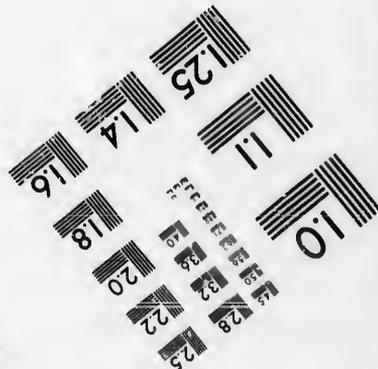
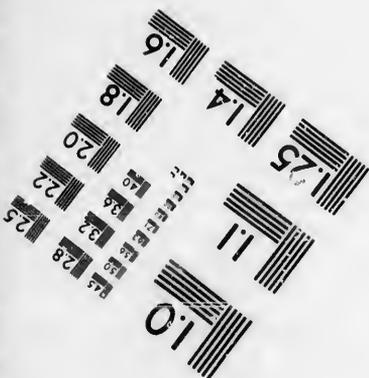
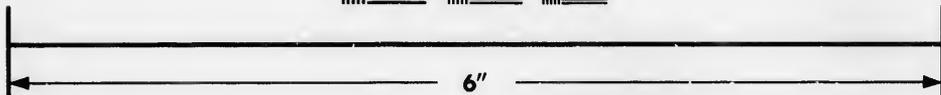
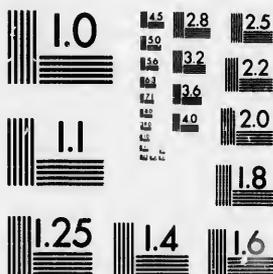


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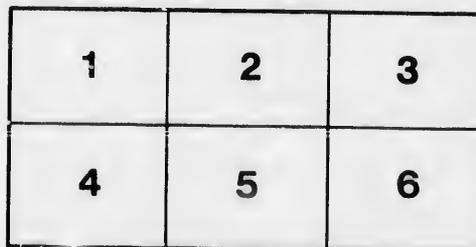
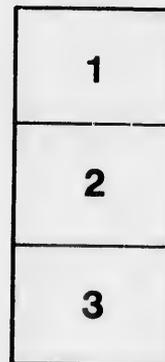
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MEMORIAL

for

CHARLES DE REINHARD,

to accompany his Petition to

HIS HONOR THE PRESIDENT

of the Province of

LOWER-CANADA.



THE undersigned Advocates, charged with the preparing a Petition to His Majesty's Government for the pardon of Charles De Reinhard, now confined in the Common Gaol of the District of Quebec, for the Murder of Owen Keveny, in the Indian Territories of North-America, have, from the extent and variety of the grounds upon which the case rests, felt themselves under the necessity of accompanying the succinct Petition of Charles De Reinhard with the following statement--And they indulge a hope that in this statement the necessity which has given rise to it will be apparent, and that if they have ventured to adopt a course somewhat out of the ordinary road, a sufficient reason for the deviation will be found in the novelty and extraordinary nature of the case which it has become their duty to submit to the only authority whence this unfortunate man can hope for relief.

The misfortune of the prisoner is to be traced to the contest which for several years now last past has been carried on in the Indian Territories of North-America, by two wealthy and powerful companies, the North West Company and the Hudson's Bay Company. Of the conduct of either of the parties in this contest it would be indecorous to say any thing, save in the instances where that conduct has materially affected the Prisoner.

It will, however, be readily believed that it gave birth to many of the evil passions and much of the party spirit by which contests of such a nature are usually characterized.

In the course of the contest, it was deemed an object by one of the parties to procure the conviction of the prisoner and of one Archibald McLellan, for the murder of Owen Keveny.

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To secure the attainment of this object, the News-Papers of this Province teemed with inflammatory paragraphs in respect of the transaction. One of the most powerful feelings of our nature—the horror of Murder—was called to the aid of the private prosecutor for the purpose of prejudging the prisoner and of depriving him of the first right of every human being—the right to an impartial trial—The private prosecutor, not less distinguished by hereditary elevation of rank than by the splendor of his talents, condescended even to give the weight of his name to a Pamphlet, having a direct tendency to deprive this poor unknown, unfortunate prisoner of a fair trial.

If the above circumstances are adverted to, it is because there is too much reason to believe that their effect upon the minds of the Jury by which the prisoner was tried was great; and because without these it is not too much to say, that a reasonable hope might have been entertained that the Prisoner would have found his safety in a verdict of the Country, instead of being now a supplicant for the mercy of the Crown.

The conviction of the prisoner resting upon circumstantial evidence and upon his alleged confessions, it will be the duty of his Advocates to bring together the circumstances scattered over the numerous pages of the printed report of the trial, carefully to distinguish what is certain from what is doubtful in the Testimony, severely to scrutinize the contradictory statements of witnesses where any exist; and this done, to point out to the best of their ability the bearings and dependencies of these various circumstances as connected with the question of the innocence or guilt of the prisoner. It will then be for them to examine the alleged confessions of the prisoner, to see how far they contain internal evidence of truth or otherwise and duly to weigh the external circumstances by which their credibility may be either enhanced or impaired.

In inquiring into the probability, whether Owen Keveny was murdered by the prisoner or by one of the other two individuals who were with him at the time when he is alleged to have come to his death; and, if the last be the case, whether the act was done with the previous concurrence of the prisoner, it is obviously of primary importance to ascertain the character, as well of the prisoner as of the other two individuals, to become acquainted with the previous conduct of the prisoner and of the two other individuals towards the deceased, and of his conduct towards them, and finally to estimate with all the correctness in our power the motives and feelings of the several actors in this tragical history.

The prisoner was by birth a Tyrolese—a country in which assassination is almost unknown—by profession he was a soldier; and had passed much of his life in the field in the service of his native Sovereign. He had been a Lieutenant in a distinguished Regiment of that Sovereign, the Tyrolese Chasseurs—and on the disbanding of his Regiment he entered into the British service. Accustomed therefore, though he may have been to scenes of bloodshed in the field, yet in the exercise of a profession, the dangers and horrors of which are embellished by the honor, the truth and the courage which it calls forth and nourishes, he never could have acquired the depravity which marks the character of a Murderer. We accordingly find him on the occasion of his first meeting Owen Keveny, and arresting him under the Warrant with which he was charged, manifesting the intrepidity of a Soldier, in coolly warning Owen Keveny not to use the pistols which he attempted to seize and which

the next instant might have been directed against the life of De Reinhard himself. We find him at the same time exhibiting the honor and truth of a Soldier in protecting his prisoner from the half-breeds, one of whom was desirous of killing him.

The next person who was present when Owen Keveny is stated to have come to his death is José, fils de Perdrix Blanche, a native of the forest—a Savage who knew not what Laws were—who had never seen civilized life—A man who, and whose ancestors, had never felt the protection of the Law, and had been taught from his infancy that to kill an enemy by the most treacherous means was not only admissible but praise worthy—Let one other peculiarity of this race of men be adverted to—The extreme secrecy with which they conduct their projects of revenge—that Owen Keveny was his enemy is apparent from facts stated by more than one of the witnesses on the part of the prosecution.

The last person who appears to have been present was Mainville, a half breed—Of a race which to the treachery, the secrecy and the inextinguishable love of revenge of the Savage, adds the energy and fixedness of purpose of the white man—and so marked and universal is this character, that in their own native forests their savage relations designate them by a name implying the happy amalgamation of the moral as well as physical qualities of the red and the white man.

It is not pretended by any of the witnesses that José, fils de Perdrix Blanche, had any hand in the killing of Owen Keveny.

The inquiry is then reduced to this point—

If Owen Keveny was murdered, was he murdered by this honorable Soldier or by the treacherous Mainville—and here the first question which bursts upon the mind of even unlettered common sense, and which is to give the hue and coloring to all the subsequent facts is, did Charles De Reinhard owe any grudge to Owen Keveny? Charles De Reinhard had seen Owen Keveny but once previous to their meeting at the Dalles. The life of Owen Keveny was then in his hands—he would have been justified in shooting him on his attempting to seize the pistols—Yet he did not take the life of Owen Keveny—he did more, he protected him from the half-breed indian who was desirous of killing him. Hardly one short month had elapsed before they again met at the Dalles, and if the prisoner is believed guilty it must also be believed that during this month he had, without any assignable cause, without speaking to Owen Keveny, without even seeing him, been maliciously changed from the protector of Owen Keveny to his determined Assassin—Looking at these facts which stand uncontroverted, the inference is plain that Charles De Reinhard bore no malice to Owen Keveny.

The second question is—

Had Mainville any vindictive feeling to Owen Keveny? It is believed that it can be clearly shewn that he had, and that if Owen Keveny was murdered he was murdered by Mainville, and without any previous understanding of Mainville's intention on the part of Charles De Reinhard.

On the occasion of the arrest of Owen Keveny by Charles De Reinhard; Mainville with several others of the half-breeds were present, and it was one of the countrymen and friends of Mainville who attempted to kill Owen Keveny, as an enemy of the nation.

It is material to ascertain, whether this sentiment was peculiar to the individual, or was the common sentiment of the tribe to which Mainville belonged, for the purpose of determining the probability of his being influenced by a like sentiment. To do this, it will be necessary to advert to transactions which took place several years anterior to the alledged death of Owen Keveny.

In the year 1811, the Right Honorable Thomas Earl of Selkirk obtained, as is well known, a grant from the Hudson's Bay Company, of a tract of land, comprising, in extent, between 70 and 80 millions of acres. This territory was inhabited by a warlike race of savages, of the whole and of the half-breed, who derived their subsistence principally from hunting on horseback the buffaloe, with which its extensive plains abound. Of the validity of the grant, made by the Hudson Bay Company to the Earl of Selkirk, it does not appear to be necessary here to inquire. All that will be requisite, is to examine what effect the course of proceeding, adopted by the Earl of Selkirk under this grant, would be likely to produce on the minds of these savages.

In the subsequent establishment of a Colony within this territory—in the prohibition made by the Earl of Selkirk, of the hunting of the buffaloe therein—in the seizure of the provisions of the inhabitants thereof—they saw acts of territorial aggression, of warfare, which seemed to them to justify a resort to arms. These Indigenes, expelled as they saw they would be, from the lands of their fathers, and driven upon the hunting grounds of the more powerful tribes, of the South and the West, there to be extirpated, or obliged to displace their more weak neighbours to the North, and obtain a scanty and miserable subsistence in regions approaching to the Arctic Zone; could not look upon the men, by whom all this mischief to their nation was to be effected, in any other light than as enemies of that nation.

If this feeling obtained towards all the adherents of the Earl of Selkirk, it was likely to exist with peculiar force towards Owen Keveny.

He is described as a man of ardent temper, of high spirit, of great activity: in their language, as a distinguished warrior in the ranks of their enemies. In their language too, treachery to an enemy, is wisdom, and the murder of him, a martial exploit. It was these feelings and sentiments which pointed the gun of the half-breed Indian to the breast of Owen Keveny, when he was first arrested. And can it be doubted, but that Mainville, himself a half-breed, participated in the same feelings and sentiments. But if these were the feelings of the savages, on the first arrest, circumstances soon occurred which must have greatly added to their intensity.

The Earl of Selkirk, at the head of a large armed force, captured Fort William. As the advocates of Charles De Reinhard, it is not for us to inquire whether this act was justifiable, or other-

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wise. We here look at it only as affecting subsequent events, and in relation to Owen Keveny. When a Report of this event reached the post at which the prisoner was stationed, the utmost consternation was excited. The winter supplies were stopped—They were apprehensive of a want of ammunition to hunt, and of nets to fish. The two only sources of subsistence for the winter were thus cut off. A meeting, or council, (as it is named in that country,) was called for the purpose of determining upon what should be done. In this most unexpected and alarming danger, instead of calling together the clerks and partners only, as is usual when matters of commercial arrangement are to be settled, the gentleman at the head of that particular station, called together all the persons there, because it was a matter which might touch the lives of all:

This circumstance has furnished the ground-work of an assertion, that at this meeting it was determined, that Owen Keveny should be murdered. But the assertion is controverted by the most positive and direct testimony. By that testimony we learn, that the result of the meeting was, as might naturally have been expected, a determination to proceed towards Fort William, for the purpose of ascertaining whether the canoes, with the expected supplies, had passed that place, and to obtain further and more particular intelligence respecting its capture. On commencing their journey, they had no reason to expect that they should overtake the canoe wherein Owen Keveny was. That canoe was a light one, and had preceded them by a few days. Accidental circumstances, however, to which it is not necessary to advert, brought them on the fourth day of their journey, to the place where Owen Keveny was. The day before they reached this place, they were informed by two of the persons who accompanied Owen Keveny, that he had attempted to overset the canoe, in a place where, if he had succeeded in the attempt, they must all have perished. It is stated by two of the witnesses, on the part of the prosecution, (whose credibility it will be our duty presently to consider,) that the half-breeds then threatened to kill Owen Keveny. No language, however, of this import, came from the mouth of the prisoner. His words are stated to have been, "It is I who have taken him: it is I who will take care of him." Words which, from the mouth of a soldier, no one can misunderstand. He had, in fact; "taken care of Owen Keveny;" on the first arrest, against the very men who are stated to have renewed their threats; and it cannot be doubted, that, in his mind, the words had reference to the protection which he had previously afforded to Owen Keveny.

If an associate of Mainville thought himself justified in killing Owen Keveny, for the injuries done to his nation, before the capture of Fort William, what must have been the temper of mind of Mainville, after that event? The Earl of Selkirk had entered the Indian territories with a large military force, and thus put into jeopardy the existence of his nation, and subjected Mainville himself, and all the neighbouring people, to the almost immediate danger of starving! If to this be added, the peculiar notions of the North American savages, respecting the treatment of prisoners, and the knowledge which Mainville had of the attempt of Owen Keveny to drown his first keepers; who can doubt but that, if Owen Keveny was murdered, it was from the hand of Mainville that he received his death. No proof of any facts, anterior to the alleged death of Owen Keveny, is offered to shew a privity between Mainville and De Reinhard. Those who know the secrecy with which the North American savage conducts his projects of revenge, will easily believe that Mainville

did not communicate his design to De Reinhard; and, that the first intimation which the latter received, was the report of the gun of Mainville.

Whether Owen Keveny, after being wounded by Mainville, was killed by Charles De Reinhard, defending himself against a desperate attempt on the part of him, (Owen Keveny,) to seize the sword of Charles De Reinhard, and take his life therewith; whether the wound inflicted by Mainville was evidently mortal, and De Reinhard had (what is not unusual amongst foreign soldiers) shortened the last agonies, from a mistaken motive of humanity; whether, in fact, Charles De Reinhard had ever raised a murderous hand against the life of Owen Keveny, is thus far in the testimony, involved in mystery and uncertainty. Indeed, it is thus far uncertain, whether Owen Keveny was killed or not. The only source of light upon these important questions—the examination of José, fils de Perdrix blanche—has been shut out in a manner which will be hereafter adverted to. For more than a year previous to the trial of Charles De Reinhard, the most extensive circulation had been given to a pamphlet, containing the direct assertion, that M'Lellan had said to De Reinhard, "Make the prisoner believe that he is going to Lac La Pluie. He must not be put to death amongst the Indians. We will go on further, and wait for you; and when you find a favorable spot, you know what you have to do, (*vous savez ce que vous avez à faire!*) and that Keveny had been killed by De Reinhard in consequence of orders given by M'Lellan.

In support of this assertion, not one witness has been produced on the part of the prosecution. But the matter rests not here. Subsequently to the conviction of De Reinhard, Archibald M'Lellan was put upon his trial, as accessory to the murder of Owen Keveny, before and after the fact. A long and patient investigation of six days was instituted, and the Jury, by their verdict of acquittal, directly falsified the above assertion.

To presume, then, that Charles De Reinhard knew the intention of Mainville, is to presume guilt without evidence.

The next branch of evidence in this case, appears to arise out of the fact which intervened between the alledged killing of Owen Keveny and the arrest of the prisoner at Lac de la Pluie, by Captain D'Orsonnens.

The third and last branch of the evidence, will be found in the facts which occurred during the time which elapsed from the arrest of De Reinhard, to the preferring of a Bill of Indictment against him and divers others, in his Majesty's Court of King's Bench, for the District of Montreal.

Upon these two branches, it will be the duty of the advocates of the Prisoner to submit some observations equally applicable to both; and connected with the questions of the credit due to both; and from which they will leave the inference to be drawn, as to the innocence or guilt of Charles De Reinhard.

These observations will apply to the credibility of Hubert Faïlle, Jean Baptiste Lapointe and Captain D'Orsonnens; as also to the credit due to the alledged confessions of the

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ation which the prisoner after his arrest at Lac La Pluie. For the present, the testimony of Hubert Faille and Jean Baptiste Lapointe, will be taken as unimpeached.

by Charles De (Owen Keveny,) another the wound is not unusual e of humanity: against the life certainty. In- the only source drix blanche— ore than a year had been given o De Reinhard, he put to death when you find a *avez à faire!*) rders given by

The canoe wherein M Lellan was, having more than its full complement of men and passengers, another smaller canoe having been provided for Keveny and his keepers, M Lellan proceeded on his route to Lac la Pluie. Some time after their stopping for the night, a shot is heard, and soon after the small canoe arrives, not having in it Keveny. De Reinhard is stated, on his arrival, to have said, "It is a service that I have rendered to that man, Keveny." De Reinhard, according to Faille, "forbade them to speak of the business, and told him, if met by the people of Lord Selkirk, not to speak of the death of Keveny." Lapointe adds, that De Reinhard told him not to speak of the murder of Keveny, and that, "if it were talked of, it would not be him, but we, (the others,) who would be punished for it."

In these expressions two things are to be observed, as militating against the prisoner. First, the injunction of secrecy as to the transaction; and next, a declaration which, at the first sight, looks like an avowal of his having been the perpetrator of the deed.

But an injunction of secrecy, as to an alleged criminal act, made by an accused person, whether previous or subsequent to the formal accusation, if it constitutes any presumption at all, is one of the weakest kind. The being subjected to a prosecution for a capital offence, with its attendant evils—imprisonment previous to trial, the anxiety necessarily produced by having life put in jeopardy, and the stain left upon character, rarely restored even by a verdict of acquittal—are ample motives for an innocent man to make such injunctions. But where, as in the present instance, it is accompanied with a declaration, amounting to an assertion of innocence, surely no weight can be attributed to it: "If it is talked of, (says the prisoner,) it will not be me, but you who will be punished."

The declaration, "It is a service what I have rendered to that man, Keveny," must be strangely construed, if it be understood to mean, "I have treacherously and in cold blood murdered Owen Keveny, my prisoner, and if his mouth were not closed in death, I should receive from him his thanks." It were painful to believe, that the feeling which could dictate an expression of such jeering atrocity, were to be found in the breast of any man. And who is the man to whom this feeling is imputed? One, of whose humanity and moral worth, for a long period anterior to these occurrences, the most unequivocal testimonials are offered. But we are not driven to the necessity of believing a miracle; of believing that the spirit of a fiend had taken possession of the body of Charles De Reinhard. The expression is perfectly consistent with his having, from a mistaken motive of humanity, shortened the last agonies of Owen Keveny. It is consistent with his having, in self-defence killed Owen Keveny. Nay, it is consistent with his having rendered the last offices of humanity to Owen Keveny, suffering from the mortal wound which Mainville had inflicted.

The next facts stated by the witnesses are, that a partition of the effects of Owen Keveny was spoken of by the prisoner; that they were retained by him; and that he claimed the largest share, saying "It is I who have killed him, &c" It will be necessary to examine the weight which each of these facts has. And first, of the appropriation of the goods of

Owen Keveny. This, if true, was undoubtedly a criminal offence; but a criminal offence of a nature altogether different, whether looked at in a moral or legal point of view, from that wherewith the prisoner was charged, and of which he is convicted. It made of him an accessory to the murder of Owen Keveny, after the fact—Mainville was alone liable to expiate by his blood, the blood of Owen Keveny. The prisoner, as his offence was less, so also would have been the punishment inflicted by the law. And it perhaps will be thought, that three years imprisonment is a sufficient punishment for the offence, if it were committed.

Next, as to the declaration, "I am entitled to the largest share, &c." No principle is better established, than that a confession made under the hope of a reward, or the fear of loss, is not entitled to credit. Now this confession, if made, had for its immediate motive, the hope of reward. The prisoner claimed, it is said, a larger share of the goods of Owen Keveny than the others; and supported this claim by asserting, that it was he who killed Owen Keveny. Without this assertion his claim would have been immediately rejected. It was then made with a view to obtain reward; and that reward was the principal share of Owen Keveny's goods. Again, if a confession so obtained, could be taken as evidence that the prisoner had killed Owen Keveny, it affords no light as to the manner of the killing. But upon this depends the innocence or guilt of the prisoner.

The prisoner continued his route to his usual residence, Lake La Pluie; and there appears to have been nothing in his deportment, or language, or conduct, to induce a belief that he thought he had been guilty of any crime. And this leads us to the third and last branch of the evidence.

Many days before the alledged death of Owen Keveny, it was known to the prisoner that the Earl of Selkirk had entered the Indian territories, at the head of a military force, had captured Fort William, and had arrested the Honourable William M'Gillivray, and the other partners found there, and had sent them prisoners to Montreal. The partners and servants of the North West Company, were uniformly represented as rebels and murderers. Soon after, Captain D'Orsonnens, who had served in the same regiment with the prisoner, being then at Fort William, sent forward one Nolin and one M'Donald to Lac La Pluie, with orders to detain the prisoner. They carried with them also, a note from Captain D'Orsonnens to the prisoner, requesting or ordering the prisoner to wait the arrival of Captain D'Orsonnens.

After the receipt of this note, Nolin saw De Reinhard walking in the room, who said he was much surprised that Captain D'Orsonnens wanted him to give information about the Red River. Captain D'Orsonnens arrived three or four hours afterwards, and he walked with the prisoner out of doors. Captain D'Orsonnens wore, at this time, an old military grey great-coat, and had his sword by his side. The force commanded by Captain D'Orsonnens consisted of seventeen discharged soldiers, of the regiments Glengary, Meuron and Watteville; and eighteen Canadian voyageurs. The soldiers, it is admitted, were armed, had cannon, and were encamped in sight of the fort which Captain D'Orsonnens had just entered. A confession is alledged to have been made, under these most peculiar circumstances by the prisoner to Capt. D'Orsonnens and in the absence of every other person. As the subsequent confessions of the prisoner are but consequences of this first confession, and but a conti-

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nance of the course of conduct which the prisoner then determined to adopt, it is highly material to ascertain what degree of credit is due to this confession. At the time of making it he was under illegal duress—he was in the hands of the enemies of his masters—he was far from any Court wherein redress could be sought—the man who addressed him had been long his officer and possessed, therefore, an habitual ascendancy over him—that officer too a foreign officer, unacquainted with the Criminal Code of England, and a most zealous partizan of the enemies of the masters of the prisoner.

Under these circumstances, it was to be expected that the prisoner might admit himself to be guilty, but would throw the whole blame of the transaction on his masters; thereby conciliating his enemies, securing the protection of his old officer, and freeing himself from confinement. Not being expected to swear to his confession, he would feel that he had the power, so soon as he found himself under the protection of the Law, to tell the truth. Accordingly the prisoner is stated, by Captain D'Orsonnens, to have told him that, some days after the arrest of Keveny, "a Council was held, at which were present Mr. Alexander M'Donell, Mr. Archibald McLellan, Joseph Cadotte, Cuthbert Grant, and several other *Métifs*; that he, De Reinhard, was present, (not as one of the Council); and that it was resolved, that Keveny was a man of too great consequence, and that he ought to be killed, but not there among the Indians; and that he had, in consequence, been sent in a canoe to Lake La Pluie. That by dint of the solicitations of a man named Mainville, who had consented to kill him, he (De Reinhard) agreed to see that Mainville *did do it*." Being come to a place called the Dalles, in the River Winnipic, Keveny required to go on shore, which De Reinhard granted, and when Keveny came to re-embark he, De Reinhard, said that it was the proper time.—Mainville immediately discharged the gun, and wounded him in the neck; when, as an act of humanity, seeing that he could not live, he ran his sword twice through his body to prevent him from suffering; and, according to all he had heard from his masters (*bourgeois*,) he was in the belief that he would have done a meritorious act even had he killed him himself, and that he should have done the same to any other Englishman; having, at a council of war some time before, heard the Indians solicited to make war on the colonists, and the English of Red River, whom he considered as enemies to Government, from the representations of Mr. McLeod."

The great improbability that ten or fifteen men should meet together, and determine, in broad day-light, to do a deed of darkness like this, must at once be apparent. And what are the powerful solicitations to which he yields, when he consents to be present at the doing of this deed? To the solicitations of Mainville, the half-breed Indian, a man, by associating or sitting at the same table with whom he would have been disgraced. To surpass even these improbabilities, he is made to say, that he, a Christian, thought, from all he had heard from his masters, that he would have done a meritorious act even if he had himself killed Keveny, or any other Englishman. Let not, however, the prisoner be thought hardly of, for making these statements. If there be any circumstances which can justify or palliate the telling a falsehood, surely they are the circumstances by which the prisoner was surrounded. The above observations are made upon the supposition, that the deposition of Captain D'Orsonnens has been in no degree discoloured, even involuntarily, by the party-spirit by which the most hasty perusal shows that he was actuated.

The next confession is stated to have been made to one Jacob Vitchie. The prisoner is here stated to confess, that he committed the murder at the solicitation of Mr. McLellan, and "that he believed he should be received as King's evidence; that he had confessed the whole to Captain D'Orsonnens; and that he was going to do the same to my Lord Selkirk, hoping to be received as King's evidence; but that he did not say, that he had any conversation with Captain L Orsonnens, relative to such expectation."

Now, Mr. McLellan has been put upon his trial, as accessory to the murder of Owen Keveny, before the fact; and has been found innocent. This statement, then, was also untrue. The reason for the making of it is obvious. Mr. McLellan was a partner in the North West Company. It would appear, also, from what is stated respecting the intention of the prisoner to become King's evidence, that the love of life had whispered him, that innocence might not be a sufficient protection from the formidable power which was arranged against him; and that he could find safety only in transferring the crime to another innocent man. If this idea did pass through his mind, let him be forgiven for it: When restored to the protection of the law he never acted upon it.

The observations made upon the confession to Captain D'Orsonnens and the last mentioned confession, apply equally to that stated to have been made to Mr. Miles McDonald who, heretofore, acted as Governor to a settlement of the Earl of Selkirk.

The next confession is the written confession stated to have been made by the prisoner to the Earl of Selkirk.

After the arrival of the prisoner at Fort William, he was kept in close confinement for ten days, and at the end of that time he was brought before the Earl of Selkirk, when he delivered to him a written paper, which is called his confession; after delivering this paper the prisoner was liberated, and when the Commissioners went into the Indian Country he was found at Drummond's Island, a place not more than a few miles from the American lines, under the surveillance of one man. He had resided at Drummond's Island six months previous thereto, and had not attempted to make his escape although it would not have been difficult.

Curiosity is naturally excited respecting this paper, and we expect to find in it some explanation of the conduct of the prisoner, so clear and satisfactory as to justify, may require that the severity of his confinement should be mitigated.

On examining it we find that the first three or four pages contain a variety of matters relating to the North-West Company and the conduct of certain of its partners. These will be passed over as totally unconnected with the present subject of inquiry. On comparing it with the confessions alledged to have been made to Captain D'Orsonnens, to Vitchie and to McDonell, we find that it differs from them in several essential particulars.

It not therein said that the murder of Owen Keveny had been determined upon in Council at Bas de la Riviere, as was said to Captain D'Orsonnens and to Mr. McDonell. It is not therein said that the prisoner was solicited to do this act by Mr. McLellan, as it is stated by

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Vitchie was said to him. It is not said that any communication whatever respecting the killing of Keveny took place between the prisoner of the one part and M'Lellan and Mainville of the other part. It is therein said that the Indian José fils de Perdrix Blanche, told the prisoner, when they came came up to Keveny's tent "make the prisoner believe he is going to Lake La pluie. We cannot kill him among the Savages—We will wait for you farther on and when you come to a suitable place you know what you have to do." Yet it is in evidence that the Indian could not speak the language of any civilized country and the prisoner had not been long enough in the country to learn the Indian tongue.

These are the differences between this confession and the previous confessions. The points in which it resembles the other confessions—are first, in the absence of the expression of any ill will or cause of ill will on the part of the prisoner towards Owen Keveny—and secondly, in designating Mainville as the murderer of Owen Keveny.

To these circumstances let it be added, that the Magistrate, by whom the confession was received, was not produced upon the trial; so that had there existed any motives of hope or of fear, it was out of the power of the prisoner to prove them by his testimony.

But he has proved such motives, by evidence of a higher nature. Testimony respecting spoken words, is liable to much inaccuracy, arising from imperfect observation in the first instance, from the frailty of human memory; and above all, from the involuntary blending of the passions and feelings and opinions of the narrator with the words and deeds of the actors, and unconsciously transferring to the scene which he intends faithfully to portray, shades, not taken from reality, but copied from the illusions of his own mind. But there is evidence of a higher nature; evidence arising out of facts and circumstances, which are too plain and distinct to be misconceived, or unintentionally misrepresented, and too striking to be easily forgotten. Much light is thrown upon this part of the subject by evidence of the last description. In the admission of De Reinhard to the table of Captain D'Orsonnens, after he had confessed himself guilty of a murder—in the severity of his confinement by the Earl of Selkirk, previous to his confession—in the relaxation of that severity, after the confession—in the freedom he enjoyed during his residence at Drummond's Island—in the unrelenting accusatorial spirit with which the prosecution was urged forward, after the prisoner had retracted his alledged confessions—we see strong reason to conjecture, that hopes were held out, in some way or other, of favorable treatment to the prisoner, in the event of his making a confession. And the view which the prisoner appears to have taken of the subject, when the confession was made, seems to have been correct, for his hopes were realized.

No evidence was offered on the trial, of the actual death of Owen Keveny; and although circumstantial evidence, but circumstantial evidence, of the most unequivocal nature, of the death, may be received by necessity, and when the want of positive evidence arises from the nature of the case itself; yet it is respectfully questioned, whether this can be done when the alledged necessity arises out of the act of the private prosecutor, and may at any time be removed by the entering of a *noli prosequi*, on the part of the Crown.

The prisoner was conveyed by the authority of Government from Drummond's Island to Montreal for trial. The Indian José, fils de la Perdrix Blanche, was also conveyed thither.

A Bill was, however, preferred as well against the prisoner as against the Indian. The latter effected his escape, and the prisoner was deprived of the benefit of cross examining him in open Court, and establishing by him that Mainville was the murderer of Owen Kenveny.

Some few observations on the credibility of the two principal witnesses on the part of the prosecution, Hubert Faille and Jean Lapointe, will close the case.

These men were both to a certain degree implicated in the transactions in question. They were both taken before the Earl of Selkirk as prisoners, and were discharged by him in order to become witnesses. Their examination on oath, was taken *ex parte*. They could not recede from any thing said in those examinations, though inconsistent with truth, without incurring the pains and penalties of perjury.

And upon examining the depositions of both, a variety of contradictions will be found in them.

The undersigned advocates do not feel it proper to submit any observations upon the various points of law, urged for the prisoner after his conviction. With respect to those matters, they had an opportunity of being heard before the Court, and the arguments on both sides are to be found in the printed Report of the Trial.

As to matters of fact, a well known rule of law prevented them from being heard. It is to supply this, that they have deemed it necessary to submit the preceding observations; and if in the course of them any errors have been fallen into, they venture to hope, that some portion of the indulgence which is freely allowed to a prisoner under sentence of death, addressing his Sovereign for mercy, will be granted to themselves.

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