testimony, or stand before the world convicted by the judgment of Parliament, as dastardly calumniators, and be condemned to that ignominy, disgrace and punishment which so vile and wanton an abuse of the right of petition deserves.

It is most respectfully submitted that it is no light thing, by a formal petition to the great Court of Parliament, thus to assail a Chief Justice of a Province and the administration of justice over which he presides; and aside from all private consideration, public interests of the greatest magnitude demand at the hands of the Government and of the Parliament of Canada, according to the constitution of the land, a prompt and speedy vindication of the truth, and a punishment of the guilty. In the manner I have ventured to suggest it is most respectfully submitted that this end may be promptly attained; for in my observations and appended documents is contained a full and complete demonstration of the willful, malicious and false insinuations and accusations in the whole petition.

All of which is, nevertheless, most respectfully submitted.

E. B. WOOD, Chief Justice.

#### CHAPTER I.

##### *Observations on the first paragraph of Mr. Clarke's petition.*

"The petition of the undersigned, living or having interests in the Province of Manitoba, most respectfully sheweth to your honorable House:

"That the conduct of the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, residing at Winnipeg, in the said Province, is and has been for years past characterized by very serious misconduct and injustice and by acts of a nature to completely destroy all confidence in him as Judge of the Court of Queen's Bench, of suitors and all other classes of people in the said Province of Manitoba, to wit:

"That said Hon. E. B. Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, did deliberately in a most illegal and unjust manner in the case of Louis Riel, *et al.*, without the knowledge or consent of the Clerks of the Crown of said Court of Queen's Bench or of defendant's counsel, alter and change the dates in certain documents and records of said Court of Queen's Bench, then in the custody of the Clerk of the Crown and Prothonotary of said Court, and did thereby procure illegal outlawry of Louis Riel and others."

Certainly from the 10th February, 1875, till I received a copy of this petition I have never seen the papers in the *Queen vs. Riel*, nor had I the slightest intimation of any such charge as that made against me till I learned it from that petition. Since, I have examined the papers as they are filed in the office of the Court of Queen's Bench. The whole charge is wanton and malicious and without the slightest foundation in fact, as the papers themselves will demonstrate.

I came to this Province and assumed my official duties as Chief Justice about the middle of June, 1874. I found Mr. Clarke to be then the Attorney-General, and Mr. Daniel Carey the clerk in the office of the Court of Queen's Bench, who, under powers conferred upon him by statute, and by his friend the Attorney-General, as Clerk of the Crown and Peace, managed the criminal business, how and in what manner the records now in the office will give but a faint idea. In the interest of public justice, I found it to be my duty to exercise a constant and watchful supervision over all criminal proceedings.

In the month of July, Mr. Clarke, as leader of the Government, was defeated in the Legislative Assembly and resigned and a new Government was formed, and shortly after Mr. Clarke left the Province and went to California and did not return to this Province until in the autumn of 1877. Mr. Carey, as a rule, continued to manage the Crown business chiefly under my supervision, and, in so far as I know, very creditably. From him I learned, shortly after I came here, that proceedings in outlawry for the murder of Thomas Scott were going on against Louis Riel, who, on an indictment for murder having been found against him by the Grand Jury in the preceding November, had fled the country. I did not profess to know, nor did I in fact know, nor was I familiar with the practice of such proceedings; and on looking into the matter I did not then well see, nor do I now well see, how outlawry can, with our Courts constituted as they were then and are now, with no separate county judicial organizations and no sheriff's county courts held at short intervals as in England, nor any places that would answer the "hustings" in the practice as settled in England, be prosecuted to a successful termination.

As it appears by the papers in the case, a *capias* had been issued by Mr. Carey on the 19th November, 1873, and an *alias capias* on the 10th February, 1874, and a *pluries capias* on the 10th June, 1874 (for similar copies of which are herewith enclosed with the sheriff's returns thereon marked respectively A, B and C). They do not purport to be issued by the authority of the Attorney-General or any other prosecutor on behalf of the Crown. That issued on the 10th of June, 1874, purports to be, and no doubt was, issued after I came here, but I have no recollection of being spoken to about it, but no doubt if I had been I would have ordered the writ to go. The test of each of these writs was on the day of the statutory term of the sittings of the Court of Queen's Bench, as it was called, for the hearing and trial of all matters civil and criminal.

According to my recollection, as refreshed by an examination of the papers, my attention was not called to this matter till some time in October, 1874. On looking into the matter, I recollect that I saw that nearly a year had already been consumed in these outlawry proceedings, and that, according to the regular practice in England, situated as we were in this Province, I did not well see how we could get on so that the proceedings would be of any avail in law. Already considerable expense to the Province, as I understood, had been incurred; but upon the whole I did not feel justified in ordering the proceedings to be abandoned. Mr. Carey, on the return of the *pluries capias*, had issued the writ of *exigent*, returnable the first of Hilary Term, 1875 (a Statute having been passed in 1874 establishing terms for the sittings of the Court, and a Court of Assize), and a writ of *capias cum proclamatione*. I examined these writs, as I felt it my duty to do, and I looked carefully into the practice in such cases as it was in England, there being no cases to which I could refer in this country. I thought best to conform as nearly as it possibly could be done, in our existing judicial status to the practice, as settled by Statute in England. We had in Manitoba a Court of Queen's Bench, which then, by the third section of 38 Vic., chap. 12, of this Province, was authorized to sit as a Court of Oyer and

Terminer, &c., and of Assize and *Nisi Prius*, three times in each year for the whole Province, on the tenth days of February, June and October respectively, which embraced within its jurisdiction all matters cognizable by, or within the jurisdiction of, the Court of Quarter Sessions of Peace, in a county in England. We then had also five County Courts, as they were called—the County Court of Selkirk, the County Court of Lascar, the County Court of Provencher, the County Court of Marquette East, and the County Court of Marquette West.

According to Gudo's Crown Practice, Vol. 2, p. 166, form of writ *cum proclamatione*, it appeared to me that one of the Courts at which the *exigent* should be made was the General Quarter Sessions of the Peace; and on looking at the Statutes, and the construction which the Courts had put upon them, I thought it safest that the writs should be so framed, and as the Queen's Bench, sitting as a Court of Oyer and Terminer, &c., was in fact for this Province a Court equivalent to the Court of Quarter Sessions of the Peace in England, I came to the conclusion that one proclamation should be made to the Court of Queen's Bench, sitting as a Court of Oyer and Terminer.

The writ of *exigent*, as drafted by Mr. Carey, ran thus: "We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court, until he shall be outlawed, according to the law and custom of England, if he shall not appear."

In the amendment I made to this form, the writ ran and now is: "We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court ('for four successive County Courts, and then at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, the last being the *quinto exactus*,') until he shall be outlawed, according to the law and custom of England, if he shall not appear, &c." I have underlined and put in parenthesis the only amendment (except as after mentioned) I made to the writ; and on the margin of the writ opposite the amendment, I find in my handwriting the words, "Amended, 10th October, 1874, E. B. Wood, C.J." The only other amendment made in the writ is consequent upon what I have said in respect of the change made in the sittings of Queen's Bench in Term, and as a Court of Oyer and Terminer, &c., by the Act 38 Vic., chap. 12, sees. 3 and 5. Mr. Carey's draft made the writ returnable on the first day of the Hilary Term next, to wit, on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy-five." (38 Vic. chap. 12, sees. 3 and 5.)

But the Court of Queen's Bench would not on that day sit as a Court of Oyer and Terminer, &c., and I therefore struck out the words "First day of Hilary Term next, to wit, on the twenty-fifth," and substituted the word "tenth," the day of the sitting of the Court as a Court of Oyer and Terminer, &c.

And further on and last of all, I struck out the words "*in banco*" following the word sitting, and inserted the words after the word "sitting" the words "as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*;" and opposite these amendments, on the margin of the writ, I placed the words "Amended 10th October, 1874, E. B. Wood, C.J."

The cognate writ of *capias cum proclamatione* contains the same amendments made at the same time and for the same reasons. I forbear to recapitulate these amendments; but I send herewith exact copies of both writs respectively, marked D and E, the amendment being written in red ink, and the words scored out having a red line through them; so that the whole thing may be comprehended at a glance.

It appears by the papers on file in the Crown Office that on the 10th of February, 1875, the writs were returned by the Sheriff and a record of judgment in due form made up and filed in the office of the Clerk of the Crown and Peace; but as this record is only a recital of the several writs and their return and as the labor of mak-

ing a copy of it is considerable, I am inclined to forego the labor unless a copy should be thought material. For myself, I do not see that it is.

In the case of criminal outlawry, the proceedings are necessarily *ex parte*; they are simply to compel, after indictment found, the surrender of the delinquent. In these proceedings the offender cannot appear by counsel; he must first surrender himself to the custody of the law, and then his counsel may appear and be heard, but not before. The end aimed at is the surrender of the offender; that being accomplished, the proceedings are at end. I make this remark as showing the reckless allegation or ignorance of the petitioners in respect of what they say as to counsel for the defendant. Of course the defendant could have no counsel known to the Court; and if he had, I do not think it would be incumbent on the Court to consult that counsel as to what should be the terms and form of writ against his client. They say amendments "were made in a most illegal and unjust manner," that "dates were altered and changed in certain documents and records of the Court then in the custody of the Clerk, and thereby was procured the illegal outlawry of Louis Riel and others." There never was any other case of outlawry in the Court in Manitoba that I know of than that of Louis Riel, and no change of any "dates in documents and records" were ever made in that case except as I have mentioned; and those changes being perfectly right according to the law and the justice of the case, and in no sense, as I can see, affecting the end reached in the outlawry proceedings, to say that thereby the illegal outlawry of Louis Riel was procured, is one of the most wanton, reckless and daring charges ever made against a judicial officer.

It is charged against me that in what I did I did not consult Mr. Carey, (then the Clerk of the Court, but since dismissed for alleged intermissions in his office.) I was not aware before, that I was bound to consult the Clerk of the Court as to the exercise of any judicial discretion in the discharge of my judicial functions. My ignorance in this respect, has no doubt been the occasion if not the cause of this dastardly attack on my honor as a Judge for which I have no remedy.

Even if the writs in question had been formally issued and delivered to the Sheriff for execution, but not formally executed, on my attention being called to any matter of mere form, I should not have had any hesitation in making the amendments thought expedient or even necessary; and now I should, in such a case, have as little hesitation even without the consent or knowledge of the Clerk of the Crown and Peace. As an illustration of the length to which the power to amend now goes in criminal matters, I need only refer to 32, 33 Vic., chap. 29, sections 70, 71 and 72. A criminal information may be amended (*in re Conklin*, Q. B. Ont. 160.)

But really in fact in this matter there was no amendment of even the writs properly so called--there was merely more specific directions in the writs given to the Sheriff--the form of the writs not being prescribed by Statute, but being settled by counsel so as to conform to the Statute and exigency of the occasion in this case caused by a change in the sittings of the Court *in banc*, and as a Court of Oyer and Terminer, &c., by 38 Vic., chap. 12, secs. 3 and 5.

In all cases of criminal outlawry, the offender can, on surrendering himself, move against the judgment and assign error on the record, which is made up of the writs and returns; and if not conformable to law, the judgment of outlawry will be set aside.

Whether the judgment in this case would be upheld by the Court, I can offer no opinion, but I am certain it would not on the law or merits be held defective for any change or alteration in the writs. (*Rex vs. Barrington*, 3 T.R. 499; *Rex vs. Almon*, 5 T.R. 202; *Rex vs. Perry*, 6 T.R. 573.)

In conclusion permit me to say that I cannot but feel, that through malice and malevolence, great injustice has been done me in this matter. The mere mention of any such accusation as this against a Judge, in a formal petition, although without any justification in fact, is so abhorrent to all our notions of the uprightness of the Bench, that careful examination is with many dispensed with, and flagrant wrong visited upon an innocent and perfectly justifiable act. There can be no question in this case; but I confess that the mere imputation or insinuation annoys and distresses

me, even coming from the source it does. An examination of the accompanying papers, and a consideration of the facts, will demonstrate how unfounded and malicious is the whole accusation.

I repeat the amendments in the two writs became necessary by Mr. Carey who drafted them, not observing carefully the change made in the sittings of the Court of Queen's Bench as a Court of Oyer and Terminer, &c., in the Manitoba Act 38 Vic., chap. 12, secs. 3 and 5—a perfectly proper proceeding—and the return of the Sheriff endorsed on the back of the writ of *exigent* shows that he executed it according as it is amended. The effect of 38 Vic., chap. 12, was to make the writs returnable to the Court at its sitting as Court of Oyer and Terminer, &c., instead of to the Court sitting *in banco*; and the effect of the amendment was to make the writs returnable to the former Court thirteen days before the latter Court. That was all; a thing perfectly proper and necessary, and in no way affecting Riel prejudicially and absolutely necessary to the *pro forma* proper proceedings of the case.

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A.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
Queen, Defender of the Faith, &c.—

To Edward Armstrong, Sheriff of the Province of Manitoba, &c., GREETING:

We command you that you omit, not by reason of any liberty in your bailiwick, but that you enter the same, and take Louis Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he should be found in your bailiwick, and him cause to be safely kept, so that you have his body before our Justices of our Court of Queen's Bench, sitting in term at the city of Winnipeg, in the county of Selkirk, in the Province aforesaid, for the trial of causes criminal and civil, and holding Assizes of Oyer and Terminer and General Gaol Delivery for the Province of Manitoba, on the tenth day of February next ensuing, to answer unto us concerning divers trespasses, contempt, and felonies of which he is indicted, and have you then and there this writ.

Witness the Honorable James Charles McKeagney, Senior Puisné Judge of Our said Court of Queen's Bench, at Winnipeg aforesaid, this nineteenth day of November in the year of Our Lord one thousand eight hundred and seventy-three, in the thirty-seventh year of Our Reign. One marginal reference is good.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant is not found in my bailiwick.

The answer of E. ARMSTRONG, Sheriff.

Sheriff's Office, 10th February, 1874.

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B.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
Queen, Defender of the Faith, &c., &c.

To Edward Armstrong, Sheriff of the Province of Manitoba—GREETING:

We command you, as we have before commanded you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take Louis



Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he should be found in your bailiwick, and him cause to be safely kept, so that you have his body before our Justices of our Court of Queen's Bench, sitting in term, at the city of Winnipeg, in the county of Selkirk, in the Province aforesaid, for the trial of causes civil, as well as criminal and holding assizes of Oyer and Terminer and General Gaol Delivery for the Province of Manitoba, on the 10th day of June next ensuing, to answer unto us concerning divers trespasses, contempts and felonies, of which he is indicted and have you then and there this writ.

Witness, the Honorable James Charles McKeagney, senior Puisné Judge of our said Court of Queen's Bench, at Winnipeg, aforesaid, this tenth day of February, in the year of Our Lord, one thousand eight hundred and seventy-four, in the thirty-seventh year of Our Reign.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant, Louis Riel, is not found within my bailiwick.

The answer of                      EDWARD ARMSTRONG, Sheriff.  
June 10th, 1874.

— — — — —  
C.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

— — — — —  
COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
Queen, Defender of the Faith, &c., &c.

To Edward Armstrong, Sheriff of the Province of Manitoba—GREETING:

We command you, as we have before often times commanded you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take Louis Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he shall be found in your bailiwick, and him cause to be safely kept, so that you may have his body before our Justices of our Court of Queen's Bench, sitting in term, at the city of Winnipeg, in the county of Selkirk, in the Province of Manitoba, for the trial of causes, civil as well as criminal, and holding Assizes of Oyer and Terminer and General Gaol Delivery for the Province aforesaid, on the tenth day of October next ensuing, to answer unto us concerning divers trespasses, contempts and felonies, of which he is indicted, and have you then and there this writ.

Witness the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench, at Winnipeg, aforesaid, this tenth day of June, in the year of Our Lord one thousand eight hundred and seventy-four, in the thirty-seventh year of Our Reign.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant is not found in my bailiwick.

The answer of                      E. ARMSTRONG, Sheriff.  
Sheriff's Office, October 10th, 1874.



## D.

## CANADA, PROVINCE OF MANITOBA, WINNIPEG.

## COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
Queen, Defender of the Faith, &c., &c.

To the Sheriff of the Province of Manitoba—GREETING:

We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, Gentleman, from County Court for four successive County Courts and then at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, the last being the *quinto exactus*, until he shall be outlawed, according to the law and custom of England, if he shall not appear; and if he shall appear, then that you take him, and him safely keep so that you may have his body before us at the city of Winnipeg, in the Province of Manitoba aforesaid, on the tenth day of February, in the year of our Lord one thousand eight hundred and seventy-five, at our Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, to answer to us for a certain felony and murder whereof he is indicted, and whereupon you have divers times before returned unto us that the said Louis Riel is not found in your bailiwick and that you then have there this writ.

Witness the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench at Winnipeg, this tenth day of October, A. D. 1874, in the thirty-eighth year of Our Reign.

By the Court,

DANIEL CARCY, Prothonotary and Clerk of the Crown and Peace.

RETURN.—By virtue of this writ to me directed, at the County Court holden at the city of Winnipeg, in and for the county of Selkirk, in the Province of Manitoba, on the third day of January, in the year of our Lord one thousand eight hundred and seventy-five, I did in open County Court demand the within named Louis Riel a first time and he did not appear; and at the County Court holden at the county site in and for the county of Lisgar, in the Province aforesaid, on the seventh day of January, in the year aforesaid, I did in open County Court demand the within named Louis Riel a second time; and at the County Court holden in and for the county of Provencher, at the county site in the said county, I did in open County Court demand the within named Louis Riel a third time, and he did not appear; and at the County Court holden in and for the County of Marquette East at the county site of the said county on the thirteenth day of January, in the year aforesaid, I did in open County Court demand the within named Louis Riel, and he did not appear; and at the Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery, and of Assize and *Nisi Prius*, at the city of Winnipeg, in and for the county of Selkirk, in the Province of Manitoba, in and for the said Province, on the tenth day of February in the year aforesaid, I did in open Court demand the said within named Louis Riel, and he did not appear, as within I am commanded.

Therefore by the judgment of Curtis James Bird, Esquire, Coroner of Our Lady the Queen for the Province of Manitoba, the said within named Louis Riel is, according to the law and custom of England, outlawed.

The answer of EDWARD ARMSTRONG, Sheriff, Manitoba.

## E.

## CANADA, PROVINCE OF MANITOBA, WINNIPEG.

## COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
Queen, Defender of the Faith &c., &c.

To the Sheriff of the Province of Manitoba—GREETING:

Whereas, by our writ of *exigent*, having the same day of teste and return as this our writ of Proclamation, we have commanded you that you cause to be exacted, Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court, for four successive County Courts, another at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and Assize and *Nisi Prius*—the last being the *quinto exactus*—until he shall be outlawed, according to the law and custom of England, if he shall not appear; and if he shall appear, that then you take him and him safely keep, so that you may have his body before us at the city of Winnipeg, in the Province aforesaid, on the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-five, at our Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery, and of Assize and *Nisi Prius*, to answer to us for a certain felony and murder whereof he is indicted: We, therefore, command you, that by virtue of the Statutes in that case, made and provided, you cause three proclamations to be made, according to the form of the said Statutes in that case, made, and provided in form following (that is to say) one of the same proclamations in the open County Court to be begun and holden in the County of Selkirk on the third day of January next, in the year last aforesaid; and one other of the same proclamations to be made at the succeeding sitting of the County Court to be holden in and for the county of Lisgar, in the aforesaid Province, on the seventh day of the same January; and one other of the same proclamations to be made one month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, at or near to the most usual door of the Roman Catholic Church, in the parish of St. Norbert, in the county of Provencher, aforesaid, upon a Sunday, immediately after Divine Service and sermon, if any sermon there be, and if no sermon there be, then forthwith after Divine Service, that he, the said Louis Riel, render himself into the custody of you, our aforesaid Sheriff of Manitoba, before or at the time when he shall be the fifth time exacted, so that you may have his body before us at the said sitting of our said Court of Queen's Bench, on the aforesaid tenth day of February next, at the city of Winnipeg aforesaid, to answer to us for the felony and murder aforesaid, and have you then there this writ.

Witness, the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench, at Winnipeg aforesaid, this tenth day of October, A.D., 1874, in the thirty eighth year of Our Reign.

By the Court,

DANIEL CAREY, Prothonotary and Clerk of the Crown and Peace.

## CANADA, PROVINCE OF MANITOBA.

SHERIFF'S RETURN.—I humbly certify and return that the within Louis Riel is not within my bailwick; and, I further certify and return that at the County Court, holden in and for the County of Selkirk, in the said Province, on the fourth day of January, in the year of Our Lord, one thousand eight hundred and seventy-five, at the Court House, in the said county, in open County Court, I made the first public proclamation; and at the succeeding County Court holden in and for the county of

Lisgar, in the Province aforesaid, on the seventh day of January, in the year aforesaid, at the county site of the said county, in open County Court, I made the second public proclamation; and on the third day of January, in the year aforesaid, at and near most usual door of the Roman Catholic Church, in the county of Provencher aforesaid, upon a Sunday, immediately after Divine Service and sermon, I did make another public proclamation, that the said Louis Riel should render himself to answer Our Lady the Queen, as by this writ he is required, and as I am within commanded.

The answer of

EDWARD ARMSTRONG, Sheriff of Manitoba.

## CHAPTER II.

### *Observations on the Second Paragraph of Mr. Clarke's Petition.*

"That said Hon. E. B. Wood, Chief Justice of the Court of Queen's Bench, of the Province of Manitoba, at the city of Winnipeg, in said Province, in the month of August A.D. 1874, did deliberately, corruptly, illegally and personally prepare, assist others in preparing, prepare and cause to be prepared, a list of names of French half-breeds to serve as petit jurors at the next approaching term of said Court of Queen's Bench, to be held in October, 1874, at which Court one Ambroise Lepine and others were to be tried on an indictment for murder, and that said Hon. E. B. Wood, illegally and corruptly selected and placed and caused to be selected and placed on such list the names of such French half-breeds only as were well known to be the declared enemies of the said Lepine and others, who were to be tried for murder as aforesaid, and that said Hon. E. B. Wood did himself hand such list, so illegally selected and prepared as aforesaid, to the Sheriff of the Province of Manitoba, and ordered him to summon as many as he could find of persons whose names were on said list, and such order was obeyed, and that said Lepine was tried by a jury composed of his enemies, empannelled from said list so illegally prepared, and was found guilty of murder, and upon such finding was sentenced to death by the said Hon. E. B. Wood, Chief Justice."

I arrived in Manitoba about the middle of June, 1874, and at once assumed my judicial duties. I was a stranger to Manitoba and to all of its people; I found matters judicial in all branches, in a very unsatisfactory condition. I set about making myself master of the situation. The Court of Queen's Bench was then sitting as a Court of Assize and *Nisi Prius*, when I arrived, and continued to sit till the 1st of July. There were some eighty civil cases on the docket, some of them having been made *remanets* two or three times, all of which I tried, or they were disposed of during that term. The statutory sitting of the Court was three times in a year, on the 10th of February, June and October; and the duration of sitting of the Court, at each term, was from and including the 10th to the end of the month. A petty jury of forty-eight attended ten days and were then discharged, and a new panel of forty-eight then came on and served to the end of the sitting of the Court—ten days—making in all ninety-six petty jurors to each term of the Court, besides the Grand Jury, a pretty large drain on the population of that period. At my suggestion, this, however, was all changed by the Legislature in the month of July of that year, by the passing of the short Act 38 Vic., chap. 12.

I recollect one day in August, I think it was, at the Court House, Edward Armstrong, then the High Sheriff of Manitoba as he was called, and with whom I had become well acquainted, asked me into his office, and after I had entered he informed me that he was about summoning the jury for the next sittings of the Court to be holden on the 10th of October. I recollect it struck me as being early, and I so remarked to him. He said, no; it was not too early, that he had a great deal of trouble in making up his panel of competent men, so many were away from home that season of the year, or words to that effect. I said, how do you select your panel, from a jury list? He replied, he had had a jury list to begin with, but that it was exhausted long ago and abandoned; and since that time, for each sitting of the Court,

he had made up his panel as best he could, acting on his knowledge of men and exercising his best discretion. But, I said, have you no Statute on the subject? He replied, yes, but it had practically become a dead letter. I remarked, in my view, it was a very serious and awkward thing. He replied, that, so far, he had had no difficulty. I then obtained the Statute there, in his office, and looked up the matter to see if any duty devolved on me in the premises, as important criminal trials were coming on the next sittings of the Court. After looking at the Statutes, I pointed out to the Sheriff how the petty and Grand Jury lists were to be by him and the Justices of the Peace made and filed, from which he was to take jury panels. His reply, in substance was, that the list had long since been exhausted and abandoned, and had not been renewed, and that he must proceed in the way he had been going on. "Well," I said, "I have told you what my opinion is. It appears by the Statute that I have no commanding or directing power in the matter. The Prothonotary is directed by the Statute to issue the *venire facias*; and you are directed by the Statute to receive the writ and return attached to it a jury panel. This is to be done according to law. If there should be a challenge to the whole array for informality in the selection, it may be a serious affair." I left remarking to the Sheriff that, "I hope we should have a fair jury, and free from violent partizans; and that, of the French, there would be as many as possible who spoke, or could understand, both languages."

The above is, as near as I can at this period of time recollect, the substance of the conversation between the Sheriff and myself; and the only conversation we had on the subject. The subject was never afterwards referred to in any way by the Sheriff or myself, and I had entirely forgotten it; but it was brought to my mind by the charge in the petition and to this hour; I have no reason to believe or suspect, nor do I believe or suspect, that a proper jury was not summoned. I never saw the jury panel, except, it may be, as attached to the *venire facias* in the hands of the Clerk of the Court, nor did I, at the Court and until the Assizes were over, know a solitary person on the panel; nor do I now know the names or the persons of but two men on the panel, namely: Samuel West of Winnipeg, and Norbert Nolin, of St. Boniface, and it was years after the Assizes before I knew them by sight even. At the time the jury was summoned I had been but a few weeks in Manitoba, and if I had been bad enough to do that with which I am charged I could not have done it without outside assistants, with whom I could be easily confronted.

The whole statement and every part of it is a most wicked and diabolical fabrication, at which even the most fiendish men, as it seems to me, would stand aghast, but it seems not so to Clarke.

The question arises how, after the lapse of seven years, could Mr. Clarke get hold of something out of which he could weave his fiendish and diabolical web of calumny? It happens in this wise: Clarke himself, as I shall hereafter show, with the prone moral nature to evil of which he is naturally possessed, intensified by long indulgence in every vice, hates me with a keen hatred for being thwarted and exposed in several most iniquitous and dishonest transactions which have come before the Court, and in respect of which he has vowed vengeance against me. Mr. Carey imputes to me his dismissal by the Government from the office of Prothonotary and Clerk of the Crown and Peace for intromissions in his official duties; but with which I had nothing on earth to do. The late Sheriff Armstrong was, in the day of the power of Mr. Clarke, his creature and henchman, and he was offended at a report I made in respect of the reward of Ontario for the apprehension of the Scott murderers, to which reward the late Sheriff was a claimant, and he imputes to me complicity with his dismissal by the Government from the office of High Sheriff of Manitoba for intromission of official duties; and he furthermore thinks Clarke will be restored to power in Manitoba vain hope--when he too will regain his former position. These persons fancy that to the attainment of these objects, I, in my position of Chief Justice, am an insuperable impediment. Hence this trio have fabricated and concocted this vile calumny after the lapse of seven years. Singular that persons so morally sensitive to the fair administration of justice should have been content to withhold this charge for seven years and then disclose it in the way they have;

especially when pure evidence, by lapse of time, through the slipperiness of memory, and often the lubricity of moral rectitude, is necessarily exposed to so much incertitude.

### CHAPTER III.

#### *Observations on the Third Paragraph of Mr. Clarke's Petition.*

"That Hon. E. B. Wood is so notoriously partial, dishonest and unjust in his judgments and decisions, that suitors in said Court know and feel that their rights are not safe, and the people of the Province have no confidence in, or respect for, the judgments or decisions of said Hon. E. B. Wood, and have lost all confidence in, and respect for, the administration of justice in the Province, so long as said Chief Justice Wood shall continue to preside in any of the Courts of Justice in said Province."

In this paragraph there are no specific charges to meet. It is easy to make charges in this form. Of course it is not expected that I should answer directly such a charge as this by simply traversing it. It rests on the allegation of the petitioners. I will, therefore, make some remarks on the character and the position of the petitioners and on their presumable reasonable opportunity to know that about which they speak; but I shall introduce the petitioners in the inverted order in which their names purport to be subscribed to the petition.

On enquiry I find that J. E. Cooper lives at Emerson, some sixty miles from Winnipeg, where he has resided for some time. I have no acquaintance with or knowledge of him. I do not know him by sight. I have made enquiry in the offices of the Courts and I cannot find that he ever had, or was connected with, any litigation in this Province, except that he is now held to bail for trial at the next October Assizes, on the commitment and order of Colonel Peebles, the Police Magistrate for the Province, on a charge of wilful and corrupt perjury, on the evidence, as I understand, of Mr. Whiteher, Agent at Winnipeg of the Crown Lands Office, and others.

I have had considerable difficulty in ascertaining the identity and whereabouts of William Boyle; I can find but one such name in this Province. On reference to the Land Office at Winnipeg, I learn that there is a person of that name who purports to be a homesteader on the South of Section 14, Township 3, Range 7 West, South Dufferin, who is entered as having come from the township of Huntly, county of Carleton, Ontario, and took up his homestead on the 3rd of May, 1877. If that is the person, his residence is about 150 miles from Winnipeg, and about 100 miles from Emerson. I can find no trace of his name in the offices of the Courts, or otherwise in connection with any litigation; I never saw the name that I know of, nor did I ever hear of such a man being in existence, till I learned it from Mr. Clarke's petition.

F. T. Bradley resides at Emerson and is an officer in the Customs Department. He is so far as I know (barring his action in this petition as after disclosed in the correspondence with him, and in reports as to what he had said about his signature to the petition,) what may be termed, a respectable man. He has never, in so far as I know, or on inquiry can ascertain, been concerned in, or had any connection with, any litigation, directly or indirectly in the Courts in this Province. I know him by sight, but I have no personal acquaintance with him—having never in my life ever spoken to or with him. I have had some formal official correspondence with him on magisterial matters, nothing more.

It is well known here that he and Mr. Clarke were, until recently, great enemies, and were, each, unsparing of denunciations of the other. In this, perhaps, they were both right—that one was right I have no doubt at all. So bitter and deadly was their personal hostility that they carried pistols, each declaring that on meeting the other he would shoot him, but each, as it is said, took great care not to meet the other. This was when they both lived in Winnipeg.

Upwards of a year ago now, Mr. Clarke went to Emerson to live and commenced speculating in lands, and among other lands, some near Emerson, to which the Hud-

son Bay Company "unjustly and greedily," as Mr. Clarke says, set up a title. It is reported that Mr. Bradley is concerned with Mr. Clarke in these land speculations,—that the lamb and the lion lie down together—but that is difficult to tell which is the lamb and which the lion. It is reported that last winter Mr. Bradley was in Ottawa to assist Mr. Clarke in the advancement of these land matters; and while there, on an evening when he was a little elevated, Mr. Clarke got him to sign some petition about the Chief Justice, which Mr. Clarke said required investigation; and thinking it was, as it was said to be, a mere matter of form, he did sign his name to a paper, but to no such petition as was presented to the House of Commons and the Governor in Council. Of course I have not seen Mr. Bradley myself. I could have no personal intercourse with him on the subject; but it is fit and proper that I should state that after he had written to me the two letters of the 17th and the 21st of June, 1881, not at my instance at all, nor with my knowledge, he submitted the correspondence to certain gentlemen and had a conference with them on the subject; and it appears that the outcome of that conference was his letter to me of the 21st of July, 1881. From a gentleman who was a party to that conference, I am at liberty to disclose what I have said in reference to Mr. Bradley signing the petition. More could be said, but I am not at liberty to say it.

I will now introduce the correspondence, to which I solicit a careful examination and consideration. All I can say is, if Mr. Bradley is an honorable, high-minded and truthful man, he has a strange way of showing it.

"WINNIPEG, 15th June, 1881.

"SIR,—I find your name purporting to be subscribed to a petition against me in my official capacity as the Chief Justice of Manitoba, presented to the Governor General in Council—a copy of which has been forwarded to me for my perusal and observations.

"Therefore, as I have not the advantage of your personal acquaintance, and as, in so far as I know, you have never been, directly or indirectly, connected with any litigation in the Courts of this Province over which I have presided, you will be good enough to inform me whether or not you subscribed such a petition, knowing its contents; and if so, whether you have any knowledge of the allegations and charges contained in the petition—and if you have, what and on what evidence based and founded, giving full particulars. Awaiting your reply,

"I am, Sir, your obedient servant,

"E. B. WOOD.

"F. T. BRADLEY, Esq., Emerson."

"EMERSON, MAN., 17th June, 1881.

"SIR,—I have the honor to acknowledge the receipt of your letter of the 15th instant, asking for full particulars as to certain allegations contained in a petition against you subscribed by myself and presented to the Governor General in Council, a copy of which has been forwarded to you for your perusal and observations.

"As you have omitted to enclose me a copy of the petition to which you refer, I regret that I am not in a position to give you the desired information.

"I am, Sir, your obedient servant,

"F. T. BRADLEY.

"Hon. E. B. Wood, Winnipeg, Man."

"WINNIPEG, 18th June, 1881.

"SIR,—I have your favor of the 17th instant in reply to my letter to you of the 15th instant, in which you say you cannot answer my letter without a copy of the petition.

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"I innocently assumed that you would know what the petition contained before you signed it, and would recollect the most grave charges against a high judicial officer, to the truth of which you had subscribed your name. In this, it seems, I am mistaken. I hope you will pardon the oversight, I hasten to correct the error.

"I herewith enclose to you a copy of the petition in question forwarded to me by the Secretary of State for Canada.

"You will now be in a position to reply definitely and distinctly to my letter to you of the 15th instant. Be good enough to do so at your earliest convenience.

"Your obedient servant,

"E. B. WOOD.

"F. T. BRADLEY, Esq., Emerson, Manitoba."

"EMERSON, MAN., 21st June, 1881.

"SIR,—I am in receipt of your letter of the 17th instant enclosing a petition addressed to His Excellency the Marquis of Lorne, Governor General of Canada, in Council, in which you state that you innocently assumed I would know what the petition contained before signing it, and would recollect the most grave charges against a high judicial officer, to the truth of which I had subscribed my name.

"Reverting to your prior letter now before me, I would say, in my opinion the questions therein submitted should be given and answered before that tribunal who have requested of you your perusal of the petition and observations thereon, and not demanded by the accused from an alleged petitioner.

"For your information, however, I would say that I have not to my knowledge signed any petition addressed to His Excellency the Governor General in Council reflecting in any way upon your character.

"I am, Sir, your obedient servant,

"F. T. BRADLEY.

"Hon. E. B. Wood, Winnipeg, Man."

Just a month after the receipt of the above letter without any intercourse, directly or indirectly, by letter or otherwise, I received from Mr. Bradley the following letter:—

"EMERSON, July 21st, 1881.

"DEAR SIR,—While I have not felt called upon to answer certain questions submitted to me by you in regard to the allegations preferred in a petition to Parliament assembled, I may say that I have not signed the petition to which my name is attached, in its entirety, as many accusations contained are not known to me, and must have been inserted after signature.

"My only desire in signing the petition was in view of investigation of those charges circulated against you in the discharge of your duties.

"F. T. BRADLEY.

"Hon. E. B. Wood, C. J."

I have nothing further to say of Mr. Bradley, I cannot speak of him as I think he deserves, without transcending temperate expression; and I, therefore, leave him to the judgment of His Excellency in Council.

One thing seems apparent, in this matter he was a mere instrument in the hands of Mr. Clarke. Another thing seems apparent, this petition which in a private and public point of view is of vast moment—to me, a matter of life and death—to suitors in Court, of rights and property, and may be of reputation, which is more dear than property, of liberty and even life, and a shock to the moral sense of the whole world is got up by Mr. Clarke, purporting to be deliberately signed by the apparent



signatures, but was not so signed by one of them at least, may be, and probably was by none except Mr. Clarke, and it is in fact a forgery. I understand Mr. Bradley to mean this: He signed something, he knows not what (called a petition), on a half sheet of paper, consisting of more than one-half sheet; this half sheet of paper on which he placed his signature, if placed there at all has been detached, and attached to other and different half-sheets, containing other and different matter; or other half-sheets have been inserted, added to or substituted, containing other or different matter. If this be true, in a matter so important as that of which this petition treats, it is at least a moral offence of the very greatest magnitude--it is a forgery! It is a fraud! I leave this matter to be settled by His Excellency in Council with Mr. Clarke and Mr. Bradley. As regards the petition, it all comes to this, Mr. Clarke is in truth the sole petitioner, and the commencement of the petition: "The petition of the undersigned," etc., is a cheat and a fraud.

Henry J. Clarke I found in Winnipeg when I came here, in June, 1874. The Queen's Bench was then sitting as a Court of Oyer and Terminer, &c., and Mr. Clarke, the Attorney General was acting as Crown prosecutor. At this Court an incident occurred in connection with Mr. Clarke which created an unpleasant impression on my mind. I found on file for trial, among other indictments, five indictments which the Crown had postponed from Court to Court, namely, the Queen against George N. Merriman, kidnapping Gordon Gordon; the Queen vs. Gordon Gordon, forgery; the Queen vs. Gordon Gordon, perjury; the Queen vs. Lorin Fletcher, kidnapping; the Queen vs. William J. Macaulay, accessory after fact to kidnapping. I examined the charges in these indictments, and looked to see what witnesses were indorsed on the back of the indictments, and inquired where those witnesses were. I was informed that they were in Court, or could be produced in a few minutes. I then asked Mr. Carey, who was then acting for the Attorney General and under his instructions, if the Crown was ready to proceed with the cases, and if not, why not? He replied that the Attorney General was not ready to proceed; and moreover, that the day previous when Mr. Justice Betournay was on the Bench, the cases had by his order been put off to next Court, and the bail respited. Counsel for the defendants respectively denied that they had had notice of the motion; nor were they, as they claimed, present when anything of the kind took place; and they protested against the further postponement of the cases. No note of the alleged order was produced, Mr. Carey saying it was arranged between Mr. Justice Betournay and the Attorney General, who, as he alleged, was not very well that morning, and was not present in Court. I think this was the last day of the sittings of the Court. I selected one indictment in which it was admitted that the witnesses for the Crown were in Court. The Queen vs. Macaulay, the defendant being a large lumber manufacturer in Winnipeg, and I ordered a jury to be called. Mr. Carey, the Clerk, hesitated. I peremptorily ordered a jury to be called, and sent a constable as a messenger for the Attorney General. The jury was empaneled. The messenger for the Attorney General returned, but without the Attorney General, and conferred with Mr. Carey. Mr. Macaulay was ordered into the criminal dock, for it was a felony with which he was charged; and the jury, I believe, were sworn when Mr. Carey arose and said he was instructed by the Attorney General, on behalf of the Crown, to enter a *nolle prosequi*, and the four other indictments were disposed of in the same manner. It struck me at the time that these indictments were procured and kept hanging over the heads of the persons indicted for an improper purpose, derogatory to the honor of the Crown, and I so expressed my impression at the time in open Court, and subsequent information and facts have converted that impression into a conviction.

Mr. Clarke shortly after left Manitoba and took up his residence, as it was reported, in California. He returned to Manitoba in the autumn of 1877, and opened a law office, and commenced the practice of the law, but his chief business was in and about the police courts, presided over by the puisne judges. Mr. Clarke's practice before me was chiefly in criminal trials on indictments, in which he was counsel for the accused. We did not get on pleasantly. The cause was his ignorance of



law, and particularly of the law of evidence or mine. A notable instance of it, that I now recollect, occurred in the case of the Queen v. Henriette Anderson, at the sittings of the Assizes in October, 1877.

At the opening of the Assizes, when the Grand Jury were called to be sworn, Mr. Clarke arose and asked the attention of the Court. He said that he was retained as counsel for Henriette Anderson, against whom a bill of indictment for infanticide was to be preferred at this Court, which would come before the Grand Jury for their consideration; and that he was advised and believed the panel of the Grand Jurors was defective and illegal, and, therefore, he challenged the array of Grand Jurors; and he desired that I would note his motion, and take down the particulars of his motion. I declined to do so; but I informed him what the practice in such cases was—that he must file his grounds of challenge in writing, in the form of a declaration, and then counsel for the Crown could either demur or traverse it. If there was a joinder in demurrer, I would hear argument and dispose of it at once; if it issue in fact were joined, evidence would be heard by the Court, and the issue disposed of according to evidence. I gave him a-half hour to prepare his declaration, and he prepared what he said he thought contained a statement of sufficient facts to validate the array, which he read to the Court and it was ordered to be filed. The counsel for the Crown demurred, and Mr. Clarke joined in demurrer. The demurrer was argued; I gave judgment for the demurrer, very much to the dissatisfaction of Mr. Clarke, who apparently did not attempt to conceal his disappointment. My judgment was in writing and is now on file in Court; and a copy of it is subjoined to these observations on the third paragraph of Mr. Clarke's petition, marked F. As I recollect, the chief objections to the array were, that the Christian names of the jurors were not spelled in full, or spelled by contraction, as "J. W. Primrose, Wm. Dick, Alex. Smith," &c., and the names of the places of residence were indicated by contractions, all of which, however, are pointed out in the judgment.

I will mention another incident which, I think, occurred at the same Assizes, in the Queen vs. Dapas, in which Mr. Clarke was counsel for the prisoner. A witness for the Crown was examined and gave his evidence in chief. Mr. Clarke, on cross-examination, asked the witness: "Was he present at the preliminary examination before the magistrate?" He answered: "Yes." He asked him had he anything to say? "Well," says Mr. Clarke, "what did the prisoner say?" Here I interposed, and said to Mr. Clarke: "Surely you do not mean to contend that what the prisoner then said is evidence to be given here, to-day, in his own behalf?" He answered: "Yes, I do, and why not?" I replied: "You can't be really serious, Mr. Clarke, and we have no time for trifling; I rule that such evidence cannot be received." He answered: "Well, I can accomplish the same thing in another way." He then took the depositions taken before the magistrate, and asked the witness if the name subscribed to the depositions was in the handwriting of the justice. He was answered in the affirmative. He then asked, "Was the name subscribed to the statement of the prisoner in the handwriting of the prisoner?" The witness said it was read over to the prisoner in his presence, and he saw the prisoner sign it. Mr. Clarke then giving a glance at the Bench, turned with an air of triumph to the jury and commenced reading the statement made before the magistrate to the jury. I stopped him and said I did not propose to have any more trifling, that I could not think him serious in what he proposed to do; and that it was my duty to see that every trial was conducted according to law; that he would see even by looking at the Statute that, recognizing the law, it prescribed a warning to the prisoner that he need make no statement unless he liked, and that his statement, if made, might be given in evidence against him, but it nowhere says for him; and for the best of all reasons, it would make a prisoner a witness in his own behalf—no less absurd, nay, more absurd, than now to put the prisoner in the witness box to give evidence in his own behalf, for in such case he might be cross-examined, in the other there was no responsibility of even cross-examination. Mr. Clarke replied that he was astonished at the ruling of the Court, that he could produce plenty of authorities to show that what he proposed to do was the correct rule of law, and that he

had been twenty-five years practising at the bar and had never before heard it questioned; and that the authorities and his learning were to little purpose if he was to be ruled out of a proper defence for the prisoner in this fashion. I answered that it was arrant nonsense to talk about authorities sanctioning such a course of procedure—there were no such authorities, none could be produced—and as to his experience of a quarter of a century at the bar, it seemed he would have to spend another quarter of a century, and be a better student than he had been in the past twenty-five years before he would “be able to come to the knowledge of the truth” in the elementary principles of the law of evidence. Mr. Clarke professed to be highly indignant, and requested, in not very civil terms, that I would note his tender of this evidence and my rejection of it. I said I would do so if he demanded it, but for the sake of his reputation as a lawyer he had better not insist on my disfiguring my notes with such an absurdity.

In the month of February, 1878, following, there was a trial before me under the “Speedy Trials Act,” (without a jury of course) of the *Queen vs. Woolner*. As one of the witnesses for the Crown was proceeding with his narrative, and to connect the same, mentioned that the prisoner told him that the next day, on Monday morning, he was going to one Mr. Hay to do some work, and the felony in the meantime having been discovered, he went to Mr. Hay’s and asked if the prisoner had been or was there, and he proceeded to say that Mr. Hay said he was not there and had not been there. To this Mr. Clarke objected on the ground that it was hearsay evidence. It was not material to the issue at all, and I had not taken it down; but it was merely in the way of connecting in the mind of the witness his narrative. I explained this to Mr. Clarke, and reminded him that there was no jury to be misled, and that I had not taken down what the witness said Mr. Hay had told him. Mr. Clarke replied that he protested against hearsay evidence being allowed and received by the Court, and wanted his objection noted. The thing seemed to me supremely ridiculous, but I noted the objection, and remarked that hearsay evidence was objectionable as had been ruled in the notable case of *Bardwell vs. Pickwick*. “Yes,” said Mr. Clarke, “it was that case I had in my mind.” The trial then proceeded, and resulted in a verdict of guilty. Unfortunately for me, as it seems, some law students were in the Court room when the incident occurred, and reported it, and it came to the ears of Mr. Clarke; and some amusement was had at Mr. Clarke’s expense over the authority of *Bardell vs. Pickwick*, and Sam Weller’s, “Oh, quite enough to get, Sir, as the soldier said ven they ordered him three hundred and fifty lashes;” and the sharp reproof of Judge Scarlet: “You must not tell us what the soldier or any man said, Sir, it’s not evidence.” I understood Mr. Clarke felt himself highly insulted when he really comprehended the allusion to *Bardell vs. Pickwick*, and expressed himself very bitterly against me for the playful allusion.

Another incident came to my notice judicially in the month of January, 1878. There were in Winnipeg some six or seven Chinese, who all lived together and carried on the laundry business. One evening it seems they had a quarrel, and one of them went to a magistrate and laid an information against the others for robbery, and the others did likewise. They all were, by the Chief of Police for the Province, Mr. Richard Power, arrested and put into gaol. They were brought before the late Mr. Justice McKeagney, acting as Police Magistrate. He could make nothing of the charge, as none of them could speak or understand English, and no interpreter could be obtained; and it appeared to be a sort of family quarrel among themselves. It appeared when Richard Power arrested them, he searched them and found on them several trinkets of valuable jewelry and five twenty dollar gold pieces. The next morning early Mr. Power was obliged to leave for Portage La Prairie on important business; but before leaving he handed to an assistant officer, Mr. Huston, the money, &c., he had taken from the Chinese (explaining the matter), to be produced and deposited with the Clerk in Court, when the Chinese should be brought up for hearing. In some way Clarke found out that Huston had this money; and under pretence of a fee for defending them, although he could not understand or speak the Chinese lan-

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guage, nor could they speak or understand English, he got from them an order on Huston for these five \$20 gold pieces, he presented the order to Huston and persuaded him to hand them over to him. Mr. Justice McKeagney subsequently brought this transaction to my notice as Chief Justice. I told him it was his duty to order the money to be paid back into the custody of the law to be subject to the disposition of the Court under the Statute in that behalf. He said he had so ordered already, but Clarke had put him at defiance, and that he was afraid of his life should he go any further. I told him I should be deterred by no such consideration, and if the matter could be judicially brought before me in any way, I would make short work of it. Mr. Clarke heard the opinion I had expressed about the matter, at which I was informed he was very indignant, and used threatening and abusive language.

The criminal proceedings in the Chinese matter ended in nothing, but the "poor heathen Chinese" never got back his five \$20 gold pieces from Mr. Clarke.

In the month of May, 1879, one Rimer was arrested by David B. Murray, the Chief of the City Police, on information from Toronto, Ontario, that he had, in Toronto, in the month of November preceding, committed forgery and fled the country, with considerable money, the fruits of his crime, and he found on him some \$900 or \$1,000 which he took from him, and at once by telegraph he communicated with the Police of Toronto, and received a reply "to hold prisoner until a special officer with a warrant could reach Winnipeg." I was made aware of the arrest of Rimer and considerable money being found on his person from the city papers. In order to justify Rimer's detention in gaol until the officer could arrive from Toronto, it became necessary to bring Rimer up to be formally remanded for eight days, and as I happened to be at the Court House on the Bench, I was asked to permit him to be brought before me for that purpose, to which I assented, and he was accordingly brought before me. I explained to the prisoner for what purpose he was brought up before me, and what it was my duty under the circumstances to do. A large concourse of professional gentlemen and other persons had gathered in the Court-room, and among them I noticed Mr. Clarke. When I had explained to the prisoner for what purpose he had been brought up, and my resolution to remand him for eight days, and was directing Mr. Marston, the Clerk of the Police Court to make out the warrant for remand, Mr. Clarke rose and said that he was retained as counsel for the prisoner, and that he had to state that there was no evidence before the Court to justify a remand. I replied that I thought differently, and must act on my own convictions of duty. On Mr. Clarke's intervening, it recalled to my mind the "Heathen Chinese" money matter, and I enquired of Mr. Marston, if any money had been taken on the prisoner, and if so, was it deposited with him? He replied that he understood quite a large sum had been taken from the prisoner, but that the Chief of Police, Mr. Murray, had not handed it over to him. I told him he was the proper depository, in the meantime, of the money; and Mr. Murray must be sent for to bring the money and everything into Court, and deposit it with the clerk; and that I should go no further till that was done. A messenger was accordingly sent for Murray to bring the money, &c. After a few minutes Murray came in with the money, &c. He said he had in money, as I recollect, from the prisoner, upwards of \$900, consisting of sovereigns, Bank of England notes, some other bank notes, and some silver; but he said Mr. Clarke had presented him that day with an order from the prisoner for \$200, which he had received but not as yet paid, as at the time the order was presented he had not the money at his office, but had put it away in his house, and was to bring down to Mr. Clarke the \$200 when he came from his dinner. He said if this \$200, for which he showed the order, was taken out, there would be some seven hundred odd dollars. My "righteous indignation" may be imagined. I said: "Not a dollar of the money is to be touched by any one;" and I expressed "my surprise at the daring and dishonorable conduct of Mr. Clarke as a professional gentleman in his attempt at inveigling money from an officer of the law in this fashion." Mr. Clarke attempted a defence of his conduct on the ground, as he said, that the money was the prisoner's, and the prisoner gave him, as a retaining fee, an order on his own money, as he had

a right to. I answered, I must confess with warmth: "For aught I know the money may be the prisoner's, but I strongly suspect it is not. That has nothing to do with the matter. The law has laid its hand on the money, not for the purpose of transferring it as a counsel fee to the prisoner's counsel, but for the purpose of securing its delivery to the rightful owner. It is another attempt to do what, to the disgrace of the administration of justice, was successfully accomplished in the case of the 'poor Chinese.'" I added: "I can only say if it had proved successful in this instance, I should have felt it my duty to visit so flagrant a breach of right and law with marked and signal punishment. Happily, by accident, it has turned out that I am relieved from that unpleasant duty." Astonishment and disgust were depicted on every countenance except that of Mr. Clarke. He looked pale and trembled—evidently with anger, for to shame he is a stranger.

This Rimer was successfully transported to Toronto, was tried, convicted, and is now in the Kingston Penitentiary.

Many more instances of unprofessional and disreputable conduct might be given, but I must, for fear of tiring, forbear.

I now come to civil cases. I will give one or two as illustrations of the general character of all cases brought before me, in which Mr. Clarke was concerned, either as counsel or as a party. Those in which he was concerned as party will probably be most significant. *Ab uno disce omnia.*

The case of Power vs. Clarke is a fair specimen of the cases he brought before the Court as attorney, or which were brought before the Court of which he was a party, plaintiff or defendant. This is a recent case, and I, therefore, select it out of many like it, because it is recent, and because he complained bitterly of my judgment, and moved Mr. Justice Dabue for a new trial, which he refused; and because it constitutes, as rumor says, one of his chief grounds of grievance against me. The action is in the County Court of Selkirk, and came on for trial before me for the sittings of the Court at Winnipeg, on the 10th of February, 1880. I gave a written judgment on deciding the case. I think the decision is correct. I have no doubt about it. I crave a careful examination of that judgment which contains all the evidence in the case, and the grounds of decision. This decision gave great offence to Mr. Clarke. Let it be carefully examined, and an opinion formed from this judgment of Mr. Clarke's ideas as to the correct, fair and honest administration of justice. A copy of the judgment is subjoined to these observations on the third paragraph of the Petition marked G.

The next and only other case I shall mention is Dahll vs. Clarke. This is an extraordinary case, and suggests the utter depravity of Mr. Clarke. It was commenced in 1880, and not determined till late in the autumn of that year. It was protracted, waiting, at the instance of Mr. Clarke, for evidence on his part, but none was ever given or offered. It finally came on for judgment in November. I pronounced the judgment of the Court. A few days after, I understood Mr. Clarke, in the course of a public speech at St. Andrew's dinner, with outstretched arm, declared that he, in three weeks, would be in Ottawa, and would see whether or not Manitoba was to be longer inflicted with downright corruption in the administration of justice by one man, at the same time stating he had the greatest confidence in Mr. Justice Miller, who had then just come to the Province, and in Mr. Justice Dabue, both of whom were present. He was, no doubt, smarting under the judgment of Dahll vs. Clarke, which a few days previous had been pronounced. A copy of this judgment is subjoined to these observations on the third paragraph of the Petition marked H.

I solicit a careful examination of this judgment. It contains the substance of the bill of complaint, the answer, and the entire evidence.

It is to be noticed that all the persons who purport to have signed this petition, except Mr. Clarke, are resident out of Winnipeg, sixty or one hundred and fifty miles or so, and in so far as is known, never have had any litigation in our Courts, and that no member of the Bar, or person having, or concerned in any litigation in Winnipeg, or out of Winnipeg, except Mr. Clarke, has subscribed this petition; it is fair, therefore, to assume, and, no doubt, it is the fact, that this petition was entirely

got up by Mr. Clarke, who, failing to get a solitary individual in or around Winnipeg, where all the litigation of this Province has been carried on, except the sittings of the county court outside, who have been concerned professionally or as a party in any legal proceedings, to sign his petition, wheedled and induced, or himself put to it, the signature of persons who either know nothing of its contents, or nothing of the purpose aimed at by Mr. Clarke, or were careless or indifferent as to the consequences. It becomes, therefore, a matter of the first moment to know who this Mr. Clarke is, when he launches forth such charges, in a general way, as these are contained in the third paragraph of his petition, against a high judicial officer of the Crown; resting as they do, upon his own individual and personal character, I have already stated facts which lay a foundation for his personal hostility to myself. Many more if it were thought necessary might be added.

With the view of informing His Excellency in Council what kind of character this Mr. Clarke bears, I clip from the *Manitoba Free Press* of the 16th of November, 1878, the following outline of his biography in Manitoba. It was published and spread broadcast over Manitoba and all Canada; and in not a single material statement or paragraph, in so far as I know, has it ever received a contradiction. The only defect in the biography is, it seems to me, that the dark shadows of his moral character have been too faintly drawn, his iniquity and moral depravity have not been sufficiently developed, they have been touched with too light a pencil, with a faltering hand:—

MANITOBA FREE PRESS, DAILY EDITION, SATURDAY, NOV. 16, 1878.

*H. J. Clarke.*

The subject of the following sketch is one that we had hoped we should never again have been called upon to make any reference to. We desired to have kept our columns as free of his name as do respectable people who know what he is, keep their houses of his person. But we feel that the exigencies are such that we should not be discharging our duty did we withhold from the people of this Province, many of whom, by reason of their late arrival, are not familiar with his character and doings, an outline of the same. Armed with a smooth and voluble tongue, it would be no matter for surprise that he should make a very favorable impression where he is unknown. In the interest of public morality we lay this sketch before the electorate, especially at Rockwood:—

Henry Joseph Hynes Clarke, as with gusto in those days he subscribed himself, landed in Manitoba in the year 1870. Following close upon his arrival he was elected a member of the first Manitoba Legislative Assembly of the Province, for the Parish of St. Charles, and made Attorney-General in the first Government. During the fourth and last session of the first Parliament, the Government was defeated. So soon as the succeeding Government were able to analyze the public affairs they discovered that the capital account of the Province had, during his short term of office, been reduced \$158,386 or, in other words, the subsidy had been impaired to the extent of \$7,912.30 per annum. An investigation, as far as it was practicable, showed that a most prolific cause of such a result was a process of

#### *Legal (?) Public Robbery*

which had been carried on by the Attorney-General in his department of the administration of justice. The vote and voice of the people, as expressed in Parliament, had been absolutely disregarded. For instance, the year 1872 Parliament voted \$4,000 for this service, and Attorney-General Clarke expended \$9,645.17; for 1873 Parliament voted \$12,000, while he spent \$23,562.11. The way in which this expenditure was made to so much exceed the estimate, and to the advantage of the head of the department, was, to say the least, ingenious. He managed to appropriate the public funds in large amounts by two modes

*Secret Service and Indictments.*

During the year 1873 he succeeded in drawing from the public treasury \$10,835.10; and during the half of the year 1874 that he remained in office he secured \$4,205.50, from the same source. The secret service part of the item is generally considered to have been "clear gain"; at least since Clarke left office it has not been found necessary to spend one dollar in any such business; while Attorney-General he performed the functions of Crown prosecutor, and as such secured to himself \$25.00 for every indictment he obtained. To make this "branch" as remunerative as possible, his plan was to have almost every person accused of one substantial offence indicted from three to half-a-dozen times. One or two instances by way of illustration will suffice. At the September, 1873, term of the Court of Queen's Bench, an Indian was charged with burglary, for which he was indicted no less than four times as follows:—house breaking; larceny; stealing money; feloniously breaking and entering a house and stealing therefrom. The case at a subsequent stage broke down on the first indictment, and the accused was discharged. At the same term of the court two persons who had already suffered a term of imprisonment, and were known to be then in the United States, were indicted no less than six times each. The reports of all the courts of those times are but a repetition of this sort of thing; and the instances in which an accused individual was indicted only once are very exceptional. Ninety per cent. of these indictments served no purpose whatever in the interests of justice, they only benefitted Attorney-General Clarke to the extent of \$25.00 each, at the expense of the country. The monstrosity of this mode of proceeding is rendered abundantly manifest by the comparison that when Clarke had the conducting of the Crown business it cost the country, as we have shown, \$25.00 for each indictment, while since he was deposed, notwithstanding the rapidly increasing population, not one dollar has been "appropriated" under the item of secret service, only \$5.00 each has been paid for indictments, and the conduct of the Crown business has cost only about \$1,000 per annum, \$3,101.60 being the amount for the three years ending at the close of the last fiscal year.

*To Make Money,*

no matter how, was evidently the prime aim of Attorney-General Clarke. The big "hauls" were, of course, taken from the public chest, as shown. But he evidently allowed no other opportunity to gratify this ambition to pass without attempting to improve it. Many of the readers of the *Free Press* will remember the name "Lord Gordon." These do not need to be reminded that in 1873, an attempt was made to unlawfully convey him to the United States. The attempt, it was alleged, was aided by certain prominent and wealthy Americans that were here at the time upon other business, and they were arrested. These gentlemen being friends of Mr. W. J. Macaulay, of this city, he very naturally interested himself in the case. The whole of the details need not be related; but we have by us a printed sheet issued from Ottawa shortly after the occurrence, which is a recital of the whole affair under the oath of Mr. Macaulay; and it certainly discovers one of the grossest attempted outrages by a public officer extant. It is a case in which the Attorney-General offered to

*Barter Justice for Money,*

and to commit the very offence for which he was then prosecuting others. Mr. Macaulay in this affidavit says: "While in the Attorney-General's office on the night of the 4th, he said he wished to make me an offer and wanted it to be in strict confidence." He commenced by saying: "Mr. Macaulay, you know that I am a poor man, I want money, and if your friends will guarantee me say \$25,000 I will resign as Attorney-General and agree to have Gordon Gordon in New York within twenty days." The affidavit then proceeds to relate how Clarke, through another party, tried to sell the accused persons a property worth not more than \$3,000 for \$16,000, in consideration for which he would accept "a man of straw for bail," under which they



might get out of the country. However, he failed in all his negotiations; and because Mr. Macaulay did not try to promote Clarke's views in this connection, he formulated a criminal charge against him. Nor did his attempts in this line end here.

*"Lord Gordon"*

was reported to be wealthy, and Clarke seems to have tried to prosecute him into coming down with his "contributions." Accordingly, upon a series of trumped-up charges, he had him pursued into the North-West Territories, whither he had gone for a hunt, illegally arrested, brought back to Winnipeg, incarcerated, and indicted twice. Immediately that Gordon was arraigned he appealed to the Court in these terms: "My Lord, that Counsel (pointing out the Attorney-General) tried to extort from me ten thousand dollars, and because he failed I am locked up here." Gordon's subsequent explanations, which were abundantly probable, from collateral circumstances, were that upon his being put in the jail, Clarke met him in his cell and demanded of him \$10,000 under pain of being handed over to the United States authorities.

*Clark's Politics.*

Those who were resident in the Province during the first four years of its existence should need no enlightenment upon this point. He was pre-eminently a time and self server. When he got control of affairs, the French-speaking people were in a position to dominate, and so long as he was tolerated by them, his manifest determination was to subordinate the rights of all others. The Ontario emigrant was his *bête noir*. His legislation was so devised as to give the new-comers as little say as possible in the affairs of their adopted country; and his public utterances were calculated to be as offensive to them as possible. During the 1872 Session of the Legislature, Clarke introduced a Bill for the registration of voters which excluded from the franchise all persons coming to the Province until they had been here three years. But, opposed by Hon. D. A. Smith, he was forced into a modification of this high-handed attempt to "clip the wings of the Ontario people," to use a favorite expression of his own, in those days. On questions of both principle and sentiment he went the most extreme lengths against the English-speaking new settlers in his mad and reckless, but ultimately vain efforts to keep the solid French support. In 1872 the Ontario Legislature, it will be remembered, offered a reward of \$5,000 for the conviction of those who took the life of Thomas Scott, at Fort Garry in 1870. The Manitoba Legislature was sitting at the same time, and when word was received here of the actions of the former body, Attorney-General Clarke brought before the House a resolution of condemnation upon the Legislature of Scott's native Province for their action in this matter. He did so in a speech most outrageous to the feelings of the handful of Ontario people then there, knowing that they were numerically powerless to resent. He designated the Scott murder cry as nothing more than a "hobby horse" of Ontario. He characterized the action of the Ontario Legislature as "nothing less than a piece of impertinence," adding, "the passage of the resolution proposed would give them the snub." In the course of the debate that ensued he said: "It will be seen that Riel, who has been made the scape goat for the whole of what was done and left undone then and for years past was not to blame. He was a man who when chosen stood forward, becoming the mark of all." At another time the question of the 69-70 rebellion came before the House, when Clarke said: "He was prepared to justify their every act, save one, of those commonly called rebels; and that one had been used to its utmost by their enemies. If he had been a resident of the country he would have been a rebel too." After the House rose on one of those occasions a number of the members were assembled in one of the offices, having what is commonly called a "good time," when Clarke, in a moment of supreme gush, dropped on his knees before those assembled, and called God from heaven to witness his declaration that before any person could harm one hair of Louis Riel's head, they should have to walk over his (Clarke's) dead body. However, there was

*A Turn in Affairs.*

At the opening of the fourth session it was evident that he and the French speaking party were two. The Roman Catholic dignitaries and clergy, whom he had hitherto affected to believe perfectly immaculate, he went far out of his way to refer to in most offensive and insulting terms; and the French speaking element, which before he had labored to keep supreme at all costs, he was prepared to put out of existence entirely had he the power.

*Why this Change?*

He was the central figure in a social and domestic scandal, which, fortunately for society, as an outrage on public morality, and for inhumanity, seldom had a parallel in a Christian community. His mother church would not tolerate his conduct, and knowing that the day was rapidly approaching when the English speaking people must become dominant at any rate, he turned his back upon his quondam friends, and set about to make up with those whom he had so enormously abused hitherto. But they would have none of him; and he was driven from office by the concentrated action of French and English.

*A Heart Rending Tale*

Indeed, is the barest outline of this man's perfidy to a woman who, at the time of writing, is lying upon a sick—perhaps dying—bed at the Grand Central Hotel in Winnipeg. That woman, several years ago, he made his wife. At the time, she was possessed of a large amount of money. Actuated by the whole confidence of a devoted wife, she gave him control of her property; and in a very short time, save a comparative trifle she had retained, it was all lost in some wild speculation in Montreal. In 1870, as before related, he came to Manitoba, flourishing the name of Henry Joseph Hynes Clarke; Hynes was the maiden name of his wife and he incorporated it with his own; but he has dropped it now. Yes; he has dropped the name and abandoned her from whom he took it. When he came to Manitoba he left his wife in Montreal, with the understanding that at an early day she was to follow. He took up a home in Winnipeg with a highly respectable private family, with the members of which, by means of his oily tongue and *suave* manner, he soon established himself most favorably. The Government of which he was a member having some bridges to construct in distant parts of the Province, and his host being a practical man was entrusted with the work, which necessitated his absence from home for considerable periods. During his absence Clarke was sapping the foundations of his domestic happiness and ruining his home by weaning from him the affections of his wife. Returning home upon one occasion he found his wife not there, and was told something to the effect that she had been sent for by friends in the east and had gone to visit them, Clarke explaining that he had lent her the money to go with. This seemed satisfactory. A short time after Clarke left to visit Montreal, and in due course suggestive stories were brought home by those who had met the Attorney-General and the woman last referred to, travelling in the United States. Little by little the full truth forced itself upon the master of the house in which Clarke had found a home, his wife had deserted him, and taken up with his guest. Clarke, however, turned up in Montreal and met his wife; but she at once detected something very different in his manner to that of old. Some time after she came to Manitoba with him; but it was only after patiently suffering unkindness at his hands for more than a year that she came to understand the true state of affairs. That may be briefly told. Clarke was keeping up an affectionate (!) correspondence with his later attachment, and supplying her with money for sustenance, while his loyal and once happy, but now wretched, wife was suffering more and more ill-treatment from him. In 1874, Clarke was voted out of office, and he immediately left the country with his ill-gotten gains from the public treasury, deserting his wife entirely. It soon became generally known that Clarke and the wife whom he had seduced from her husband, were living as husband and wife on the Pacific Coast, and luxuriating on mis-appro-



priated portions of the Manitoba subsidy. Wealth illy acquired, however, is seldom abiding. So it was in this case; and then, forsooth, in 1877, as though Clarke had not made his poor deserted wife suffer enough, and as though the woman he had robbed her husband of, had not sufficiently wrecked him by her conduct, they came back to Winnipeg to brazen out their shame in the very community where were residing the particular victims of their infidelity. The outraged husband has since fled from the scenes of earlier and happier associations—before the despoiled of his household had crossed his threshold—and taken up his abode in the farther west; and the broken-hearted wife, utterly hopeless of comfort this side of the grave, is pining away and hastening beyond that bourne whence no traveller returns. But, thus far, their determined efforts to force themselves into respectable recognition has utterly failed, and they are righteously surrounded by a social atmosphere of supreme contempt. Clarke has, ever since his return, been trying to get into public life again, and has knocked at the door of nearly half-a-dozen constituencies, one by one of which gave him to understand the same as the respectable householders of Winnipeg—you cannot pass our portals. St. Agathe said no, St. Vital said no, St. Anne said no, St. James said no, and now, having utterly failed in these old settlers' constituencies, he is knocking at the door of Rockwood, a division inhabited by Ontario people—the class of all others to whom his public career was most obnoxious—and, for their good name let us hope, whose moral sense is not less acute than that of their fellow citizens in the constituencies named.

Yet this Mr. Clarke, whose life is stained with every wickedness and whose character is black with every infamy, unredeemed by a single virtue, presumes *ex cathedra, pro bono publico*, to arraign the Chief Justice of Manitoba for being “so notoriously partial, dishonest and unjust in his judgments and decisions, that suitors in the said Court know and feel that their rights are not safe, and the people of the Province of Manitoba have no confidence in, or respect for, the judgments or decisions, &c.”

To me it was incomprehensible how, in the House of Commons, of which I had been for several years a member, and to many of whose members, at present constituted, I was well known, a member could be found to present such a petition. But I have learned how this was brought about. After trying for a long time, without success, to get a member to present the petition, Mr. Clarke at last hit upon this scheme. He went to Mr. Royal, an old enemy, and told him, if he would present this petition to the House of Commons, he would forego having certain papers, exposing Mr. Royal in the Indian Commission Investigation *in re* Provencher, moved for in the House. Mr. Royal accepted the overture and presented the petition. This statement is based on a current rumor at the time, which has received no contradiction; and the following correspondence between Mr. Thibaudeau, a respectable barrister of eight or nine years standing in Winnipeg, and myself:—

“WINNIPEG, 17th July, 1881.

“DEAR SIR,—It has been intimated to me that Mr. Clarke, when he came up from Ottawa, last winter, to get signatures to his petition against me, showed the petition and asked your signature to it; and upon your refusing to sign it, you remarked to him that you did not believe he could get any member of the House to present such a petition; and, that he replied, that he had already arranged that. In consideration of his (Clarke's) undertaking and agreeing to forego and to abandon having certain papers, exposing the frauds of Mr. Royal, developed in the Indian Commission *in re* Provencher, moved for and brought down to the House, Mr. Royal had agreed to present the petition—that he had that all fixed.

“It seems that subsequently, after Mr. Clarke's return to Ottawa, Mr. Royal presented the petition.

“Will you be good enough to inform me what communications (if any) on this subject Mr. Clarke made to you.

“I am, Dear Sir, your obedient servant,

“W. B. THIBAudeau, Esq., Barrister, &c., Winnipeg.”

“E. B. WOOD.

## REPLY.

" WINNIPEG, 19th July, 1881.

" DEAR SIR,—I beg to acknowledge the receipt of yours of the 17th instant, and in reply have to state,—

" In the early winter of 1880, Mr. H. J. Clarke openly stated, that the object of his then proposed trip to Ottawa, was to have the matter relating to Mr. Royal's connection with the Provencher Indian investigation brought before the House of Commons, and to have him prosecuted and expelled from the House. No one could speak more bitterly of another than he did of Mr. Royal.

" On his (Clarke's) arrival from Ottawa, in the winter, he asked me to sign the petition against you, which I declined doing. I suggested that he could get no member to present it. He answered: ' That is all right; Royal will do it, if I will not press the Provencher charges against him.'

" I did not regard his conversation as being in any way private, as it was said in such a way that any one paying any attention in the premises, could have heard what he said; and, besides, I had previously heard the same thing on the streets.

" I have the honor to be, Sir, your obedient servant,

" W. B. THIBAUDEAU.

" Hon. Chief Justice Wood."

Thus, it seems, these two worthies have now become friends—*pars nobile fratrum*! As indicating what sort of a man this Mr. Royal is, and with what he was charged, in respect of which this Mr. Clarke threatened to have him exposed, I give two articles from a sort of quasi private newspaper which Mr. Clarke published in Winnipeg, for a few months, in the winter of 1878-79—a file of which, I suppose, will be found in the Library. It is called *The Manitoba Gazette*.

" ROYAL & Co."

" The above named patent, outside combination is at present making most powerful efforts to secure the votes of the people at the approaching election. Royal is about among the French half-breeds, preaching to them the paramount necessity of supporting him, Joe, the Godly, if they don't want to see the downfall of the Catholic Church, the French language and the Catholic separate schools in Manitoba. Yes, says holy Joseph, if you want to uphold your holy church, your glorious French language and your Catholic schools, if you wish to defend yourselves against those who are trying to take from you all these things,—you must support the Royal Norquay government, and must elect men we recommend to you. Beware of any one or of any party that tries to divide by opposing us. Their object is to get us weakened, and then you will be blocked out.

" Now we are aware, that in this bigoted howl, Royal is assisted only by the clerical who are with him as their visible head, form the politico-religious ring which now controls the Province. It is useless to deny this, facts speak far louder than words. For the past eight years this man Royal has been pushed forward and sustained in power by those who know him well, who despise as a man, but who find in him just the tool they require. They know that during the last two years he has been detected in public frauds amounting away up among the tens of thousands of dollars. They know that he has been on the very point of exposure for a breach of trust of the most shameful kind, and was saved only by a silent settlement of the matter—an Archbishop indorsing promissory notes to a large amount to save his protegee from arrest at the suit of a Frenchman from Montana, who was deceived by the order of sanctity by which he found Royal surrounded, and thus fell a victim to his too great reliance on outward signs and appearances.

The Commission held here last Fall on the frauds in the Indian Bureau, disclosed a system of swindling of the most impudent and glaring kind, over \$42,000 were shown to have been stolen from the department, and in almost every case Joseph

Royal was the most prominent actor in the names of others, without their knowledge or consent. Royal made up false accounts to large amounts, signing with his own name as witness to their being genuine; got warrants and cheques from the Government in payment of such accounts payable to the order of the persons in whose names he swindled the department, and he deliberately endorsed the names on such cheques and got the proceeds from the bank here at Winnipeg. We will just give an example or two where the goods, to the amount of thousands of dollars, were found to have been sold to the Government by a man named Guy; his accounts, vouchers and receipts were produced, all duly signed with his name and certified by Joseph Royal as witness; cheques on the bank here payable to the order of Guy were presented at the bank endorsed with the name of Guy, and were duly paid. Now, before the Commissioners, Guy, under oath, swore that he never sold anything to the Government—that he never had any contract with or for the Government in his life, that he did not know how to write his name, that he never made out an account against the Government, never signed a receipt, never endorsed a cheque or received money on a cheque at the bank; that in fact he was simply a servant man in the employment of the Hon. Joseph Royal on small monthly wages. Now, every one of the papers produced, every receipt and cheque, had Guy's name forged on it by Joseph Royal, who received the money.

"The case of David Champagne is another proof of the honesty of Joseph Royal, the Godly. Here it is, Champagne and Poitras, with men and carts, were employed by the Indian Agent to take forty head of cattle to the Lake of the Woods. The amounts they were paid are: David Champagne \$72, Poitras \$40, 3 men, \$20 each, \$60, total \$175. When Champagne was summoned before the Commission what was his horror and astonishment to find that his name had been forged to a receipt for \$4011 and the forged name witnessed to by the Hon. Joseph Royal, the amount stolen on this little transaction being \$226.60. But more follows: there was another charge made against the Government for the same service by Guy-forged vouchers and receipts being produced, all certified or witnessed by the Hon. Joseph Royal, and \$400 more stolen from the Indian Department, for the bringing of the same 400 head of cattle to the Lake of the Woods. Thus \$627 were actually stolen in a most infamous manner.

"We might go on through whole columns to give the details of the thefts perpetrated by the ring of which Joseph Royal was the head and ring-leader. James Tremble's name, for instance, is forged to receipts for thousands of dollars which he never got and never heard of till he was on oath before the Commissioners and had the forged papers shown to him. Joseph Royal is the man who wrote his name and got the money.

"How then can the people, who pretend to be the directors and guides of other people's consciences, how can the independent people of this Province pretend to desire a proper and honest administration of public affairs, if they suffer, not Royal only, but any manner of party men who will support a Government with Royal at the head of it. Can pure water flow from a rotten source? Can a public man who is known to be guilty of gross dishonesty be trusted with public interests? Can men like Norquay, who allow themselves to be made tools of such men as Royal, be trusted with grave public duties? These are questions to be answered by the voters and electors.

(NOVEMBER 16TH, 1878.)

*Honorable Joseph Royal and his other self N. D. Gagnier & Co.*

"Our readers have been told a little, a very little indeed, of what might be told about the various offences that have been proved against the honorable and highly respected French Canadian gentleman, who now, as he has done for the past four years, rules this Province in the interest of himself and his Grace of St. Boniface.

"We now propose to submit, for the cool consideration of the electors of this country, a statement of facts, which will prove beyond any doubt that Joseph Royal, the Godly, has been as busy cheating the people of Manitoba as he has been cheating the Indians of the North-West, during the four past years. We will to-day let in the light on the Hon. Joseph Royal, as he plunders the treasury under the name of 'N. D. Gagnier & Co.' in the stationery business, and of a 'N. D. Gagnier & Co.' in the printing business; and, as our information is given by Mr. N. D. Gagnier himself, under oath in a declaration duly sworn before His Lordship Mr. Justice McKeagney, on the 19th day of August last, we defy any kind of contradiction of our statements. On the floor of the House last Session of the Local Legislature, during the debate on Supply, Mr. Martin, M.P. for Ste. Agathe, when the item of printing came up, charged the Hon. Joseph Royal, Attorney General, with being personally interested in *Le Metis* newspaper, and in the printing done in *Le Metis* newspaper, and in the printing done at the office of that paper, for the Government. Mr. Royal repudiated the statement, charging Mr. Martin with stating that which he knew to be untrue, and most positively declared that he, Royal, had no interest whatever, directly or indirectly, in the *Le Metis* nor in the printing done at that office, nor had any interest in any Government printing. This he said was only another of the many slanderous assertions by the member of St. Agathe to insult him, the Hon. Joseph Royal! In fact, the Hon. Mr. Royal was foaming with anger, deeply insulted, even by suspicion of his being capable of holding contracts with the Government of which he himself was a member, if not in fact, the whole Government. Now, at the time the Hon. Mr. Royal contradicted Mr. Martin's statement, he was contradicting the truth, and in doing so he was uttering falsehoods. He knew that for years he had been doing all the printing in French and a large part of the job printing in English for the Government of which he was a member. Here is a paragraph from N. D. Gagnier's statement under oath, on that subject: '4th. That on or about the 24th day of March, 1877, the said Hon. Joseph Royal and myself under the co-partnership name of 'N. D. Gagnier & Co.,' entered into a contract with the Government of Manitoba of which the said Hon. Joseph Royal was then and is still a member for departmental printing, advertising in *Le Metis*, and for book and job work, which contract is still in full force; and tenders for which contract were prepared by the said Hon. Joseph Royal in his own handwriting addressed to Alexander Begg, Queen's Printer. Now where is the Hon. Mr. Royal's word of honor? As a member of the House he was acting the part of a cheat of the very worst kind; as a printer he charged a hundred per cent. over the real value of the work; as a member of the Government he was also a member of the board of audit, passed his own printing accounts, got his cheques payable to 'N. D. Gagnier & Co.,' or order, from his friend the Premier R. A. Davis, and after endorsing 'N. D. Gagnier and Co.'s' name on the cheques, got the money at the Merchant's Bank. Here is a sample of the accounts that were thus taken from the Province of Manitoba by the Hon. Joseph Royal under the name of 'N. D. Gagnier & Co.'

1876, Subscription for <i>Le Metis</i> .....	\$ 7 50
Stationery for office. ....	174 00
do .....	600 00
Printing blanks.....	422 00
Printing.....	7,775 60
1877, Subscription for <i>Le Metis</i> .....	7 50
Stationery for office.....	714 00
do .....	1,102 80
Printing.....	4,329 71
Paper.....	61 00
	<hr/>
	\$15,208 61

"We can only find room in the present issue for one example of the Hon. Mr. Royal's stealing under the name of 'N. D. Gagnier' with Co. left out. On the 2nd

of February last, the Government of Manitoba was charged for stationery by Hon. Mr. Royal, alias 'N. D. Gagnier' \$14.00, \$70.00, among other items of the account is this one:—

4 doz. Roger's knives @ \$20.00..... \$85 00

"Now, how did two dozen members come to require four dozen knives to begin with; and how is it that \$20.00 a doz. is charged, when the same knife can be bought by retail for 80 cents? The answer to the conundrum is this: Joseph Rymal first cheated the Government of which he was a member, out of a couple of dozen of knives, on the count only, and then he cheated the Province out of at least \$40.00 on the penknives alone, for one session. We have the originals of Mr. Royal's printing accounts which our friends and the public can examine."

Here we have the character of this Mr. Royal given by this Mr. Clarke. I do not pretend to endorse the charges; but I strongly suspect that the developments, in respect of Mr. Royal, in the Indian—Provencher—investigation, were most damaging. I have no doubt he was conscious of this, and was exceedingly anxious to avoid the exposure; and gladly availed himself of the proposition made to him by Mr. Clarke to present Clarke's petition to the House of Commons, to avoid, as he supposed, Mr. Clarke getting some member to move for the papers, disclosing his alleged frauds and crimes in the Indian—Provencher—commission.

Vain hope! for I see by the Votes and Proceedings of the House of Commons, that Mr. Charlton, a few days after, put a notice on the paper for these dreaded papers, but which was too late to be reached last Session, but will doubtless be renewed next Session; and I hope it may not be so, but I greatly fear that the revelations of these papers will fasten on Mr. Royal grave irregularities, and convict him of peculation and fraud on the Crown.

With this, I am well aware the accusations against me, where they consist of specific acts, have nothing to do; but where they are general in their nature and are not susceptible of disproof by evidence of fact, but rest on the affirmation of the petitioners and the member who presented the petition to the House on the one hand, and on my denial on the other hand, it is important to know thoroughly the character of the petitioners and of the member of the House who was induced to present such a petition, and the motives he had in view and the reasons operating on his mind leading and impelling to such an extraordinary act. In the light of what has been said, I think the inference may be fairly drawn that it is at least more than doubtful if Mr. Royal was moved in this matter by a sense of right, truth or justice.

By these men and by these means is my character attacked and my reputation sought to be taken away with impunity; and, in any event, I must, it seems, submit in silence to the irreparable wrong.

From the first day I assumed my judicial duties to this day it so happens that I have not tried and disposed of a single case involving any dispute or controversy, but the evidence has been carefully taken down in writing and the judgment or decision reduced to writing at the time of giving the judgment, with all the reasons *pro* and *contra* with authorities cited; nor have I given a single judgment in term on any disputed matter but I have reduced it to writing, going into and exhausting the subject. These decisions and judgments are filed away in the Clerk's office, and are accessible to the whole profession at pleasure. Nay, even in the County Court, which is analagous to the Division Court of Ontario, but has jurisdiction to \$100 in actions *ex delicto* and to \$250 in actions *ex contractu*, so careful have I been that the reasons and grounds of all my decisions should "be known and read of all men," that I have, in every case tried before me in which there was any real controversy in law or fact, taken down the evidence in writing in full and given judgments in writing, which are on file in Clerk's offices. The labor has been immense, yet it has been done by me, and I think well done, in accordance with justice according to law. In taking this course I had no idea of such an attack as this, but now, providentially, I can point to written evidence I written judgements in every case I have tried and decided, or

in which I have given judgment, since I have been in Manitoba; and what is more I have the serene satisfaction of believing—I had almost said of knowing—that they are all right. At all events, there they are, and they speak for themselves. I am willing to be judged by them. *Scripta manent.*

Judges possess no infallibility. That they are liable to err is inseparable from the infirmity of human nature. In many cases, however, in which inferior Courts are overruled by superior Courts of review, we cannot say as of a mathematical proposition, one is truth, another is error; all that we can say is that there is an honest difference of opinion, and that the decision of the Court of review is to be decisive, not because it is a demonstration of the truth, but because it has constitutional or legislative authority. The numerous cases in appeal formerly to the Exchequer Chamber, now to the Court of Appeal under the Judicature Act, to the Judicial Committee of the Privy Council, to the House of Lords in England, and to the Supreme Court in Canada, and the result of these several appeals, shows the diversity of opinion which prevails among the most learned and gifted men in the world. I do not profess, with all the care, learning and assiduity I can command, to be exempt from the infirmity of liability to error in every one of the thousands of contested cases that I have decided for now upwards of the seven years that I have been Chief Justice of Manitoba; but I do profess that I have striven most anxiously that all of my decisions should be right, not according to my notions of equity and right but according to equity and right as laid down and settled in decisions and judgment made and delivered in courts of authority by the great oracles of the law, and believe they are.

It seems superfluous to mention a self-evident proposition, that in every contested action at law or suit in equity, one or the other of the parties must fail. For the sake of judges, I have sometimes felt as if I could wish this was not the ordination of nature. There seems no way out of the difficulty of the necessity of a contested cause being decided for the plaintiff or for the defendant, unless the middle course of Petrus Stuyvosant, the Dutch Governor, be adopted, of dismissing the case against both parties and ordering the constable to pay the costs. This necessity of deciding the case in favor of one or the other party, or against one or the other party, has at all times subjected courts and judges, more or less to, sometimes, intemperate criticism both on the part of lawyers and clients. This intemperance of criticism in a new state of society where the judge is, from circumstances which surround him necessarily brought into more immediate converse and contact with the people, is far more liable to be indulged in to excess than in older and more settled communities where the judge is more removed from the multitude, and where the expression of the sentiments and opinions of men are more restrained by an enlightened conversation and by a proper sense of responsibility.

I do not wish to disguise the fact that very often both the unsuccessful party and his counsel have "in talk outside"—as is almost always in all countries done spoken complainingly and sometimes censoriously at particular decisions of the courts. I do not know it for a fact, but I think it not all unlikely, such has been done in this Province. This is a practice very common, I believe, both in Canada and in England, immediately after a decision, arising from disappointment at defeat but reflection and reason soon displace and remove it. I, like all other judges, suppose, have not been, nor shall ever be, exempt from this innocent and harmless criticism. It is a relief to the disappointed; it is no injury to the judge; it is a sort of safety valve to pent up feelings of irritation.

I have made these additional remarks to show how any one may, in a community like that we have here, gather up rumors of dissatisfaction at the decision of the judge or of the court. The decisions referred to in the course of the observations on several paragraphs of Mr. Clarke's petition, will, to a surprising extent, illustrate this point.

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