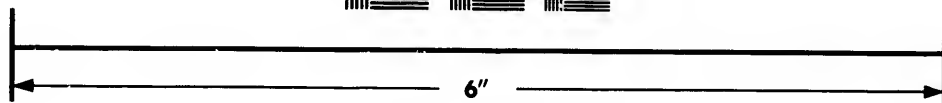
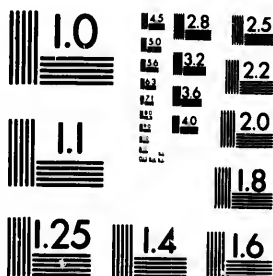


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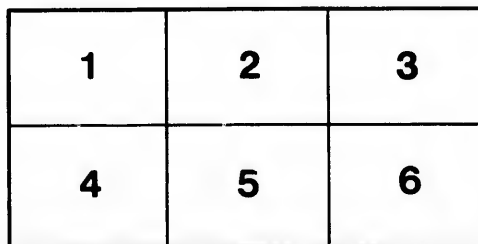
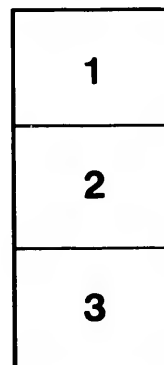
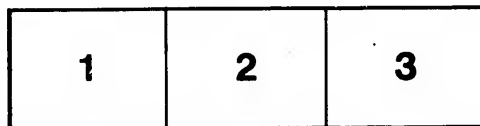
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C A S E

OF

BAPTISTE CADIEN,

FOR

MURDER ;

**TRIED AT THREE RIVERS, IN THE MARCH
SESSION 1838.**

THREE RIVERS :

PRINTED AND PUBLISHED BY G. STOBBS,

1838.

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CASE OF CADIEN.



A True Bill was found at Three Rivers at the September Session in 1837, of the Court of King's Bench, against Baptiste Cadien for having in December 1835, at Lac Puant in the Indian Territory, murdered an Indian to the Jurors unknown.

A plea to the Jurisdiction was put in, in the month of March ensuing, denying either Cadien or the person killed to be British Subjects, or that the crime of which Cadien was accused, if committed at all, had been committed within the territories of Great Britain.

This plea was overruled by the Court, on the ground that the prisoner would have the benefit of the matters therein pleaded on the trial.

The only witness adduced to prove the alleged murder was one Baptiste Jourdain, his testimony was as follows :—

“ In December 1835, Mr. Mowatt, a clerk of the Hudson's Bay Company, sent a party of six men from Fort Normand to a store of fish, called in the country *cache de poisson*, to bring fish to the fort. The party consisted of Cadien, one

Lagraisse, two Indians of the dog-rib nation, one young Indian of the hare tribe, and myself.

“ Having heard Cadien say that he intended to kill some Hare Indians, I informed Mr. Mowatt thereof. On our way, Cadien attempted every evening to kill the young Hare Indian. When we arrived near Lake Puant, Lagraisse said “this day will I shed dog’s blood on the snow.” Cadien said the same thing. I wanted to go straight to the *cache*, but Cadien took another road leading to the Indian lodges. Lagraisse agreed to it, and I went with them. We came to the Indian lodges on the eve of Christmas Day in the evening. There were at the lodges six men of the Hare Tribe, three young women, two old women, and I saw five children. When we arrived, the Indian who had the woman that had been carried off by Cadien, had his gun by him. I did not know what to think. We were well received ; they gave us meat for ourselves and fish for our dogs. I went to bed, and they afterwards spoke together, but I do not understand the language. The next morning Cadien said that he would kill the Indians, but I said that it was not a day for that, that it was a great day. They fed us. On the day after Christmas in the morning, Cadien went for fire to another lodge. I harnessed the dogs and we were ready to depart, when Cadien came and said to me, “I will pay the Indians: I owe them something.” He called them three times. I saw one who came with a piece of cloth to receive payment,

He held the cloth spread out, and stooped before Cadien, as if to receive something. Cadien also stooped, as if looking for some articles in his sleigh; he drew a pistol from within his coat and shot the Indian in the left side of the head who fell dead; and Cadien then cried out to us, "*defendez-vous.*" Then Lagraille shot the man who had the woman that had been carried off by Cadien, and he also fell. I went towards the lodge to make the young Hare Indian run away. I discharged my gun at random and ran after the young man to make him fly and escape. I fell and broke my gun. The young Indian returned to the lodge, took a pair of snow shoes and ran off, while Lagraille pursued him and strove to fire at him, but his gun repeatedly missed fire.

"There were six killed, amongst whom one woman, and another woman was wounded. Then Cadien, Lagraille, the two dog-ribo Indians, one of whom was brother of the woman that had been carried off by Cadien, four in all, went together. Cadien returned in less than half an hour, and said to me "you have not helped us: find out where the Indians are concealed and we will kill them." I went into the woods and fell into the track of the fugitives, and I did all I could to obliterate their track with my snow shoes. I came to an old woman and four children, and concealed one under the snow. I named Cadien to them to make them understand their danger. I returned to the camp,

where I found Cadien loading a gun which he had found there. He went out instantly, telling me he had found out the track of the Indians. Some moments later I heard the report of a gun, and I saw Cadien in that direction about one arpent and a half. I saw him through the branches. I went to the spot and found the young Indian killed. I then returned to the camp with Cadien. Lagraille and the two dog-ribbed Indians also returned, and soon after came Cadien. Then the four commenced burning the lodges, and we departed immediately, five in number, namely, Cadien, Lagraille, the two dog-rib Indians, and myself, and we went towards the *cache*. Cadien had directed the woman to go in that direction and wait for us, and we found her at the distance of thirty arpents from the lodges. She came on with Cadien. We spent five days in going from the lodges to the *cache*. On the first day we only crossed Lake Puant and encamped on the other side of it. We encamped every night; at the first encampment they had a dance. While dancing, Cadien asked Lagraille how many he had killed, who answered that he had killed five: Cadien said he also had killed five: Cadien's brother-in-law (the woman's brother) said he had killed two; and I, to soothe Cadien, said I had killed one. Cadien took back the woman as his wife, and told us she was the same whom he had twice carried off. We came to the *cache*, but took no fish as it had been de-

stroyed by vermin. Then the two Indians left us, and we were joined by two others, one of whom was another brother of the woman. Cadien had said that he would kill Mr. Mowatt, and I went on before the party to warn him, and informed him in part of what had happened. I told him of the destruction of the Indians. Mr. Mowatt hearing this, came and stood by me while the party entered the Fort. There was one Canadian in Fort Normand. Cadien, on entering the Fort, went to his own house with the woman.

Cross examined.

"The first Indian killed by Cadien was not armed. Lake Puant is near M'Kenzie's River in the Indian country. Lagrassie had no pistol: he and the Indians had guns.

"Lake Puant lies west of the Rocky Mountains.

"Cadien spoke French when he threatened to kill the young Hare Indian. We were seven days in reaching the lodges where the Indians were killed. The two Indians (dog-rib), that were with us did not understand French, nor did they that were killed. Cadien told us every evening that he was about to kill the young Hare Indian.

"My gun was loaded with powder only: this is usually the case, as we know not what animal we may find: bullet or shot is used as occasion requires.

" When Cadien and Lagraille spoke of spilling dog's blood, they spoke French. I did not know what they intended to do.

" When we came to the lodges I went to bed without any uneasiness. I slept well. I did not hear them speak. I awoke once or twice.

" There were six Indians in the camp. I saw one gun. I had never seen these Indians before, except the old man that was first killed, and whom the Bourgeois usually called *le fou*. I saw a gun in the hands of Lamousse, the woman's husband who was killed by Lagraille. After the massacre of the Indians, Cadien took a gun, Lagraille one, and I also one, that had belonged to those Indians.

" None of the Indians defended themselves. When Cadien spoke of killing the young Indian, he said that he and the young man had spoken ill of him. The young Indian was a full grown man.

" I offered no resistance to Cadien and Lagraille. I did not suspect any such thing. I had for a long time prevented them from killing the young Indian. This young man was at the door of the lodge when Cadien killed the first Indian. I discharged my gun after Lagraille had fired his. Lagraille was behind me, and the Indian killed by Cadien was before me. There was no person in the lodge.

" When Cadien boasted of having killed the Indian, he said they wanted to kill all the white men. Cadien said he had twice taken the woman from Lamousse when the latter was hunt-

ing. Cadien's mother is a dog-rib squaw. La-graisse while going to the lodge repeated frequently that those Indians intended to kill us. Cadien was made a prisoner upwards of a month after the massacre. I never heard of an Indian having been made a prisoner for killing another. The gentlemen of the north (*Bourgeois du Nord*) have sent me hither. I have been informed that government paid my board here.

"The gun I took was loaded. I have seen the prisoner's mother. He told me that his father was a Canadian. The prisoner was an interpreter at Fort Normand."

Cadien on this evidence was found guilty, and was condemned "to be taken, &c. and on the sixteenth of March instant he be hanged by the neck until his body be dead, and it was further ordered that execution be stayed to the twentieth day of April next."

The following Petition, signed by a great number of the inhabitants of Three Rivers, was on the second of April presented to His Excellency Sir John Colborne, Administrator of the Government :—

TO HIS EXCELLENCY SIR JOHN COLBORNE;
&c., &c., &c.

The humble petition of the undersigned inhabitants of the town of Three Rivers, respectfully represents :

That Baptiste Cadien was tried before the Court of King's Bench for the District of Three Rivers, on the 14th instant, for having, feloniously, killed and murdered, in the month of December, 1835, at the place called Lac Puant in the Indian Territory, an Indian man to the jurors unknown, and was, thereof, found guilty and was, by the said Court, sentenced to be executed on the 16th instant; the execution of which sentence was, by the said Court, respite to the 20th day of April next.

That your petitioners take leave, respectfully, to submit to Your Excellency that the case of the said Baptiste Cadien is not an ordinary one, arising in a state of civilized society, and that the crime of which he has been found guilty, if committed at all, was not committed by a person enjoying the protection of the laws and, therefore, bound to submit to them: Cadien is the child of nature and, as, your petitioners respectfully think, acted from the impulse of the laws of nature: The savage cannot appeal for protection to man and to Courts established by man: He is his own protection: To his own right arm is he forced to appeal when he is injured or is threatened to be injured. Your petitioners are aware that the Imperial Parliament of England has passed a law giving to the Courts of the Province of Lower Canada jurisdiction over crimes committed within the Indian Territory. But your petitioners beg to submit to Your Excellency's consideration, whether that law can, or was intended to, affect any but British subjects, or to punish any crimes but those committed within the territory of Great Britain. Cadien, your petitioners beg leave to represent, is not a British subject, nor was the crime, if committed at all, committed within the territory of Great Britain: It is, in the humble opinion of your petitioners, a grave question whether the execution of the sentence pronounced against Cadien would not amount to the commission of the very crime of which it is pretended he is guilty.

Your petitioners, however, even on the supposition that the Court of King's Bench for the District of Three Rivers had jurisdiction over Cadien, beg leave, particularly, to call the attention of Your Excellency to the testimony upon which the

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unhappy man was convicted. To convict a man of murder your petitioners are aware that the law of England establishes that the testimony of one witness may suffice : But it qualifies, in some measure, the apparent, and, perhaps, real hardship of that enactment, by requiring from that sole witness a testimony unimpeached and unimpeachable : That witness must be disinterested, unbiassed : He must not act from the impulsion either of fear or of favour. Your petitioners earnestly call the attention of Your Excellency to the fact, of the truth of which your petitioners appeal, confidently, to the Honorable Judges before whom the said Cadien was tried, that the testimony of Baptiste Jourdain, upon whose sole evidence the said Cadien was found guilty, does not unite the essential qualities above mentioned : Your petitioners will go further, and they maintain that it does not possess a single one of those qualities. Your petitioners also refer to the affidavit of Joseph Morin, hereunto annexed, as an additional proof of the truth of the allegations of this petition.

Your petitioners, while adverting to the affidavit of the said Joseph Morin, call the attention of Your Excellency to a fact established by the said affidavit and which, alone, in your petitioners humble opinion, suffices to render null the verdict against Cadien ; that the said Jourdain is not a christian nor was ever baptized, though, it appears by the affidavit of the Clerk of the Crown for the District of Three Rivers hereunto also annexed, that the said Jourdain was sworn on the Holy Evangelists, in the usual form made use of to swear, as witnesses, individuals believing in the truths of the Gospel.

Your petitioners in calling the attention of Your Excellency to the fact that the said Cadien had for prosecutors the rich and powerful Company, known by the name of the Honorable Hudson's Bay Company, will content themselves by remarking to Your Excellency, that the place of the trial of Cadien was chosen by them ; that the witnesses were also chosen by the said Company, and that the said Cadien was altogether incapacitated from having any witnesses to establish his defence. His unprotected state will no doubt be weighed by Your Excellency in the balance of justice ; in that balance in which

the poor and the unprotected savage weighs as much as the rich and the powerful Company who are his prosecutors.

Your petitioners in closing this petition, most respectfully repeat that obedience to the law is grounded upon the protection of the law : That the one is not to be expected where the other is not to be found : Cadien was unprotected by the laws of man : Cadien, therefore, by the immutable rule of nature and of reason, owed, in the humble opinion of your petitioners, no obedience to the laws of man : His laws were the laws of nature : Those unsophisticated laws told him, in a manner not to be misunderstood, that it was his right to take the life of him who wished and who intended to take his life.

Your petitioners therefore humbly request Your Excellency, in the exercise of the most precious prerogative of the Crown, to be graciously pleased to grant Her Majesty's pardon to the said Baptiste Cadien, and your petitioners, as in duty bound, will ever pray.

Dated Three Rivers, the 30th March, 1838.

Affidavit of Joseph Morin, referred to in the foregoing petition :

Joseph Morin, of the Parish of Maskinongé, in the District of Three Rivers, landholder and *voyageur*, after being duly sworn doth depose and say, that he has been in the service of the Honorable Hudson's Bay Company for the last thirteen years, in the capacity of guide and agent. That this deposant being in the month of June last at Pike River, received orders from Mr. Simpson, Governor of the said Company, to conduct Baptiste Cadien, now lying under sentence of death for murder, from the said Pike River to the City of Montreal, and that, in consequence, this deposant did conduct the said Cadien to the said City of Montreal, where he arrived about the 8th of September last. That during the whole of the voyage, the said deposant was accompanied by Baptiste Jourdain who was examined as a witness on the trial of the said Cadien, which took place at the Town of Three Rivers on the 14th instant.

Sir,
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That during the said voyage this deposant had, frequently, conversations with the said Jourdain on the subject of the said Cadien and of the crime of which he was accused. That the said Jourdain told this deposant that the two Indians who were with the said Cadien, the man of the name of Lagraisse and the said Jourdain, for about eight days before the commission of the crime of which the said Cadien was accused, told, (*ont averti,*) the said Cadien, several times, during the said eight days, that about seven or eight Indians of the Hare tribe, who were then at a small distance, intended to kill the said Cadien and that the said two Indians, repeatedly, told the said Cadien to be very much on his guard, (*d'être bien sur ses gardes.*) That the said Jourdain told this deposant that though he did not understand the language of the said two Indians, he perfectly understood what they were saying from the signs they made. That the said Jourdain also told this deposant, both before and after the trial, that he, the said Jourdain, was not a Christian and has never been baptized.

And this deposant further saith, that during the said journey, this deposant often had opportunities to remark the mildness and harmlessness of the character of the said Cadien, and that the said Jourdain, when speaking to this deposant of the said Cadien, manifested hatred and a grudge towards him, (*marquoit de la haine et de la rancune pour lui ;*) and this deposant further saith not and has signed :

Signed, JOSEPH MORIN.

Sworn before me, at
Three Rivers, this 30th March, 1838. }

Signed, VALLIERES DE ST. REAL,
Resident Judge.

Answer to the foregoing Petition.

Government House,
Montreal, 11th April, 1838.

Sir,—The Administrator of the Government having taken into his serious consideration the Petition signed by you and

several other inhabitants of the Town of Three Rivers, praying that His Excellency would be pleased to grant Her Majesty's pardon to Baptiste Cadien who was convicted of murder at the late Criminal Term of the Court of King's Bench at Three Rivers, and whose execution stands respited to the 20th instant; also the report of the Chief Justice of Montreal who presided at the trial: The observations of the Attorney General on the petition in favour of Cadien and a communication of Mr. Justice Vallieres on the same subject, together with a further report from Chief Justice Reid; I am commanded to acquaint you, that as it appears from the whole of these documents that the trial of Cadien was conducted with every consideration to his unfortunate situation and that the Jury consisted of Canadians of respectable character who, had any favorable circumstances appeared, would assuredly, have leant to the side of mercy, His Excellency laments exceedingly that it is not a case in which the Executive Government can interfere.

I have, &c.,
Signed, WM. ROWAN,
Civil Secretary.

The Rev. Thos. Cooke, Vic. Gen., Three Rivers.

The communication from Mr. Justice Vallieres, referred to in the foregoing letter, was the following, which was obtained from the person employed by Mr. Justice Vallières in copying it:

Three Rivers, 6th April, 1838.

Sir,—As one of the Judges present at the trial of Baptiste Cadien whose execution for murder stands respited to the 20th instant, I cannot forbear from making known to His Excellency, the Administrator of the Government, some considerations which create a doubt in my mind whether the prisoner ought to be executed.

It does not appear to me to have been satisfactorily proved, that the offence was committed within the dominions of Great Britain, or that Cadien is a subject of the British Crown. As it is the duty of every Sovereign to protect his subjects, so it is his right to punish them, in whatsoever place they may live or offend, but no Government has ever assumed the right to pu-

nish a foreigner for an offence committed in a foreign country. If therefore Cadien be not a subject of our Sovereign, he cannot be punished by the Queen's authority, for an offence committed without the pale of Her Majesty's dominions.

Cadien was convicted on the evidence of one witness, (Jourdain), whose testimony does not appear to me as satisfactory as it ought to be in a case of life and death. Jourdain was sworn upon the Gospel, yet it does not appear that he is a christian. His account has some strange features ; I will use a translation of his own words. (See page 3).

This is the whole of Jourdain's evidence upon which I beg leave to make the following observations :

1. Jourdain, according to his own statement, knew the atrocious design of Cadien and Lagraille.—Why, then, did he not warn the intended victims of their danger ? If Jourdain and the young Hare Indian had joined the six Indians in the lodges, they would have stood eight against four : Why was not this done or attempted to be done ?

If Jourdain was adverse to the murder, it is difficult to explain his conduct. If he consented to the murder, it is equally difficult to give the least credit to his evidence. 2. Jourdain says that Cadien attempted, every evening, to kill the young Hare Indian while the party was proceeding to the lodges. He says that even before his departure from Fort Normand, Cadien said he would kill the Hare Indian : He says in his evidence in chief that, on the night of his arrival at the lodges, he went to bed and afterwards heard Cadien and the Indians speaking. Yet on his cross examination he says he heard no conversation after going to bed, that he went to bed without any uneasiness : Nay, when asked why he had not resisted Cadien and Lagraille, he affirms that he had not suspected such a thing as the murder of the Hare Indians, which murder he had nevertheless prevented the day before if we believe him. 3. Jourdain might be convicted of murder by the evidence of any one of the persons to whom, at the evening dance near Lake Puant, he boasted of having killed one of the Hare Indians. 4. It appears from Jourdain's evidence that Lake Puant lies west of the Rocky Mountains. Now the countries, west of the Rocky Mountains, are left open to American as well as to British Traders, as appears by the Imperial Statute.

1 and 2 Geo. IV, and it has not been proved that Lake Puant is part of the territories of Great Britain. It is proved to be without the limits of the Hudson's Bay Territory and it does not appear that the authority of British laws or government ever extended to Lake Puant or its immediate neighbourhood.

It has, indeed, been proved that Cadien was the hired interpreter of the Hudson's Bay Company at Fort Normand, but assuming that he was born of a foreign woman in a foreign country, it cannot be pretended that his being the hired servant of British merchants made him a British subject: A Chinese employed as interpreter or servant to the British merchants at Canton would still be a subject of the Celestial, not of the British Empire.

In, respectfully, submitting my doubts to His Excellency Sir John Colborne, the principal object I have in view is to acquit my own conscience, and I am not without hope that my observations may be of some use to the Representative of my Sovereign in the arduous task of administering justice in mercy.

I have &c.,

Signed, VALLIERES DE ST. REAL,
Resident Judge.

Colonel Rowan, Civil Secretary,
Montreal.

Letter of Catholic Clergy to His Excellency asking for a further respite:

Three Rivers, 13th April, 1838.

Sir,—We have learnt, with pain, from your letter to one of us, the Reverend Thomas Cooke of the 11th instant, in answer to the petition signed by us and several of the inhabitants of Three Rivers, that His Excellency the administrator of the Government, has come to the conclusion that the case of Baptiste Cadien, now lying under sentence of death for murder, is not one in which the Executive Government can interfere.

We had hoped that the opinion of the two Honorable Judges before whom and the Honorable the Chief Justice of Montreal, the unfortunate man was tried, that serious doubts

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existed as to the jurisdiction of the Court and the sufficiency and credibility of the evidence of the sole witness upon whose testimony Cadien was convicted, would have given weight to our petition; from the well known doctrine of the law of England that any, the least doubt, in a case of life and death, should have its full weight in favor of the accused.

We take, now, the liberty, once more, humbly, to address His Excellency, and to request that, as the unfortunate Cadien is now no longer to expect mercy from man, he may have a respite granted to him to prepare him to hope for mercy from God. We beg His Excellency to take into consideration the ignorance of the truths of the gospel in which Cadien has been brought up and lived, and though his spiritual advisers have done their utmost to instruct him therein, that it would require a few weeks more to prepare him for the awful passage to eternity. Hoping and earnestly trusting that His Excellency may take this, our request, into his favorable consideration and grant a further respite, we have the honor to subscribe ourselves, with every degree of respect and consideration,

Sir, Your most obedient humble servants,
Signed, THOS. COOKE, G. Vicar.
JOYER, Pretre.
HARPER, Pretre.
FORTIN, Pretre.

Colonel Rowan, Civil Secretary,
Montreal,

To this letter, no answer was received, but Cadien was shortly after respited to Friday the fourth day of May, 1838. Whereupon, the Advocates of Cadien addressed the following petition to His Excellency Sir John Colborne:

TO HIS EXCELLENCY SIR JOHN COLBORNE,
&c. &c. &c.

May it please your Excellency,

The humble Petition of the undersigned, Advocates of the town of Three Rivers, humbly represents:—

That they were, in the month of September last, by the Court of King's Bench for the District of Three Rivers, ap-

pointed to act as Counsel for Baptiste Cadien, against whom an Indictment for murder had been found.

That the trial of the said Baptiste Cadien took place on the fourteenth day of March last, and that the said Baptiste Cadien, was found guilty on the sole testimony of one Baptiste Jourdain.

That your Petitioners were not aware at the trial of the said Cadien, that the said Jourdain was not a Christian, and had never been baptized; that that fact was not elicited at the said trial, and that the said Jourdain was sworn on the Holy Evangelists, in the usual form made use of to swear witnesses believing in the truths of the Gospel.

That the fact of Jourdain's not being a Christian was established by the affidavit of Joseph Morin, of the 30th March last, annexed to a petition to your Excellency dated the 31st March last, signed by divers of the inhabitants of the said town of Three Rivers, praying your Excellency, graciously, to grant Her Majesty's pardon to the said Baptiste Cadien.

Your Petitioners in stating, simply, that there are doubts whether the crime alledged to have been committed by Cadien was committed within the territories of Great Britain, whether Cadien is himself a British subject, and whether Jourdain's testimony is sufficient and creditable, have every reason to believe, from what occurred at the trial, that their view of the case would be supported by the opinion of the Resident Judge of this District and Mr. Justice Bedard who sat on that occasion, with the Chief Justice of Montreal.

Your Petitioners also think it their duty to inform your Excellency, that the Honorable the Chief Justice of Montreal, at the time of passing sentence of death upon the said Cadien, informed your Petitioners, in open Court, that the case of the said Cadien should be favorably represented to your Excellency, and that the said Chief Justice of Montreal, as your Petitioners have been credibly informed, privately intimated to the Sheriff of the District of Three Rivers, after the trial was over, that, in his opinion, the said Baptiste Cadien would not be executed; and that the Court before whom he had been tried would recommend the said Cadien to the favourable consideration of the Executive Government.

Your Petitioners would conceive themselves to be wanting in their duty to their unfortunate client, did they not intimate

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to your Excellency that they have too just grounds for fearing that the Honorable the Chief Justice of Montreal has not represented to your Excellency, in conformity to his promise and, as your Petitioners beg leave to add as their opinion, his duty, the case of the said Baptiste Cadien to the favourable consideration of your Excellency ; but on the contrary, that he has done exactly the reverse, notwithstanding his promise which he made as President, and, consequently, in the name of the whole Court ; and your Petitioners find themselves obliged to come to the painful conclusion forced on them by too evident facts, that the hopes, given by the said Chief Justice to your Petitioners and the humane part of the public, have had the effect of inducing them to trust to those hopes, and thereby relax in those exertions which, under the circumstances of a case like this, could hardly be unsuccessful, on an application made to the representative of the Sovereign of Great Britain, for the pardon of a man found guilty of a crime of which, your Petitioners are convinced it would be found on reference to the Judges who sat on the trial, that doubts do exist as to their jurisdiction, and of the sufficiency and credibility of the sole witness, upon whose uncorroborated testimony, the accused has been found guilty. Your Petitioners may also add, that the application was the more likely to have attention paid to it from the circumstance that that sole witness has not only contradicted himself, but that it appears from his own shewing, he could have been tried as a participator in the crime of which Cadien is accused.

Your Petitioners are emboldened, by a sense of duty, to entreat your Excellency to take into consideration the fact that the Governor General, named by our gracious Sovereign, is expected to arrive in a very few days after the fourth of May next, the day fixed by the short respite granted by your Excellency, for the execution of Cadien ; and your Petitioners entreat your Excellency to consider whether it is necessary that your Excellency should consult any other than your own conscience and your own benevolent feelings, as to the justice and expediency of your Excellency's granting the humble prayer of your Petitioners, that your Excellency may be pleased further to respite the execution of the said Baptiste Cadien until the arrival of the Governor General.

Your Petitioners, in urging, humbly and respectfully, this

their request, entreat your Excellency to consider the humane doctrine of the law of England, that it is better that many guilty persons should escape the punishment due to their crimes, than that one innocent person should perish : and our client, may it please your Excellency, is innocent until he is legally convicted. Is it necessary for us to ask your Excellency is Cadien legally convicted, if two, of the three Honorable Judges who tried him, shall tell your Excellency that they have serious doubts on the subject ?

Your Petitioners, in closing this Petition, beg your Excellency to consider that the warmth which your Petitioners may seem to feel in favor of their client is an honest one, that it is called for by the circumstances in which that unfortunate and unprotected man is placed, whose life, as your Petitioners fear, is about to be unlawfully sacrificed, at the instance of the powerful company who ask it of the hands of your Excellency : and whatever the result of this Petition may be, your Petitioners can confidently say that they have to the utmost of their feeble power, acquitted themselves of the debt they owed to their client, to humanity, and to their consciences.

Wherefore your Petitioners humbly pray, that the execution of the said Baptiste Cadien may, by your Excellency, be graciously respited to the first Friday in June next, and your Petitioners, as in duty bound will ever pray.

Three Rivers, the 18th April 1838.

Signed,

EDW. BARNARD.

H. JUDAH.

No answer having been received to this Petition ; and as the time approached of putting, unlawfully, as it was conceived, in execution the sentence against Cadien, it was thought adviseable to write the following letters :—

Sir,

Three Rivers, 26th April 1838.

As the Advocate of Baptiste Cadien, now lying under sentence of death for murder, I beg to apprise you for the information of His Excellency Sir John Colborne, that, it is apprehended the sentence is a nullity and a blank piece of paper, inasmuch as it is not conformable to the provisions of the Statute 25 Geo. II. ch. 37.

I beg to refer to Russell on Crimes, No. 479. Foster 107. 1 East P. C. ch. 5, s. 136, p. 374; and the case of Rex v Fletcher, Trin. T. 1803. Russell and Ryan, 58. which was referred to all the Judges.

I should suppose that, as a matter of course, notice will be taken of the present letter. I have, &c.

Signed, EDW. BARNARD.

Colonel Rowan, Civil Secretary, Montreal.

ANSWER.

Government House, Montreal, 1st May 1838.

Sir,

I am directed to acquaint you that your communication of the 26th ultimo, has been duly received and laid before His Excellency, the Administrator of the Government.

I have, &c.

Signed, W. ROWAN, Civil Sec.

Edward Barnard, Esq. Advocate,
Three Rivers.

Three Rivers, 26th April 1838.

Sir,—A friend of yours, whose name I am not authorized to give, has directed me to request you to obtain from the Executive Government communication of all the documents which have passed to and from the Government, on the subject of one Cadien, whose life, it is to be feared, is to be unlawfully sacrificed on Friday, the fourth day of May next.

It remains to be seen whether your interference may not be, under Divine Providence, a means of persuading the Executive against taking upon itself so fearful a responsibility.

I have, &c.

EDW. BARNARD.

The Hon. James Cuthbert, Montreal.

ANSWER.

Special Council Chamber, Montreal,

1 o'Clock, P. M. 28th April.

Sir, In answer to yours of the 26th instant, I beg to say, that I have had some communication on the subject of your unfortunate client, and I have reason to believe that, in consequence of some favorable interpretation or doubt on the part of high judicial authority, the prisoner may be farther

reprieved preparatory to the adoption of commuted punishment.

You will please to consider this communication as altogether unconnected with any official permission to make it.

In haste, I am Sir, truly yours, &c.

Signed,

JAMES CUTHBERT.

E. Barnard, Esq. Advocate,
Three Rivers.

Three Rivers, 26th April 1838.

Sir,—In taking the liberty to address you on the subject of the following letter, I think I ought to plead no other apology than that of not having done so sooner. Though I have waited till the very last moment, there is still time, though there is but just time enough, for me to expect that there is one man in the Province whose commanding talents and standing can prevent the Executive Government from rendering itself guilty of taking away, unlawfully, the life of an unfortunate and unprotected individual. A circumstance which emboldens me to hope that the appeal I make to *you* may and will meet with that attention which has been refused me where I had a *right* to expect it, is, that the case of the individual, in whose behalf I am now addressing you, arrested, to a considerable degree the attention, and, I may add, aroused the indignation of Mr. Andrew Stuart, who happened to be here last September; and that gentleman, in a manner worthy of him, tendered his professional services in aid of the accused, and elicited from the Chief Justice of the Province, then sitting, his opinion as to the want of jurisdiction in the Courts of this Province from proceeding to the trial. Indeed had your brother not have been lately called away from the Province, there is little doubt that it would not have become necessary that I should now address you. For his sake, and for the sake of humanity, you, I would fondly hope, will throw your powerful resources into the balance, which would otherwise be weighed down, not by right but by might.

I, therefore, take the liberty of forwarding for your consideration divers documents which have passed to and from the Executive Government on the subject of Baptiste Cadien, an Indian, now lying under sentence of death for murder, which there is too much reason to fear, will, unless Providence inter-

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tere, be carried into execution on Friday, the fourth day of May next.

These papers will give you, pretty nearly, an insight into the whole case; and I only fear that, after the perusal of them you will deem it not necessary to give yourself any particular trouble in the matter, as you will come to the conclusion that I apprehend, every lawyer must in a case like this, that Government would not be willing to take upon itself the responsibility of executing Cadien.

This conclusion, however, I take the liberty, particularly to guard you against. I was induced, from the peculiar chain of the circumstances in the case, to go to Montreal in the beginning of the month, and, in an interview with His Excellency, my worst fears were confirmed beyond a doubt; and I then became convinced of what I had before feared, that among the powerful men, thirsting for the blood of Cadien, are, from some cause or another yet to be discovered, to be ranked some, whose business it was to convict, whose duty it was to try, but whose duty or business it never could be to prejudice the honest, but I fear too confiding, ear of the personage now at the head of the administration.

In pressing, then, this matter upon you, I have in the name of poor Cadien, no fee to offer but that worthy of a mind like yours, his gratitude and the thanks of the humane and reflecting part of mankind.

I have the honor to be, &c.,

EDW. BARNARD.

The Hon. J. Stuart, Montreal.

N. B. Independently of the reasons on the merits, which alone should have been sufficient for Government to pay attention to our petition, you will, no doubt, remark from the certified copy of the sentence which I forward you, that under the statute of 25th George 2, ch. 37, the omission in the sentence that the body shall be anatomized is a nullity. Excuse me if I refer you to, Russell on Crimes, No. 479. East P. C. ch. 5, s. 136, page 374. Foster 107. And particularly to the case cited by Russell, *eodem loco* of Rex vs. Fletcher T. T. 1803. Russell and Ryan 58, so held by six Judges against six.

Some of my professional friends insist that I should not omit to inform you, likewise, that in the respite lately granted, the following error crept in: it is that Cadien was condemned by the Court to be hanged on Friday the 16th March last, and then

by the Court respited to the 20th April last, whereas the respite says that he was by the Court condemned to be hanged on *Saturday the Seventeenth March last.* E. B.

ANSWER.

Montreal, 5th May, 1838.

Dear Sir,—I was duly favoured with your letter of the 26th April, with its enclosures. Soon after its receipt, I learnt that a further reprieve to precede a conditional pardon, was intended for Cadien, rendering any services on my part unnecessary. I congratulate you very sincerely, on the success of your meritorious exertions for this unfortunate individual, and am,

Dear Sir, &c.

Signed,

J. STUART.

Edward Barnard, Esquire, &c., &c.

Three Rivers, 2nd May, 1838.

Sir,—Please accept my heartfelt acknowledgments for the honorable and conscientious manner in which you have fulfilled a sacred duty to humanity.

I lose no time in informing you that the official information has just arrived that poor Cadien is respited to the month of November next; it is a circumstance which I attribute, under Divine Providence, in a very great measure to you.

I have the honor to be, &c.

Signed,

EDW. BARNARD.

The Honorable the Resident Judge.

ANSWER.

Dear Sir,—I need scarcely assure you that the information conveyed in yours of this day has given me the greatest satisfaction. If my poor efforts have been of any service in saving the life of your unfortunate client, I have an ample reward in the result, and permit me, dear Sir, to congratulate you on the successful termination of your disinterested and persevering struggle to save the life of a fellow creature and to maintain the purity of the law.

I have the honor to be, &c.

Signed,

VALLIERES DE ST. REAL.

To Edward Barnard, Esquire.

2 May, 1838.

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