

Governor McTavish enquired what it was, and Mr. Sutherland asked him if the Government of Assiniboia was in existence or not; Governor McTavish said, "No!" Then Sutherland said, "Would it not be advisable to establish a Provisional Government?" The Governor said, "Not only it is necessary, but for God's sake establish one; we shall have no peace in the country until one is established;" Sutherland or Frazer asked Governor McTavish, "And your power as Governor?" he said, "Leave me alone, I am a dead man; you work for the people;" nothing else was said, but bade the Governor good evening, and he saluted us in return, and we left; witness and the other three returned to the Convention-room; the two English representatives, Frazer and Sutherland, explained to the Assembly the result of their mission; there was no excitement about the report in the Convention, and we thereupon decided to elect a President, a Provisional Government being spoken of, but I cannot say any subsequent resolution was passed to that effect, and Riel was then elected as President of the Provisional Government; I understood by what was then done that a Provisional Government was then established with Riel at its head.

To Mr. Cornish.—When we went to Mr. McTavish's, Mr. Sutherland spoke in English; witness understood English sufficiently to know the words; was not at the Fort on the 4th March; was not present at the shooting of Scott at all; knew there were prisoners in the Fort on the 10th February; at the time of the establishment of the Provisional Government, the English asked them to release the prisoners; we said, "We are now strong and united, and these people could do us no harm," so advised to let them go; this was after Riel's election that it was spoken of; it was spoken of before also; they had kept the prisoners, as they were afraid they might raise trouble if refused; it had never been spoken of publicly before this, only privately; I mean privately among the members of the Convention; it was not stated privately among the Convention that if they agreed on the election of a President, that then the prisoners might be released; do not recollect having heard this mention; it was only talked among ourselves; some said if they were released there would be some disturbance, and they generally all agreed.

Narcisse Marion sworn.—Resides at St. Boniface; knows the prisoner Lepine well; saw Scott when he was shot; was present when some guns were fired on the 4th March; was about a hundred yards from the place the firing party were; I was with another man named Andrew Anderson; I was coming from the town when I passed near the Fort; was told it was Scott when he was shot; cannot say who composed the firing party; was too far to notice the men; did not notice who gave the signal to fire; saw a man carrying a sort of a white flag; don't know who it was; am sure it was not the prisoner; it was a man of middle size; on that day did not see the prisoner Lepine; think I should have noticed him if he had been there; I then returned home; saw a man falling and some one moving, as I understood to finish him, but did not stay; I walked off on my way and did not recognize who this person was; I did not enter the Fort.

Cross-examined by Mr. Cornish.—Was about hundred yards from Scott when the guns went off; was beckoned to go on one side and keep clear, (witness here pointed out his exact position on the plan of the Fort which had been used for the purpose during the trial); noticed a man by the name of Deschamps, because he was drunk and tumbling about; after the shooting, passed right straight along and took no further notice of what took place; to the best of my knowledge, I counted six men in the firing party; did not notice a man named Guilmette in the firing party; do not know Guilmette; did not notice André Nault; know André Nault; know Rev. Mr. Young; did not see Rev. Mr. Young there; know Elzéar Goulet; did not see Elzéar Goulet there; know Riel very well; did not see Riel there; know O'Donohue; did not see O'Donohue there; there were a good many people there; they were from all directions, from up the river, and down the river, and from all places; had heard before I came over, that morning, that Scott was to

be shot; is was a rumor; do not remember who told me; lived about twenty chains south of St. Boniface Cathedral; am a blacksmith; could not say where I heard the rumour; was not near enough to see if Scott was dead; the man who had the white flag witness saw him bringing it down, (witness here motioned in imitation of the act); when it was brought down the guns were fired instantaneously; thought afterwards that this was a signal for the firing of the guns; the guns were fired, the man fell, and then I thought that it must have been a signal.

Michel Dumas sworn.—Know Lepine, have known him for many years; have always known him to be a man of good character, and of peaceable disposition; on the 4th March, 1870, was in Winnipeg; was present at what was called the execution of Scott; was not there when Scott came out of the Fort; saw Scott when he came out of the building that served as a prison, inside of the Fort; saw him coming down the stairs outside of the building; Scott had a white cloth on his head; was in the house when I saw him pass; was in John McTavish's house; saw Scott through the window, and saw him till he reached Dr. Cowan's house, and afterwards saw him when he came in sight again to the corner of the house in which witness was; went out to see him again, but could not see him on account of the crowd; I saw two men leading Scott as I took it, walking on each side of him, and I am sure neither of those two men were the prisoner; I then followed the crowd that was going out, and saw when the guns were fired; when I proceeded to go out of the gate, and so I reached the small gate, there was such a crowd there that I could not get out; I did not stand there; there were a few others with me that could not see, so we got an old sleigh that was there and placed it against the wall, and by means of this we got on the wall; as we reached the top of the wall, we heard the report of the guns; immediately after the discharge of the guns, heard a man shout; this shout resembled the cry of a person who had been struck; among the crowd of people who were there, heard a man say, "Didn't you promise me to finish him;" as he was saying these words, the crowd got thinner, and he heard a man answer, "Yes;" then saw a man whom I knew to be Guilmette, firing at the man Scott with a pistol; it appeared to me as if he fired at the head of Scott; witness then came back into the Fort; saw something in the shape of a box lying on two benches, but it did not look at all like a coffin; did not occur to witness what it was for; appeared to be a case that guns are carried in; it was large enough to hold the body of a man; do not know anything else relating to Scott or what became of his body; if the prisoner Lepine had been near the body of Scott, or near there, would have known him as well as if it had been witness' own father; Lepine was not there when I was on the wall.

To Mr. Cornish.—I know Francis Charette; did not pay attention whether I saw him there; on the spot did not see him, but did see him afterward; the prisoner is not a neighbour of mine, neither are the Charettes; know four Charettes (father and three sons), but do not know them by their names; did not see Charette there; there were plenty more besides witness on the wall; in consequence of the excitement, did not notice any one in particular; know Baptiste Charette; did not notice if he was there or not; knew Guilmette; only recognized him as being near the body; it was Guilmette who said, "Will you promise me to finish him?" and some one whom I did not know said in answer, "Yes;" when Guilmette asked this, the man who answered was at a distance in the crowd; Guilmette wore other clothes than those generally worn; did not see Auguste Parisien there; was so troubled and excited that I did not notice even who were the two persons next to me on the wall; was soldier in the Fort; knew Scott by sight; had seen him two or three times; knew that Scott was a prisoner; heard it after Scott had been made a prisoner; heard from people that were moving about the Fort, that Scott was to be shot; it was not stated what Scott was going to be shot for; do not know if there was any meeting in the Fort the morning Scott

was shot ; do not know if there was any preaching ; if anybody preached, the witness was not present ; do not recollect seeing the prisoner that morning in the Fort ; did not see Riel ; witness endeavoured to see some of the leaders to get permission to go home, but could not find any of the leaders, so was obliged to stay in the Fort ; did not go to the officers in Dr. Cowan's building ; do not know if the prisoner had any other name except Ambrose Lepine ; heard it from this one and that one the term Adjutant-General, but did not know that it referred to Lepine ; thought it was one of the leaders they referred to, but did not know who ; always addressed him as Mr. Lepine, and Riel as Mr. Riel ; was soldiering in the Fort about two months ; left the Fort quick, and after leaving it did not go near the Fort for two months.

Rev. Father Richot.—Am Curate of St. Norbert ; have been in the country twelve years last June ; was in the country in 1869 and 1870 ; was absent in the winter of 1869, but in the spring of 1869 was here ; was here in the spring of 1870 ; am aware what movement took place in 1869 in this country ; was not present at the meeting of delegates of the 16th of November, held in the Court House ; was present at the meeting at which D. A. Smith's papers were produced ; do not remember the date ; was present at the meeting of the 19th of January ; John Bunn acted as president, Judge Black acted as secretary ; Mr. Bunn was president for the two days of the meeting, but do not know it ; Mr. Black acted as secretary for the two days ; Mr. Smith represented himself as a delegate from the Dominion of Canada to give communication to the people of certain powers given him ; he said he had not these papers in his possession ; this is about all that transpired on the first day ; many speeches were made, but no official documents were produced ; did not see in the papers any report of this meeting ; the meeting next day was very short ; the meeting opened in the afternoon ; prominent members present proposed that twenty English delegates should come and meet twenty French delegates ; the meeting was very large and agreed unanimously to this proposition ; this was all that was done at that meeting ; was not present when Riel was nominated as President ; was appointed as a delegate jointly with Mr. Scott and Mr. Black as delegates to the Dominion Government ; these three delegates were appointed by the President of the Provisional Government, and the document was signed by Mr. Thomas Bunn, as Secretary to that Government ; the letter produced is a copy of the instructions I received ; also received a document of appointment as delegate ; never understood that the convention formed part of the Provisional Government ; understood that the Council of Assembly was composed of a number of members elected by the people, and that the President chose his advisers ; date of the letter of instructions is the 22nd of March, 1870 ; the delegates were also bearers of a list of demands ; the delegates left immediately for Ottawa. The witness then gave an account of the delegates' visit to Ottawa, and was stating the time that Sir John A. Macdonald commenced to negotiate officially, and his conversations, when His Lordship objected, saying he could not go into any discussions that took place between Sir John A. Macdonald, Sir Geo. E. Cartier and the Delegates, but would allow any official documents to be read.

Mr. Chapleau urged that the conversations should be taken as evidence, but His Lordship decided they should not, and at Mr. Chapleau's request filed the same.

The Court was then adjourned until 10 the following morning.

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THURSDAY, Oct. 22nd.

Father Richot's deposition continued.—Witness knew as a fact that the Provisional Government was composed of the President and a certain number of special advisers who were elected from the members chosen from the people ;

do not know how the special advisers were taken; only know that they were taken, but do not know by what process; according to my understanding the Government consisted of the President (Riel) and his Councillors, who I know were certain persons chosen to advise with and consult on the affairs of the country; this Council was composed of Francis Dauphinais, A. Lepine, Thos. Bunn, André Nault and some others, whose names I do not now recall to mind; always understood that I and the other delegates were appointed by the President of the Provisional Government; witness here produced an appointment, dated February 12th, 1870, "By nomination of the President of the North-West Territories, as a Delegate to the Government of the Dominion of Canada, jointly with Mr. Black and Mr. Scott;" witness also produced the French copy of the Bill of Rights; I do not know if they were printed as part of the proceedings of the House; the Manitoba Act comprised the substance of the Bill of Rights; the Bill of Rights was then read to the Court, and the witness stated that the English version was delivered to the authorities at Ottawa by the Delegates; I now look at a copy of a letter written by me to His Excellency Lord Lisgar, dated 20th April, 1870, at Ottawa, and also at His Lordship's reply; I wrote the letter and received the reply; the reply is dated 22nd April, 1870; the Manitoba Act was mostly framed according to the Bill of Rights; I asked for the whole of the articles of the Bill of Rights, in my capacity as Delegate; witness produced a copy of a letter which he addressed to Sir Geo. E. Cartier, dated 18th May, 1870; these documents were fyled; the negotiations commenced from 26th April and were continued until the last part of May; they were not put an end to and have continued since, and are still in continuation, as the promise, or demands, have not all been granted.

Mr. Chapleau.—Have you in your possession any official communications from the Canadian Government or any member of it, as to the course the Provisional Government should pursue in the interval of the military forces entering into the North-West Territory?

Witness.—Have no written official documents to that effect; all that I received was only verbally from Sir Geo. E. Cartier and Sir John Young, now Lord Lisgar; I made a written report of my mission to Ottawa to the Provisional Government on the 24th June; on my return from Ottawa I found the whole population quiet, and there was no disturbance; the same provisional manner of conducting business was as when I left for Ottawa, and it continued in this way until the arrival of Colonel Wolseley, which was some time in August. (Letter from Thomas Bunn to witness read, requesting him to make a report of his mission to the Provisional Government.) The reason the three delegates were chosen was to represent the whole community, Mr. Black as a Scotchman, Mr. Scott as an English, and Father Richot for the French; witness knows, since his return, that Lepine and Riel and some others, have been in actual correspondence with the Canadian authorities here in this country, viz., the Lieutenant-Governor of this Province.

Mr. Chapleau proposed to produce these letters. His Lordship refused to prove them.

Witness.—Was well acquainted with the members of the Council of Assiniboia, and also the late Governor McTavish; had an interview with him; asked him if the Government of Assiniboia existed; the Governor looked somewhat embarrassed, and said he preferred not to give an answer; this was all that was said on this subject; witness said to the Governor, "If you give me no reply, I can make no report;" witness remained about an hour there; the Governor kept himself on his guard, but was forced to admit that the affairs of the country were in a strange state; the Governor was well this day; had been ill previously; this interview took place between the 27th and 30th of October; had another conversation about the beginning of December with the Governor about the subject of the proclamation of Governor McDougall, which Governor McTavish complained of from the beginning, and declared himself completely powerless

to remedy the evils of the country ; I had a knowledge of the whole commotion of the colony and also of the beginning of the commotion ; this was because of the great dissatisfaction of the population here on account of the conduct of the first employers of the Canadian Government ; their orders appeared not to be specific enough to appease the people as to their intentions ; I think that nobody in the country knew what these surveyors had come here for ; nothing was explained to me.

To His Lordship.—Never asked Governor McTavish about the surveyors and their power ; know as a fact that some of the surveyors were working on the property of some of the settlers here, and were brought before the authorities here, and the authorities decided that the surveyors had no right to do this ; I understand this was tried before Dr. Cowan and some members of the Assiniboia Council ; have always known the prisoner as a man of a very peaceful temper, and although of great physical strength, he has never abused anybody.

Cross-examined by Mr. Cornish.—Was not at the Fort frequently before the month of March, only some times ; heard of the shooting of Scott on the 20th of March ; about the beginning of March, heard of the rumour in St. Norbert, from a neighbour ; went to the Fort when it was a question of Captain Bolton's affair ; do not know what time it was ; do not think I was at the Fort since then and Scott's affair ; Mr. Riel visited witness seldom : in October, there were many meetings in St. Norbert, and in the beginning of November the people had a meeting ; witness addressed the people at certain meetings ; the object of those meetings at St. Norbert was concerning the arrival of Governor McDougall, and the people accompanying him, as I understood ; was not at the first meeting ; addressed the people on occasions ; Riel was present at the general meeting, and was not at some of the other meetings ; I told the meeting what duty and prudence advised me to say of the danger they incurred, but did not lay down any law or rule to them ; do not consider myself obliged to answer the question as to whether I had advised the people to let the Canadian party come in peacefully ; did not give such advice ; there was a party assembled from the 20th to the 22nd of October on the road ; do not believe they were armed ; do not know if those that took the Fort were armed ; after the 20th of October, many had guns ; do not know if there were any men at Scratching River guarding the road ; during the autumn of the year the guards were distributed through different parts of the country ; there was an armed guard at Stinking River, and saw a fence put across the road ; I should say there were about hundred men there, some few having guns in their hands ; some persons were stopped, two turned back, and some permitted to go on ; some carts were stopped ; I am not aware that any carts containing goods said to belong to the Canadian Government, were stopped ; there were some goods going to Winnipeg in carts ; they were stopped and taken on my property ; there were about twenty carts stopped ; have no knowledge of any of Schultz's goods being taken on the road ; know nothing of it personally ; part of the party left beginning of November, and the others in the latter part of it ; they came to Fort Garry, and I suppose they got into the Fort ; did not follow them.

Paul Proulx sworn.—Know the prisoner at the bar ; was in the Fort on the 4th of March ; saw a man (which was said to be Scott) going out of the house where it was stated the prisoners were kept ; saw him going towards the gate and out of the gate ; had something white round his head ; was accompanied by two or three men, one of whom was Rev. Mr. Young ; quite positive that the prisoner was not one of the men who accompanied Scott ; saw the firing party firing ; know two of them, Guilmette and Parisien ; at that time was not excited and looked on quietly, and am sure Lepine was not near the party firing ; know the prisoner for fourteen years ; his reputation was that of a good and quiet man.

Cross-examined by Mr. Cornish.—Was standing at the door of Dr. Cowan's house facing the small gate of the Fort, when I saw the man they called Scott ;

pass by me as he was going to the gate; when Scott had passed, I followed; saw Scott stop on the road, about the length of the Court-room; was moved from this place to another; cannot say who moved him; when Scott was moved, the firing party stood near the gate in a line with me; after Scott was moved, did not see the firing party change their position; did not see any person with a white handkerchief in his hand; did not hear any word of command given to fire; did not see any signal given to fire; after the firing, Scott fell on one side and leaned on his right shoulder; did not observe if Scott had his hands tied behind him; did not see any one firing with a pistol after the volley; after Scott fell, did not move up to the body; was standing about the length of the Court-room from Scott; do not know what was done with the body; I saw a box outside of the Fort, near the wall of the Fort; did not see it moved from there; it was a large box made of rough boards; I sometimes was a soldier in the Fort, and sometimes not; I mean sometimes acted as guard; when I wanted to mount guard, I did; had no Captain; was not an officer; was in the Fort altogether more than two months; did not see Lepine at all that day; saw Riel in the evening; did not hear any one say, "All that are here go into the Fort;" saw O'Donohue that day, in the morning, inside the Fort; know André Nault; saw André Nault inside the Fort, about five o'clock in the morning; he came to my room; know Francis Charette and also Baptiste Charette; did not see any persons that day inside the Fort that I now mention, except Rev. Mr. Young and Guilmette; do not recollect seeing Goulet.

Hon. John Sutherland sworn.—Was one of the Delegates of the Convention of the 19th of January, 1870; was one of a deputation that went to see Governor McTavish; Mr. John Frazer was the other one; know Mr. Pagé and the prisoner at the bar; the delegation was to enquire if Governor McTavish was Governor, or continued the Government of the country; either myself or Mr. Frazer spoke to Governor McTavish; do not recollect very well; we went by the consent of the Convention; our question was in this sense, "Was Governor McTavish still Governor of the country, and would he continue it;" the answer was, "Form some Government for God's sake, I have no power or authority;" this is the only answer, to the best of my recollection, that we got; the prisoner was with us; he came as I understood to conduct us; probably Pagé might have been; Pagé and the prisoner were members of the Assembly; it was the English members, as I understood, wanted to ascertain the point; a feeling existed that it would be necessary to ascertain if the Government existed, which, as we understood, was the Government of the country, and did not like the idea of establishment of any Government opposed to that of the Hudson's Bay Company or of Governor McTavish.

Cross-examined by Mr. Cornish.—It was discussed as to the propriety of forming any other Government to that of the established one of Governor McTavish and the Hudson's Bay Company; it was discussed among the English members outside of the Assembly; one special reason for myself going to the Convention was on account of the country being in a very troubled state, and we were sent there by the people, to meet from all parts and to come to some understanding for the public good; do not recollect for what purpose the mass meeting was assembled; the Convention, if I recollect well, was in the latter part of January, or early in February; saw some difficulty about the producing of Mr. Smith's documents; was not present when Riel was elected as President; there were some armed guards came in on the day before when the subject was spoken of; about this time a guard was put over Governor McTavish's; I understood the prisoner went with me to Governor McTavish's to get access to the room; the door was guarded; Governor McTavish was very weak indeed at this time; think the expression, "I am a dying man," was an addition to the reply; think he referred to his bodily power as being such that he had no physical power left in connection with his want of civil power; heard that Donald A. Smith was a prisoner at that time, but could not say if he was; could not say if

the prisoner had any special authority or not; he was said to be Adjutant-General, as I heard it; never saw him exercise any authority over any military force.

To Mr. Chapleau.—This Convention was sitting a day or two days at farthest, if I recollect, after our visit to Governor McTavish; know nothing about the second Convention to my own personal knowledge.

Modeste Lajemonière sworn.—Know the report that Thomas Scott was executed; know Lepine well; it was not the prisoner who was with Scott as he was coming out of the gate; Elzéar Goulet and Mr. Young were accompanying Scott at the time, to the best of my recollection; was one of the party who carried the box into the Fort; do not know what it contained; it was taken in by the order of Goulet; two men carried in the box; do not know the other man's name; we were the only two; the box was put near the bastion; I was put as a guard to prevent people coming near; as I was on guard and unarmed, a man named Hupe came near against my will and went to the box; witness carried the box, and while I carried it, and while on guard did not see any blood coming from the box, and did not see any blood on the snow at the place where we took the box; do not know if the box was taken from the place where I guarded it and put into the bastion; from personal reasons, can say most positively that the prisoner did not give the signal or command the men to fire.

Cross-examined by Mr. Cornish.—At that time had been in and about the Fort quite a while; should say about six weeks; was Riel's servant; did not mount guard at all; did not know a Captain in the Fort named Lajemonière; was standing at the attic window of Riel's house when Scott went out that morning, and I saw him go out; looked at him as long as I could through the window; from where I was could not see the gate of the Fort; Captain Gray was with witness; was talking to Captain Gray and saw somebody else behind; this was after Scott had passed; Mr. Riel was behind witness; Lepine was also behind witness; I went up there to see Scott brought out; do not know if Riel or Lepine came up there to see Scott, or whether Gray went there for that purpose; nothing was said to my knowledge, while we were there, by any of the party, except I heard Mr. Riel or Lepine say, "It is then God's truth, they are really taking him down;" heard nothing else said.

His Lordship.—Did they rush out to stop them from taking him down?

Witness.—I left before they did; I was nearer the door; I passed and went down-stairs first; I mean I left Riel, the prisoner and Gray there; I went then to the south gate; saw only the guard that was stationed there; remained there about four or five minutes; heard no firing when I was at the gate, or on that day; I thought that everything was over, and advanced towards the east gate; went out of the gate and saw a box; about twenty-five or thirty yards distance; think I saw one man standing near the box and another one nailing it; did not go to the box then, but turned back; saw a good many people around; no one could have passed through the gate without my observing it; I turned back and walked a few steps; I then stopped and spoke to Elzéar Goulet; Elzéar Goulet said, "Shall we not find a man to take in that coffin?" witness said, "I can take it in through charity," and ran to the box and took hold of it; do not know if anything was in the box; ran to the box and said, "Let us take it in;" to the best of my knowledge, think it was Guimette who assisted me to carry it in; did not notice if any one followed us; did not see Lepine and Riel up to this time since I left them in the room; did not calculate the time it took me to come down from the room; went to the large gate, and stayed there four or five minutes, and then came to the small gate; when Hupe passed me as I was guarding the box, I was about twenty-five paces from the box; Hupe stopped at the box; saw Hupe coming near the box, and put one knee on the ground and kneel against the box; Hupe was at the box long enough to listen well, and then turned back and passed me into the court-yard, and I lost sight of him; this was before dark; about this time heard Riel calling to the

people inside of the Fort to come in ; Riel was up-stairs at the attic window ; Riel said to the people, " Fall in by ten ; " this was done inside of the Fort ; as I came near to the people, I saw Lepine ; Lepine was walking about through the ranks, and speaking with his brother ; Lepine had no command at that time, for Riel was commanding.

To Mr. Chapleau.—Riel collected them to make a speech ; Lepine, while he was talking to his brother, was leaning against the house ; Lepine was listening to what was said while Riel was speaking.

Atalance Hupe sworn.—Know about the shooting of Scott ; have seen a box being brought into the Fort by two men ; the box was near the bastion ; about three-quarters of an hour after the box was put there, I came from the mess-room ; while I was in the mess-room some one came in and said, " We hear some talking inside of the box ; " witness then went outside to the box near the bastion ; it was in the same place I had first seen it ; Modeste Lajemonière was there as a guard ; I leaned one knee on the ground and leaned over the box, and heard a voice inside distinctly articulate, " I say, I say ; " the wood of the box was not quite joined ; a man of the guard came to the witness and sent him off ; I might have said to Lajemonière some one was speaking in the box ; know I have said it to several persons ; do not know how the box was disposed of ; did not see it afterwards ; know that a grave was dug in front of Dr. Cowan's house, but do not know if the box was put in.

To Mr. Cornish.—Saw the shooting of Scott ; did not see Scott taken out of the gate ; saw a man kneeling by the roadside ; they fired at him, and the man fell ; went up and looked at him, but saw no blood or nothing else ; his hands were tied behind his back ; he fell on his side ; saw a person about him with a pistol ; a Canadian named Guilmette ; Guilmette was very drunk ; could not see exactly, but think he shot him through the head ; the body did not make any motion when the pistol shot went off ; it lay still ; immediately went into the Fort ; do not know who ordered us to go in ; some one was crying out, " Go in, go in ; " who cried out I do not know ; did not know any of the parties immediately about there ; saw Riel that day ; saw Riel in his house in the attic room when he was making a speech ; did not see Riel at the time of the shooting ; saw Riel several times that day in his quarters at Dr. Cowan's house, and passing in and out ; did not see Lepine all that day ; do not recollect having done so.

To His Lordship.—Did not know who the firing party were.

To Mr. Cornish.—Did not see André Nault there ; saw Elzéar Goulet, but did not see him outside the gate.

To His Lordship.—Do not recollect seeing any one in particular, except Guilmette, at the time Scott was shot ; all of our people were there, but I recognized no one in particular.

His Lordship.—I understand that this is all the witnesses for the defence, except the Archbishop of St. Boniface.

The Court was accordingly adjourned until the following day at 11 o'clock.

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FRIDAY, October 23rd.

Archbishop Taché sworn. — Was here in 1869-70 ; came here 10th August, twenty-nine years ; was a member of the Council of Assiniboia since 1857 ; the Governor was merely President of the Council of Assiniboia ; the members gave their opinions on equal footing, and the measures were passed by the majority ; the Governor had no veto right ; this right was exercised by the Governor and Hudson's Bay Company in England ; the measures took effect from the moment they were proclaimed ; the nominations and appointments were made by a majority of votes ; although the President, the Governor took



part in the deliberations of the Council. Witness was here asked who were the members of the Council of Assiniboia at the time of his departure in June : Bishop of Rupert's Land, John Black, John Frazer, John Sutherland, Dr. Bird, Boyd, Bannatyne, Thomas Bunn, Dr. Cowan, Solomon Hamlin, Paschal Breland, Emileon Genton, William Dease, Roger Goulet, and the witness, James McKay; these are all I remember; the meetings were not at stated times; at the time of the departure of the witness, there was no question of any political changes; the members of the Council of Assiniboia were not notified of any political changes; was acquainted with Governor McTavish; he was in the colony at the time of my departure for Rome; I came back to the Province on the 9th March, 1879; I returned to the Province at the request of the Ottawa Government from Rome; the demand of the Government was on account of the troubles that had taken place during my absence; at the time of my departure for Rome, the difficulties were foreseen, but had not taken a definite form; it was because I had foreseen these difficulties that I had proceeded to Canada in the month of June, so as to put the Canadian authorities on their guard; they did not pay any attention to the representations I felt it my duty to make; when in Canada, I received a letter from Governor McTavish; before my departure for Canada, I had several conversations with Governor McTavish on the subject; at the same time that I went to Canada, I was on my way to Rome; the letter of Governor McTavish to the witness was published in the Report of the Committee of the North-West; the letter was dated 4th September, 1869; I copied that part of the letter which referred to the troubles, and sent it to Sir George Cartier; Sir George Cartier replied that he had provided for everything, and the next day, I read in the Ottawa papers that arms and ammunition were being forwarded to Governor McDougall; I returned from Rome at the request of the Canadian Government; on my arrival at Ottawa, I was immediately introduced to the Privy Council then sitting; they informed me as to the condition of affairs at Red River; the witness' opinion is corroborative of this, because when he had anything to do with the Government, I was always referred to Sir John A. Macdonald and Sir George E. Cartier; the time I had interview with Sir John A. Macdonald, he handed me a letter which stated that the letter I received from Mr. Howe was official; with the exception of a letter from Mr. Howe, dated 4th December, to Vicar-General Thibault, the rest are published in the North-West Committee's report; witness here produced a letter from Sir John A. Macdonald dated 6th December, marked private; the Government of Ottawa requested me above all to put myself in communication with the leaders of the movement, and I did so upon my arrival; they also requested me to communicate with Mr. McTavish, Mr. Salaberry, Father Thibault and Mr. Smith; I saw Rev. Mr. Thibault at once; I saw Mr. Smith, who was about to depart for Canada and who said he did not want anything more to do with the matter; I communicated several times with Mr. McTavish, ex-Governor; on the 8th March I received a letter from Governor McTavish, which I can produce, in which he speaks of a proposed loan; during the intercourse with Governor McTavish that I had, I came to the conclusion that the letter was written on the full possession of his mental vigour and faculties, and that he was not biased by bodily fear or otherwise; am satisfied that his bodily sickness did not affect his intellect—that the letter I have produced was written of his own free will; that he was not forced to write it; he repeatedly expressed to me his satisfaction at having been able to come to that agreement.

To His Lordship —It was expected that the Ottawa Government would pay the debts of the Provisional Government, and I so told Governor McTavish.

(Mr. Chapleau here insisted upon proving and putting in a document purporting to be an agreement for a loan between the Hudson's Bay Company and Governor McTavish.)

On the 1st of May I addressed a letter to the Hon. Mr. Howe; this letter is

published in the Report of the North-West Committee; I received answer to that letter from Mr. Howe; it is also published; I appeared once before the Legislative Assembly of Assiniboia; think it was about the 14th of March; remember the names of some of those who were there; Dr. Bird, Dauphinals, O'Donohue, Lepine, Bannatyne, Bunn, Hay, Spence; those are the only names I remember; this Assembly was presided over by Riel; I appeared before the Assembly at the request of Riel, but I do not know whether it was an official request or not; on my arrival here I heard that the Convention had appointed three Delegates for Ottawa, but it was, however, rumored that they would not go to Ottawa; I believe that the answers were given on account of the political state of the country at the time, and not from any bodily or physical suffering at the time; he was in full possession at the time of his faculties and vigour; Governor McTavish told me he was acting in the best interests of the country, and he stated this often; after my arrival here and after my explanations, matters seemed to take a different turn; on the departure of the Delegates, the prisoners were released and tranquillity appeared to have returned; shortly before the departure of the Delegates, Governor McTavish spoke to me of a proposition made by the Provisional Government to borrow money and chattels belonging to the Hudson's Bay Company, and at that time, unknown to Mr. McDougall; I had several communications with Governor McTavish in March; Governor McTavish recognized the existence of a Provisional Government, and recognized it because the proclamation of Governor McDougall, which he had previously thought to be legal, had led to his own abdication, for at the time I was talking to him, Mr. McTavish admitted there was no other Government in the country except the Provisional Government; he (Governor McTavish) himself counseled the strengthening that Government in order to maintain peace and order; before my departure to Canada, I again wrote to Mr. Howe, on the 9th of June, 1870; this letter is also published; I received a reply some time afterwards; the letter is dated 4th July, and is published on page thirty-four of the blue books; two of the Delegates returned, the third died before his return; my return to Canada was in consequence of my mission; I returned on the 27th of June; know the prisoner at the bar; have known him for seventeen years; he bears a good character; know him to be of a peaceful disposition; he lived with me two years; have known the prisoner for the last four years; so far from his having been a fugitive from justice, I had great difficulty in inducing him to absent himself a short time from his home at the urgent request of Sir John A. Macdonald.

This closed the evidence for the defence.

And the Court adjourned until three o'clock, in order to give Mr. Royal, Junior Counsel for the defence, an opportunity to prepare his address.

At three o'clock, the Court met pursuant to adjournment, and after routine Mr. Royal said:—

*May it please your Lordship and Gentlemen of the Jury,*

There are many reasons which will prompt my remarks on this subject. You have sat for many days listening to the evidence before you, and really I hope that the same will be done for you that was recently done in England for a jury that sat nearly two hundred days on the Tichborne case, who were paid five dollars per day. We have sat until eleven o'clock at night, and it is time we came to an end. It is now my duty to address you in the English language. In doing so, I will not be able to do so with the same ease as I could in my familiar tongue. However, this is the peculiarity of our state trials. In all the trials that have taken place with respect to the Red River country, the trials have been very lengthy, occupying some-times twenty-seven or thirty days. The first state trial has been long enough to tax you patience. As I told you, I will be very brief. I will summonse the evidence taken before you, which you will have impressed on your minds, and I will leave to my senior Counsel the task of raising the

legal points and discussing them. Now, gentlemen, what says the indictment against the prisoner at the bar?

"The Jurors for the Court of Queen's Bench, on oath present that Ambrose Lepine, on the 4th of March, in the year of Our Lord one thousand eight hundred and seventy, at Upper Fort Garry, feloniously, wilfully and of his malice aforethought did kill and murder one Thomas Scott, against the form of the Statute in such case made and provided, and against the peace of Our Lady the Queen, Her Crown and Dignity."

Well, gentlemen, it is the duty of the Crown prosecutor to prove all the material facts that are mentioned necessary to constitute the crime as laid down in the indictment. I will summonse the evidence taken before you on both sides. Here, gentlemen, are the facts that the prosecutor for the Crown has depended upon to make his case out. Who was the first witness? William Farmer, he who made the information against the prisoner. Mr. Farmer, unfortunately for himself, was selected as a Grand Juror. However, it is a duty to his country which, I suppose, he thought according to his conscience. Mr. Farmer was among certain parties from the Portage who were arrested by a party from Fort Garry on the night of the 17th of February, and was amongst those brought into the Fort. When he was asked who was the leader, he says he does not know. When pressed he says, "Riel, Lepine and O'Donohue were among the parties who came out to arrest the Portage party." He says it was discussed whether they were to be taken to the Fort or let go, and that the prisoner was in favour of their being let free, and O'Donohue took the opposite side. It seems O'Donohue was the commanding authority there, but the Crown prosecutor has tried to impress upon your minds that Lepine was the leading mind. However, Lepine was in favour of letting them go to their homes. But this evidence from Mr. Farmer will not have any great weight upon your minds. The mind cannot be trusted too long. The prisoner at the bar, whenever he appears upon the occasion, appears to be lenient and on the side of humanity. Of course, I will go from the ground that relates to their being arrested at their stopping at Headingly and Kildonan. These facts have combined to show what was the reason of these meetings. Now, gentlemen, after O'Donohue had succeeded in having the Portage party brought to the Fort, what was done? They were searched. When the question was put whether Lepine took a prominent part in having them searched, it is denied that he did. You must bear in mind that three or four names have been placed before the public. The names of Riel, Lepine and O'Donohue have been discussed in the public newspapers. These facts, it must be borne in mind, have an important relation with the case. You must also bear in mind that Lepine was with a crowd of others; that he never took part in the search of the prisoners. This is the burden of Mr. Farmer's evidence. Upon being asked in the cross-examination whether the prisoner had addressed himself angrily or in any rash words to the prisoners, he says, "No." He says there was another dictator in the Fort; there was somebody else. There are among the chief points in Mr. Farmer's evidence. The second point in this summary is the evidence of Mr. Newcombe. Mr. Newcombe was the second witness. He was examined at the preliminary investigation which took place last fall. He was one of the Portage party. On being asked whether the prisoner at the bar was there when he was arrested, he says he does not remember. Mr. Newcombe is very intelligent, and yet he cannot say whether the prisoner was with the party who arrested them or not. He says he does not remember whether he was there or not. It is a remarkable fact that a man like Mr. Newcombe does not remember. Certainly an intelligent man like Mr. Newcombe would have noticed whether a prominent man, known to be such like the prisoner, was there. We have this fact on oath that Newcombe does not remember having seen Lepine there. However, Mr. Newcombe remembers that they went over to the Fort. There were only forty men, half of them on foot. If Lepine had been there, he would have seen him. He remembers very well the fact of their being searched. He said he did not

see him give orders at any time. When he was liberated, when he had come to a certain room where the prisoner was seated at a desk, he took a certain oath, not an oath of allegiance, but an oath that he would not take up arms against the existing authorities. When asked if he saw the prisoner give any orders or directions there, he says, "No; I saw him only sitting as his desk." When he is asked whether he saw the prisoner at the bar under other circumstances, he says, "Yes; I have seen Lepine in the guard-room and in the yard." The evidence, gentlemen, given by Mr. Newcombe, like that of Mr. Farmer, is more favorable to the prisoner than against him.

Now I come to that given by Mr. McPherson. His evidence seems to bear upon the accusation more than the two others. He states he was at Winnipeg in 1869 and 1870; that when he was taken near the Prairie Saloon, there were about four or five hundred with those who took him. (Mr. Cornish here corrected Mr. Royal, stating that McPherson had alluded to the force in the Fort, and Mr. Royal accepted the correction.) Mr. McPherson's mind appeared to be very much at rest. I believe so little was in fear, that both he and Scott made up their minds to go down town from the Fort and have a drink, for as soon as they were searched, Scott said it was a very cold day. "Come down and let us have a drink," and on going they were stopped. When Scott was being led to the spot where it was arranged that he should be shot, he (McPherson) said, "I was at the window, I could see in the yard what was going on; I saw the Rev. Mr. Young and Scott going down to the eastern gate; there was one person coming behind them, it was the prisoner at the bar; I saw Lepine coming behind Mr. Young and Scott." If the credibility of this witness had not been shaken by the testimony of others, it would certainly have a very great bearing upon this case. We have grounds for the belief that Mr. McPherson was not under favorable circumstances to see. He was looking down from the window; there were double windows; he was looking from the inside; whether or not there was frost on the glass it does not appear, but at any rate he saw the prisoner. "I saw a well-built man"; he saw him only from the back, he never saw his or Scott's face either. The procession was going out when he saw it. When asked if Lepine was the only man well built, he said Lepine (the prisoner) had brothers, and that some of those brothers were as fine-looking as the prisoner. I do not say anything against Mr. McPherson personally or against his motives. It is a very careful man who ought to swear to what Mr. McPherson tells us he saw. On his cross-examination, Mr. McPherson gives us a bit of history at that time. He says, "I was a constable of Colonel Dennis." It appears that others as well as the Crown swore in constables. There were three or four governments too. Dennis had one. Schultz had one. It seems that Mr. McPherson was one of the guards who were supposed to protect or guard Dr. Schultz's property. It seems that the guard kept on Schultz's house was not very effective. He says that one morning he was allowed to go to the post-office to get letters for himself and the others, and that he did not return again to Schultz's because the party there were taken prisoners. When asked who were the officers of the movement with which he was connected, he said the officers were not elected or appointed, but took command spontaneously. It is for you, gentlemen, to take his evidence and see what amount of credibility you are to put upon the evidence of Mr. McPherson.

We come to the evidence of Mr. Young. A great deal of importance is paid to his evidence; he, perhaps, is a man that saw what passed and took place at a certain moment. He was there. He told you that he was in Scott's room giving him the consolation of religion. While he was there, there were a great many parties in the guard-room and hall. While there, he must have recognized everybody, especially some of the prominent parties, but he saw nobody. If the prisoner had been there, we must come to the conclusion that Mr. Young would have seen him. Mr. Young said he did not see the prisoner at the bar. When Mr. Young was coming down-stairs, at that time Mr. McPherson swears that Lepine was with them. Mr. Young did not see him; Mr. Scott did. Surely Mr. Young was

noticing what was around him. When Mr. Young and Scott came to the eastern gate of the Fort, it is said that both paused there. Mr. Young does not say this; he says, "We went along to the first spot where Scott knelt before he was killed." This fact you must bear in mind, because some other witness says they stopped. Mr. Young was with Scott the whole time. He was with him and had him by the left arm when they both went around to bid good-bye, and when they came down-stairs. When they proceeded to the first spot he was with him; he was with him when they proceeded from that spot to the second one. We now come to this part of Mr. Young's evidence when he saw him after the guns were fired. In his cross-examination, on being asked whether he lifted the body to examine it, to see if it had life left, he said it was dead. He could not understand what Scott said; it was only a shriek or moan. He did not observe whether Scott was breathing or not, he did not touch the body, but he said the distance that he was from it then was eight feet when the pistol shot was fired at Scott's head. He said he remarked from the position he occupied at the time, he did not see any hole or holes in the front of Scott's dress, and he remarked to the Chief Justice that it was difficult to state accurately occurrences that took place some four or five years ago. It is very probable that Mr. Young may have been mistaken. The position that he occupied is not according to the one stated by others. He states that he saw the bullet holes in Scott's coat; they were at the back. Other witnesses have told you that there were scratches on the shoulder, as if the bullet had passed through. Mr. Young said he saw the marks a little lower down, the traces of a bullet. You, gentlemen, are natives of this country, you know what kind of a hole a bullet makes in passing through woollen cloth. It remains with you to decide whether Mr. Young can swear that this hole was made by a bullet or bullets. When a man's life is at stake, it is a very doubtful thing to swear that a certain hole is a bullet hole. I do not wish to cast any reflection on Mr. Young's evidence. These are facts that the jury as well as anybody else can determine. Well, from the distance Mr. Young occupied at the time, was it possible for him to swear that these scratches were caused by a bullet hole. It is for you to decide. When more than one witness will come before you and say that they have seen the holes in the chest of the man who was said to be shot, you will be able to say which is correct. Mr. Young has seen Mr. Lepine under two circumstances. The first, when he came himself in his efforts to prolong Scott's life, and when he came to Mr. Riel at Mr. Young's request. He saw him before sending Campbell to Smith; Smith was then living in the same house with Governor McTavish; he himself went to Riel on the same errand. Riel does not understand any more English than Mr. Young understands French. On being asked does he understand French, he says no; he may have picked up a few words here and there, because he has lived for a short time in a mixed community; but remember this, he would not go far enough to say he understands even a little French. Indeed he states he does not understand French. What does Mr. Riel say? He says, "It is not my duty, it is not my business; I am very sorry the case has been decided. I will send for Lepine." Lepine comes, and what takes place before these three men? Mr. Young gives in his information this inference. He says the conversation was in French; Lepine did not say a word, but he shook his head and said no. Mr. Young, being there, ought certainly to know, but Mr. Riel or Mr. Lepine might have said anything else that was in his mind at that time, and could Mr. Young from his own admissions know what it was? The witness could not state anything giving even the sense of the conversation that then took place. On the second occasion when Mr. Young went to ask for the body of Scott, there was the very same comedy or a repetition of the same fact. Riel sent for Lepine. Certainly it was most kind of Mr. Young to make this request, but, gentlemen, you will notice that the person who exercised the chief command was Mr. Riel and not the prisoner at the bar. These are two occasions on which Mr. Young saw the prisoner. When Mr. Young was accompanying Scott, he never saw Lepine; he may have seen somebody else

less renowned, less known than Lepine; however, he gave the names of those parties he had seen. Surely he would have seen him if he had been there. He noticed O'Donohue, but he did not see Lepine.

Gentlemen of the Jury, in the cross-examination Mr. Young stated that he had seen Riel in the guard-room where he did not see Lepine. He has also seen some one else, a man by the name of Goulet, and he afterwards saw O'Donohue, but he never saw Lepine. When, after the firing, he asked Mr. Young what took place, he said this, "I heard a voice saying, Put an end to his misery." It was said in English. Mr. Young is the only witness who has stated this. The most important part of Mr. Young's evidence is what he saw when he came down with Scott to the last place. He also defined the position of the body.

Now we come to Campbell's evidence. Campbell had a good opportunity of seeing what was going on. He is in fact a kind-hearted man and was allowed to go into the Fort and bring provisions, food and even luxuries to the prisoners, and he was permitted to hold conversations with them. It is well for you to remember these facts. Liberty, gentlemen, is the sweetest thing in the world, and it is best appreciated by prisoners. You must remember that these prisoners had opportunities of meeting. The Bishop of Saskatchewan was allowed to go and make speeches to them; he mentioned one case of their holding public meetings among themselves. Campbell had excellent opportunities of going to the Fort; he was allowed to go to it to bring things to the prisoners. We next find that on one occasion he was stopped by one of the guards and refused permission to enter; he was told to go and get special leave from the Adjutant-General Lepine, who was then one of a Government composed of delegates from all parts of the country, and he had been chosen unanimously to act in the capacity of Adjutant-General. The position was never well defined. He was then Captain of the Guards, and he was, on the occasion referred to, coming to the gate, when Mr. Campbell requested him to be allowed to pass, and Lepine said: *Pass*, in French to the guard, and Campbell was allowed to proceed. Campbell says he does not understand French, but the English word *pass* is much the same in French, and from this it is inferred that Lepine was in command then. This is the only conclusion that can be derived from that fact. I do not see that anything more can be deduced from that fact. Campbell remembers the 4th of March; he remembers Mr. Young; he described the prison in full. He did not see Lepine in the guard-room. Like Mr. McPherson, he went to a window to see Scott go out. Did he see Lepine, the prisoner, come after the prisoners? No. He states that he saw Lepine at a distance; that there was a large guard at a distance; that Lepine, Riel and O'Donohue were there. How is it that they can be in the same place at the same time? This man Campbell, so it appears, has not given likely evidence. He states that he saw through the window, he saw Mr. Lepine while he was going out; he states, moreover, that he was with three persons together. I believe he is the only one who has stated that; two or three other witnesses state that O'Donohue was not there. Looking from the distance he was, and as he admits he was excited, could he see correctly? However, these parties are always before his sight. He recognised them among a guard of men. Some of you have been in the Fort, and you know the topography of the place. Place yourselves in that position, and from that window in a diagonal way, some hundred and twenty feet if you can, in the guard-room, and do you think that you could recognise anybody sufficiently to swear to his identity? He says, "I lost sight of them at once." Strange thing! What does Campbell next see? he sees a box carried by six men. He tells you the direction in which it was carried. You must remember how the carrying of that box was done. Was it by two or six men? Remember. Campbell swears it was carried on the shoulders of six men. Another witness, one of the carriers, comes and tells you it was carried by only two men and in their hands. There is very much contradiction. You are the judges of these facts. On Campbell being asked if he saw the prisoner at any time afterwards,

he says, " Yes, I saw him in the gathering on the occasion of the hoisting of a flag. Riel was ordering on that occasion." When asked what position did the prisoner hold, he says he was only one of the guards. Did he make a speech? No, it was somebody else that made a speech. The fact that the prisoner was seen now and then should not weigh against a man who is being tried for his life. It seems that Campbell saw the prisoner under some other circumstances, and he relates them. What does he say of Hallet's affair? Hallet had some trouble with his guards. Lepine was there; he did not appear to be exercising authority; it was somebody else that commanded the guard. Hallet had been ordered to be put by himself on account of some rash words he had used. The prisoners resisted on Hallet's behalf, and the Captain of the guard took Lepine by the shoulder and drew him away, and the prisoner did not resist on that occasion, showing that he submitted to the orders of the Captain. It has been attempted to prove that Hallet suffered so much from his confinement that he died from it. In the cross-examination, it was elicited that poor Hallet had undertaken a Government contract, and that he lost heavily and in a moment of temporary insanity he committed suicide. This is all that comes out of Campbell's evidence. It is for you to state how far and how much it implicates the prisoner in the death of Thomas Scott.

We now come to the evidence of the Rev. Bishop Machray. This gentleman gives the part he has taken in the matter, and in his cross-examination he says that John Bruce was at the head of affairs. Of course, he can only state this from hearsay. He states, moreover, that he used to visit the Fort for the purpose of seeing Governor McTavish. He states that the question of any other authority existing was asked Governor McTavish, and besides he states that that gentleman was dangerously ill during the troubles. He states that at the meeting of the Council of Assiniboia, he was the only one who suggested the employment of force to put down the movement. He admits afterwards that this advice was not prudent, because if acted upon it would have brought the two classes of the settlement into conflict, and this is what he wished to avoid. He states that the Council of Assiniboia, through Governor McTavish, issued a proclamation ordering the people of the movement to disperse, and that this proclamation was published in both languages. He says at that time the meetings of the Council of Assiniboia came to an end by the rash and false proclamation of Governor McDougall, dated the 1st December, 1869. When asked concerning the powers and authority of the Council of Assiniboia, he says the Council was not executive, it was only legislative, though the Governor generally sought the advice of a few of the members. It strikes me that there was then no definite Government in existence. Certainly it is for you, gentlemen, to say. When questioned as to the body of Scott, this witness does not differ from what was already said by Mr. Young.

Next we have Chambers; he was before you; he was there on the morning of the 4th of March; he saw something he describes with a certain amount of accuracy, the distance the firing party was from the man Scott, who was said to have been shot. He says the firing party were standing only about eighteen feet [20 yds] from the man to be shot. The soldiers were armed with rifles [trading guns], that they appeared to be under the influence of intoxicating liquors. When Chambers is asked who was in command of the firing party, he states it seemed to be Lepine. When pressed for the fact, he says it was a man named Lepine, but he says I cannot identify him as the prisoner; however, the man's name was Lepine. He told you that the man in command of the firing party was Lepine. Well, gentlemen, you have heard it stated from other witnesses that it was another man that commanded the firing party. When he saw Lepine, he was sideways, he saw his side only. You have also this other fact that when Chambers went to the body, he saw what other witnesses did not see; then he saw some blood on the man's face. You have other witnesses who state that the white cloth covered his face. Here is another

contradiction on which you have to judge. Chambers is a gunsmith; when asked if he saw marks on Scott's coat, he says he did not observe anything, but the blood on the white cloth. He is asked what he next saw. He says he saw six men drawn up into line. Now, how can a witness, if not in line, especially when he is sixty or seventy feet away, swear positively as to who was or who was not there? Chambers was near the gate when Scott and Young came out. He observed Mr. Young and Scott, but did not see Lepine. His evidence that Lepine was in command of the firing party is contradicted by four or five other witnesses. Here is another witness, Alexander Murray, who saw something from the key hole; he is very precise in his description. He saw something not seen by other witnesses. For instance, he swears positively that when Scott went around to see his comrades for the last time, it was Mr. Young who said, "Good-bye, boys." Scott only bowed his head. Gentlemen, here is a contradiction. Mr. Young states that it was Scott that said, "Good-bye, boys;" he does not recollect having seen anybody with Scott at that time. When asked if the prisoner was there, he says, "No. Saw Lepine on that day, but it was some time after the firing." Murray was a very intelligent witness. When he is asked what was the popular feeling in the settlements along the Assiniboia, he says that Governor McTavish could have crushed out the movement. He says that if the Governor and Council of Assiniboia had sworn in a number of special constables, no troubles would have taken place. He says the people of the Portage rose and took up arms to release the prisoners. During the course of the evidence, the learned Judge also stated his opinion that this would have been the proper course to pursue.

Duncan Nolin has seen something; he states that on the morning of the 4th of March, he came to the Fort and saw Scott; he did not see Mr. Young, but he saw Lepine leading Scott to the place where he first knelt down. It is only there that he saw Mr. Young. Strange thing for this witness! However, you have gathered it in the evidence. Lepine was not seen at the spot. Nolin himself says he was very much excited. When he saw Scott coming out, Lepine took him by the arm and led him out. He saw Riel on the spot with O'Donohue walking about, but he did not see Scott on the first spot. Whatever weight you place upon that, you must remember that this evidence is that Lepine was not there. The same witness goes as far as to tell you that it was somebody else that led the party.

Now I come to the most important evidence for the Crown. I come to the evidence given by Mr. Joseph Nolin. He swears that he was Lepine's private secretary, and as such he called the Council of War that took place on the night of the 3rd of March. He tells you that this Council of War was presided over by Lepine, the prisoner, and this evidence is not contradicted. Lepine was there by the authority of these men. What share did he take? It is true he presided; after, Riel came and made a speech, and made the accusations against Scott; some witnesses were heard; when the votes were taken, two dissentient voices were heard, Lajemonière who preferred to see Scott executed, and Baptiste Lepine who said, No! he was not in favor of the sentence of death. Did the prisoner at the bar vote or say anything in favor of the sentence? No. All he said was that the majority are in favor of death and he will have to die. He did not say anything else. He merely said that the majority being against Scott, he will have to die. If in connection with that fact we take the evidence of Modeste Lajemonière, who was in the north attic window of Dr. Cowan's building, and who declares that he heard either Riel or the prisoner, who were then behind him in the same room, say distinctly, "Then in God's truth, they are bringing him down," you will have to put these two expressions together in order to get a correct meaning. Are these the words of a man who is guilty of the act for which he stands accused? I do not believe it. I need not remind you that the only inevitable fact from the evidence of Joseph Nolin as put before you was the connection of his being President. You



must remember that this last deed, this one deed I do not pretend to contradict. This is the only fact we do not contradict. He is no more *particeps criminis* than I am, or the hundreds of others who were engaged in the movement and who invested him with the office he then held. We have the evidence of John Bruce; with this you are well acquainted. You must take his evidence as being very imperfect. He says, "I have seen the prisoner; the first conversation I had with him was in December; I asked him whether he was going to release the prisoners?" He says that Lepine said he was, only that he intended to shoot a couple of them before doing so. When asked if he was in earnest, he says "No, I think the prisoner was merely joking." Now what of Mr. Bruce and his evidence? When he writes letters to the papers he states certain things, and when, under oath, he is asked if these things are true, he says, "No! I wrote the French of them, somebody translated them into English" (and did not do them justice), and this is the kind of a witness that the Crown has thought fit to bring before you.

However, if that witness varies, his variations are not against the prisoner at the bar. He understood that the prisoner was not in earnest when he spoke. He never saw him acting in any capacity, and when asked if he would have seen him on the occasion of the shooting, he says, "Yes, I would have seen him if he was there." He saw the box that morning, and asked Lepine what it was for? Lepine says it is to put poor Scott in. If this question is to be considered, you know very well how to consider it. You may judge by his actions if not by his words. He gives you names, but he did not see the prisoner. He saw Joseph Delorme, and here is another contradiction. He states what Goulet has told him with reference to the body, but all this was ruled out by His Lordship as only hearsay evidence.

We come to Francis Charette, the fourteenth witness. He said he was looking from the wall. You will remember that when Bishop McLean was giving his evidence about the occasion of the visit to the Stone Fort, how he saw one man with a very long pistol, and another with a very long gun; how excited the witness was, and how he saw things that did not really happen. Charette swears this, "I saw Scott standing about thirty paces from the wall; I saw him talking with a man, and the next thing I heard some guns fire and saw Scott fall; I came down from the wall and went towards the body, and saw the wounds on the body; one of the wounds was in the breast, one was in the shoulder, and another was between the two." He says blood was oozing out of the wound in the breast, but the shoulder was not bleeding; "although only two feet from the body, I did not notice wounds or bullet holes in the back of the coat." He saw a pistol in the hands of Guilmette, and he thinks that it was Guilmette that fired at Scott's head. And now he states a new fact in the case; he says the pistol did not go off at first; it snapped. Then he saw Lepine for the first time. "Somebody said behind me, You have no business here, you must go into the Fort." You must remember that Charette was a guard. However, he says he saw a pistol inside Lepine's breast-pocket. Nothing very extraordinary, I suppose, at that time. He heard some one say, "That pistol is not in order." He is not certain who said it. When he is pressed by the Crown to repeat the words that he heard, he says, "I heard the words, Here is one in order, finish him, but I cannot say who said so." It is astonishing that when something is likely to be in favor of Lepine, he does not remember it. He swears positively that it was like Lepine's voice that he heard. He states this fact that at the same time that he saw Lepine put his hand to his pistol, the pistol went off. We must give him credit for this, because it is utterly from the evidence to say that Lepine furnished the pistol. The one that snapped was the one that was fired, another chamber having been used. This, gentlemen, is an important fact. He says, "I was not looking at Lepine." He says, "I only looked at him after I came into the Fort." He says, "I was kicked." This is also another important fact. He then says, "My curiosity was aroused; I was

not certain that Scott had died from the wounds of the guns." He says, "I believe there were five or six men in the firing party." He saw the box when it was carried into the Fort, I suppose when it was placed near the bastion. He says, "I heard a voice saying, O Lord, O Lord." Of course, when asked if he knew Scott before, he says, "I did not know his voice, but I distinctly heard these words coming out of the box." He says he did not personally know that it was Scott's voice, but Joseph Delorme told him it was Scott's voice. "Delorme was on guard at the eastern bastion; when I heard those words, I asked who was there; Delorme answered, Scott." He says nobody ever told him how they finally disposed of the body. His opinion is that the box was put in the ground that evening. He further says in his cross-examination, "I saw a man with a white handkerchief or cloth in his hand give the signal, but I swear positively that the prisoner at the bar is not the person that gave that signal." You remember what Chambers swore. He says, "I was not more than thirty feet from the man that gave the signal. He saw also Mr. Young; he says Mr. Young was not more than eight or nine feet from the body. I contend that this man's evidence is contradicted by others.

Baptiste Charette swears most positively that it was André Nault that gave the signal to fire. This is a flat contradiction. Baptiste Charette's evidence is very favorable to the prisoner. He saw Scott as he was coming out of the gate. He says he was inside when he met him; he does not say that Lepine was leading Scott. The next thing he saw was Mr. Young talking to Scott. He stood near the door at that time; from the position he was occupying, he could see the firing party. When he is asked, "Did the prisoner at the bar give the signal?" he says, "No! it was given by another person." Baptiste Charette when near the body saw three wounds. You must remember that Mr. Young did not come very near the body. He saw only some blood, he saw bullet holes in the back. I do not see how they could see wounds when Scott's coat was buttoned up. When he is asked in his cross examination if the prisoner took any active part in ordering the firing party, he says, "No! I saw the party come out of the gate; saw them in such a position; saw Mr. Young and somebody else." He swears positively that he did not see the prisoner that morning. Now this closes the evidence on the part of the Crown. This evidence I have gone over. I have left out everything foreign or irrelevant to the question.

The prisoner at the bar stands accused of having feloniously and wilfully killed a man by the name of Thomas Scott. It is for you to say what connection he had with it. The prisoner was selected by the people of the country who had formed a certain Government to take the place of the one that had been wiped out by the false Proclamation of Governor McDougall. I do not deny it. It is a matter of public notoriety, that he was nominated by a Convention composed of Delegates selected from all parts of the country, to the post of Adjutant-General with very undefined duties. If he has had any participation in the act, so has the whole population of the Province who rose and supported him at that time. If he is guilty of treason, so are they. If he is guilty of murder, so are they equally guilty. Lepine, you have seen, was only one. He presided at the Council of War. I believe there are doubts in the case, especially when it is remembered that this man had no interests in the deed perpetrated on the morning of the 4th March—no interests except the interests of the people who commanded him and the Government that then existed. There were some parties conspiring against that Government. A party was on its way to release the prisoners in the Fort, and it is for you to say if you can on the evidence that was brought by the Crown, if the prisoner is *participes criminis* in the perpetration of that crime. If he is guilty, so are four or five hundred others who took part with him; if he is to be punished for the accusation against him, not only there are a few others who are equally guilty, but every one who took part in the movement at that time. If the evidence of the Crown does not bear strong enough in favour of the prisoner, I

believe I can state through witnesses that this man was not at the so-called execution. You will be able to come to the conclusion that sensible people ought to do. I will now recall to your memories a few facts that were adduced for the defence.

Bunn's is the first. It relates to the organization of the Government and the action he took and the position he took. His answers were clear and definite, and the fact is a credit to the country. From his evidence it is easy to see what the path is.

Bishop McLean told you the part he took in advising the parishes to send Delegates, &c. The Bishop of Saskatchewan is not clear on this point. The third witness for the defence does not know anything immediately connected with the case. His evidence is limited exclusively to the troubles, and the causes which led to them, and the different phases of the movement. You then have Charles Nolin's evidence. I may here state that it is by Bannatyne's evidence that we know that the prisoner was elected Adjutant-General. Nolin's evidence is short. He was not present on the 4th of March, and he does not know anything immediately connected with the case. Nolin was one of the Delegates elected to attend the meetings in January. He was present at the election of the President. He swears that the prisoner was one of the four Delegates that went to Governor McTavish. Mr. Sutherland was the one who reported. He states the same thing in the same words. There are three witnesses whose case is immediately connected with the case in hands. The first is Paul Proulx; we have also Father Ritchot's evidence, but it is not immediately connected with the case. Proulx was there on the 4th of March. Of course he was well acquainted with the party in the Fort. He knew Lepine perfectly well. He saw Rev. Mr. Young and Scott. He swears positively that Lepine was not there in command or taking any action; he was in no way or kind connected with the procession. Moreover, he saw the firing party. He swears positively that if Lepine has been there doing anything, he would have seen him. "I swear positively that I did not see him do any act on that morning. I saw who gave the signal: I swear positively I did not see Lepine doing it." He states that he was close to Dr. Cowan's house, and that he followed with the crowd.

When asked if Lepine was there, he says, No! He stood in a good position to see what was going on, and he describes the position of Scott to the firing party. He saw the box; he never saw it afterwards. He saw Riel, O'Donohue, Goulet, Delorme, but did not see Lepine, the prisoner, at all. Here is a man who is not excited; he had been there for eight or ten weeks, he went out to see and saw something. This is corroborated in the main by the evidence of the Crown. I come to the last three witnesses, Lajemonière, Hupé and Archbishop Taché. The prisoner at the bar is accused, that is to say, Scott died directly through the hands of the prisoner at the bar. You have it from the mouth of the Rev. Mr. Young and Chambers, that Scott was dead when they left him, and Mr. Young did not lift up the body, but Mr. Young swears that Scott was dead. You have Charette's evidence that he heard him shout in the bastion, "O Lord, O Lord." Here is Modeste Lajemonière who was Riel's servant; on the morning of the 4th of March, he was looking out of the attic of Riel's room, when he saw Rev. Mr. Young and Scott coming down. He saw Riel and Lepine behind him, on the same flat and in the same room. This is very strange. He did not see Lepine and Riel coming down with the party. No! he did not see them there. He heard the prisoner say, "In God's truth they are bringing him down," meaning are they in earnest. He left and went down-stairs, leaving Riel, Lepine and Gray there; went to the main or south gate, and after all was over he went to the eastern gate. It was there that he stopped by Goulet, who asked if there was nobody to take in that coffin, and he hastened towards the spot himself with another man. There were not six of them, there were only two of them that carried the coffin to the bastion, and he (Lajemonière) was placed as a

guard over the body. There was another guard in front. His orders were to allow nobody to come near the box. However, a man broke the orders and rushed past the other to the coffin; that man came to the coffin, knelt down and listened, and heard two words repeated, "I say, I say." When asked if he put the box in the ground, he said he did not. As Huppé passed him, he said, "That man is not dead, he still speaks." The next thing was to bring Hupé to corroborate this evidence. He tells a similar story. He says his curiosity was aroused while he was in the mess-room; he heard a man say Scott was not dead, because he was heard to talk. He had the curiosity to see for himself, and he describes minutely the position, and he says, "I heard a voice in the box shout, I say, I say." On being asked if he saw Lepine do any act on the occasion, he says, "I did not see him."

This is the last witness that the defence had to bring. We had another witness of course, His Grace Archbishop Taché; he told you very clearly a great many of the events that took place in 1869 and 1870. He has produced to the Court official documents. His words were not merely words, they are based upon written papers. These papers have been produced. It is now my province to tell you of him. Gentlemen, the evidence that was brought by the Archbishop is most conclusive, because he had not words to say, but he had official documents. Every declaration was supported by official documents, and these documents will tell you whether the opinion of the people in the settlement was that their liberty was in danger. If there were dissensions and troubles, they rose gloriously for their lives and their liberties. This rising was shared in by the people generally. The people gave them credit for their deeds. As I told you when I closed the evidence for the prosecution, if this man is to be found guilty by you of murder, if that man is to be sent to the gallows, I say that three-fourths of our population must be sent to the gallows too. The part that the prisoner took at that time, that part was taken by the voice of the people who nominated him as Adjutant-General. You know that in that capacity he presided. Legal points are to be raised in the accusation in this case. You will hear important rules of evidence, and also you will hear that one of the best authorities states that while there is presumptive evidence, if the body has not been found, there can be no conviction. Facts have been told of men being found guilty by a jury, of murder, and the person said to be murdered turning up living after many years. I might recite three or four examples where innocent persons have been sent to the gallows for crimes that were never committed. You will see as well as others that the greatest care is required and that the most attentive examination is necessary to prove that the man is dead. The Crown has never proved that Scott is dead from the trading guns of the firing party by drunken men at a distance of sixty or seventy feet. I believe that the Crown prosecution is bound to prove all the facts that are material to prove the murder of which that man stands accused. Has that man wilfully murdered Scott? Has that man killed Scott? You have the evidence. It is for you to meet the discrepancies and contradictions which appear in the evidence. I have tried to summonse the evidence. There is much of it that is political. Your minds have been distracted by these political features. I have limited myself to the evidence. It is for you to say whether this man standing there was connected with that fact because he was in a position at that time which was conferred upon him by the people. It is for you to say that the part he took in the affair is remote or not. It is for you to say so. You, who are natives of this country, have to bear in mind these other facts that poor Parisien, Sutherland, Turner and Goulet have met their deaths. They have died! If it is to be said that the fifth man must die, that responsibility rests on you. On a calm consideration of the case you must decide that the prisoner at the bar is no more *particeps criminis* than the guard who was in the Fort until the 23rd of August, 1870. The case is in your hands, and I hope that you will be able to agree upon the facts, and that the verdict of your consciences

will be that the prisoner at the bar is not guilty of the crime of which he is accused.

M. Royal spoke until six o'clock, when the Court took recess. After recess, he resumed his speech, speaking upwards of an hour and a half.

Mr. Chapleau then followed in French, his speech lasting from half-past nine until midnight, when the Court adjourned.

"J'ai entendu plaider M. Chapleau dans la cause de Lépine et dans celle de Nault, et je vous assure qu'il a droit d'être fier des succès qu'il a obtenus, sinon sur le jury, du moins sur l'esprit de ceux qui sont à portée d'apprécier le talent. Il ne se trouvait pas dans la meilleure position possible pour faire ce que les gens du métier appellent une bonne cause. Il est arrivé ici à peine six jours avant l'ouverture de la Cour, presque sans renseignement sur la cause dont il s'était chargé, et cela, quand il s'agissait de refaire l'histoire de notre Province pendant quatre ans. Dans l'impossibilité de rien connaître de la preuve qui pouvait être faite par la poursuite ou par la défense, il a dû procéder, je ne dirai pas à tâton, mais avec une extrême prudence, et en sondant chaque pouce du terrain sur lequel il avait à se mouvoir.

"Pour un avocat habitué aux succès les plus sérieux de la Cour d'Assises, on s'imagine bien un peu qu'une foule de petites ficelles sont mises en jeu pour amener le jury où l'avocat veut le conduire, ou du moins pour l'écartier tellement de son chemin qu'il ne puisse jamais en venir à une entente unanime. Mais, pour cela, il faut connaître le jury, son éducation, ses habitudes, ses opinions, ses traditions, il faut savoir quel souvenir attristant le fera pleurer, quelle joyeuse allusion le fera sourire. Il faut un peu flatter ses caprices, ses ambitions, ses vanités; il faut le grandir dans sa propre estime, afin qu'il résiste aux appels de la poursuite qui va démontrer tout à l'heure que si l'accusé n'est pas condamné, la société est perdue à tout jamais.

"Il n'y a pas jusqu'aux juges qui n'aient leurs côtés faibles et qui ne puissent être, avec une diplomatie suffisante, amenés parfois dans une impasse qui profite au client.

"Mais tout cela ne peut réussir, ne peut même être essayé que lorsque l'avocat possède la connaissance et l'habitude de son monde. Sans cela, ses plus beaux mouvements se heurtent à l'indifférence générale, ses mots les mieux trouvés tombent à plat s'ils ne frappent pas absolument à faux, et ces petits échecs répétés finissent souvent par influencer sur la cause d'une manière désastreuse.

"M. Chapleau se trouvait malheureusement dans ces circonstances défavorables. Il venait plaider une cause qu'il ne connaissait que très peu—judiciairement parlant—devant un juge qu'il n'avait jamais vu sur le banc, devant un jury et devant un public dont il n'avait jamais eu l'occasion de connaître les idées ou les tendances. Ajoutez à cela toutes les fausses informations qui furent prodiguées et qu'il n'avait aucun moyen de contrôler, toutes les réticences mises dans les quelques renseignements qui lui furent donnés, les préjugés qui surgissent toujours plus ou moins contre les étrangers, le fort courant d'opinion constamment entretenu contre les accusés dans une classe nombreuse de la population, et vous aurez une faible idée des difficultés que M. Chapleau avait à surmonter dans cette cause.

"Son seul moyen de succès, dans les circonstances où il était placé, était de s'en tenir à la preuve, et d'aller droit devant lui absolument comme s'il eût plaidé sa première cause; il avait à mettre de côté toute son expérience du jury, pour ne s'appuyer que sur son talent d'avocat.

"Un nouvel écueil à craindre, et qu'il ne pouvait éviter qu'avec la plus grande prudence et la plus grande délicatesse, résultait de la nature même de la cause et du côté politique qui en formait les principaux traits. Un avocat de la position de M. Chapleau, ex-Solliciteur Général, Conseil de la Reine, ne pouvait pas prôner dans les mêmes termes qu'un autre l'héroïsme et la grandeur

d'un soulèvement dont l'origine était certainement illégale, et, pourtant, autour de ce point tournait toute la cause.

"La Cour, on doit le dire, avait accordé à la Couronne toute la latitude possible pour sa preuve, et toute l'histoire du gouvernement provisoire a été faite. En écoutant l'interrogatoire des témoins, on oublait souvent que Lépine subissait son procès pour la mort de Scott. On avait l'air de s'occuper avant tout des faits et gestes de la population française durant ces malheureux troubles de 1869-70. C'est le juge lui-même qui a dirigé les procédés, et c'est lui qui a voulu chercher à élucider le pourquoi et le comment de ces malheureux événements. La défense s'est trouvée autorisée à faire une contre-preuve, à démontrer la signification de l'attitude de la population anglaise.

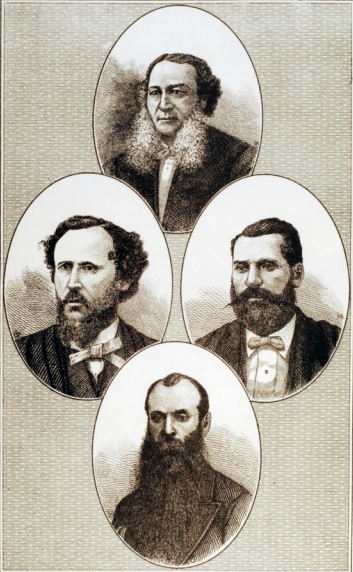
"Puis venait ensuite la conduite des gouvernements anglais et canadiens, divers actes du gouvernement de la Baie-d'Hudson, de l'hon. M. Archibald alors qu'il était lieutenant-gouverneur de cette Province, les promesses et surtout la nécessité d'une amnistie. Cela faisait partie des questions de droit plutôt que de faits, et elles furent plaidées en anglais pour le juge en même temps que pour le jury.

"C'est avec cette preuve que M. Chapleau a fait sa cause en s'aidant des lacunes de la preuve de la poursuite. La cause se divisait naturellement en trois parties : 1o. Scott a-t-il été tué ? 2o. Si oui, Lépine est-il responsable de sa mort ? 3o. Si Lépine est l'auteur de la mort de Scott, n'agissait-il pas comme membre d'un gouvernement aussi régulièrement organisé que les circonstances le permettaient, et doit-il être tenu pour responsable d'un acte que toute la contrée, par le fait de son adhésion au gouvernement provisoire, aurait refusé de condamner ?

"Voilà les trois points qu'il y avait à discuter, et je puis vous assurer qu'ils l'ont été de main de maître. M. Chapleau a pris la preuve de la poursuite point par point, témoin par témoin, et il en a fait voir les contradictions et les lacunes avec une vigueur d'argumentation irrésistible.

"Il est une chose bien certaine, et que tout avocat ne pourra manquer d'admettre, c'est que la poursuite a été très-faible, négligée surtout, dans sa preuve. Les faits qui se rattachent à la mort du malheureux Scott sont tellement connus de tout le monde, qu'on a paru vouloir se passer des minutieuses exigences de la preuve légale. Des témoins ont prouvé que Scott avait été blessé, mais personne n'a prouvé qu'il était mort. Il a été démontré, au contraire, qu'il était encore vivant plusieurs heures après ce qu'on appelle son exécution. Et aucune information n'a été donnée sur ce qui s'est passé plus tard. Bien plus, aucune démarche n'a été faite pour recouvrer le cadavre, s'il existe ; on n'a rien fait pour mettre les tribunaux en demeure de dire que réellement, légalement, judiciairement, la mort de Scott était prouvée.

"Quant à la part que Lépine a prise dans ce triste drame, elle se réduit à ceci : il présidait la cour martiale. A-t-il exprimé son opinion en faveur de la condamnation ? Non. A-t-il insisté pour que la sentence fût exécutée ? Non ; au contraire, il a témoigné la plus grande surprise en apprenant qu'elle devait avoir lieu. Il est vrai qu'il occupait une position éminente dans le gouvernement provisoire, et il n'y a pas de preuve qu'il ait usé de l'influence dont il pouvait jouir pour empêcher la perpétration de cette regrettable erreur. Mais qui donc peut se vanter d'avoir fait plus que lui ? Qui donc a fait la moindre démarche sérieuse, légale pour empêcher l'exécution de Scott ? A-t-on essayé les moindres démarches devant les magistrats ? A-t-on les preuves des plus légères tentatives d'évasion ? Non ; au contraire. D'après les témoins les plus intéressés à pallier leur coupable indifférence, il y avait plus de deux cents personnes présentes à l'exécution de Scott, et personne n'a dit un mot, n'a fait un geste pour empêcher que ce sang fût versé. Tout ce monde-là n'est-il pas aussi coupable que Lépine ? Celui-ci n'a fait que suivre l'exemple de toute la population en laissant agir comme ils l'entendaient ceux qui avaient à cette époque la direction des affaires de cette contrée. Il n'a pris aucune part directe à l'exécution ; ce n'est pas lui



FRANCIS E. CORNISH.

CHIEF JUSTICE, HON. E. B. WOOD.

STEWART McDONNELL.

HON. ATTORNEY GENERAL CLARK.

qui a tiré les coups de feu, ce n'est pas lui qui a donné le signal, il n'était pas même sur le lieu de l'exécution. A plus forte raison n'y a-t-il rien de prouvé sur le dernier acte du drame, lorsqu'on présume que Scott a réellement été mis à mort, puisque les premières blessures n'avaient pas été mortelles.

“ De quel droit les vengeurs de Scott viennent-ils aujourd'hui demander la punition de Lépine, lorsqu'il n'a fait que ce qu'ils ont fait eux-mêmes ? Pourquoi la justice fait-elle le procès de Lépine pour un acte public que les représentants de la justice n'ont pas même essayé de prévenir lorsqu'il était de leur devoir de le faire ? Pourquoi fait-on déclarer à la Reine que *la paix et la dignité* demandent la condamnation de Lépine, lorsque les représentants de la Reine ont eux-mêmes aidé à l'établissement du gouvernement qui a mis à mort l'infortuné Scott ?

“ Mais le côté principal de la question, le côté qui intéresse le public étranger, c'est la reconnaissance du gouvernement provisoire comme gouvernement *de facto*, et la promesse implicite d'une amnistie accordée à tous ceux qui en ont fait partie. Le juge Wood, président du tribunal, n'a autorisé que la production des documents officiels, et a refusé l'admission des lettres privées de Sir George E. Cartier, de Sir John A. Macdonald et d'autres personnages qui, on ne peut cependant pas le nier, avaient pleine autorité de parler et d'écrire comme ils l'ont fait, et de promettre ce qu'ils ont promis. Malgré cette lacune dans la preuve de la défense, il y avait suffisamment dans les *blue-books* pour démontrer que le gouvernement de Riel avait été reconnu comme ayant une existence *de facto* par le gouvernement canadien et par les autorités impériales ; que les délégués de Riel avaient été invités, après l'exécution de Scott, à formuler leurs demandes, et que le gouvernement canadien les avait accordées sur les ordres formelles du ministre des colonies. Cela ne vaut-il pas autant, ne vaut-il pas mieux qu'une promesse verbale ou écrite d'amnistie ? Et de plus, toute la population de la Rivière-Rouge n'a-t-elle pas accepté le gouvernement de Riel ? Le Gouverneur McTavish lui-même ne l'a-t-il pas autorisé ?

“ Si ce gouvernement n'était pas légal, ni régulier, il n'est que la manifestation d'une usurpation de pouvoir qui devrait être soumise aux tribunaux d'une manière différente. Si le gouvernement de Riel n'était pas un gouvernement établi d'après la loi et la constitution, tous ceux qui en ont fait partie, tous ceux qui l'ont soutenu, tous ceux qui l'ont toléré sont coupables de haute-trahison et devraient être poursuivis comme tels. Le crime de haute-trahison est le plus grand crime connu à la loi anglaise ; pourquoi l'ignorer, pour ne s'arrêter qu'à un acte isolé d'homicide ?

“ Mais on sait très bien que la Reine elle-même a pardonné la rébellion et qu'elle a oublié la révolte dont certains de ses sujets se sont rendus coupables contre son autorité. Toutes les mesures ont été prises pendant trois ans pour empêcher les poursuites contre les chefs du mouvement de 1869, et ce n'est que l'automne dernier que Lépine a été arrêté par le fait d'une poursuite privée. Le mot a été dit en pleine Cour. S'il y a du vrai dans toutes les protestations de loyauté, et de la sincérité dans toutes ces dénonciations contre les ennemis du trône, ne devait-on pas poser la question carrément, bravement, comme elle doit l'être devant les tribunaux et devant le public ? Cette manière d'é luder l'esprit de la loi, de s'autoriser des lacunes des documents officiels, de prendre avantage des préjugés d'une partie de la population pour arriver à un simple fait d'homicide ; lorsque pas moins de six personnes ont déjà perdu la vie par suite de ces malheureux événements, et qu'on demande encore la vie d'un égal nombre, cette conduite, dis-je, n'est-elle pas illogique au suprême degré ? Ne porte-t-elle pas avec elle sa propre contradiction ?

“ Il y a eu dans toute cette phase de transition du gouvernement de la Baie-d'Hudson au gouvernement canadien, une série d'erreurs, de bévues commises par tout le monde. Pourquoi n'en demander compte qu'à ceux qui étaient les moins en position de ne pas se tromper ? Pourquoi vouloir que des hommes absolument ignorants de la loi et de la constitution aient observé, dans leurs procédures, toutes les formes de la jurisprudence ? Pourquoi les condamner pour



avoir suivi les instructions du gouverneur McTavish qui leur conseillait fortement d'établir un gouvernement? Pourquoi leur demander d'avoir été plus loyaux que le Secrétaire d'Etat, qui écrivait à M. McDougall qu'après le 1er décembre, le gouvernement de Riel était le seul en existence *de facto* dans cette contrée?

"Si le gouvernement provisoire n'a pas eu d'existence légale ou *de jure*, et il ne pouvait pas en avoir sans qu'il s'en suivit une révolution dans la Confédération, on a du moins reconnu les Métis comme belligérants, on a traité avec eux. Ils ont donc droit aux immunités accordées aux confédérés du Sud, aux insurgés de Crète, aux "raiders" de St. Albans, aux révoltés de Cuba, aux soldats de Don Carlos. Ceux qu'on prend les armes à la main, on les juge comme révoltés, si on croit que ce soit de bonne politique de le faire; mais après avoir traité avec eux, après avoir demandé et obtenu une suspension d'armes, on ne leur fait pas un procès pour meurtre ou pour incendiat.

"Je ne prétends pas exprimer mon opinion sur la valeur de ces arguments; c'était aux jurés et au juge de les apprécier. Je ne fais que présenter un tableau très en petit de l'argumentation de M. Chapleau dans cette cause, laquelle marquera certainement dans nos annales judiciaires comme une de nos intéressantes causes *colibres*.

"En écoutant ce long plaidoyer—long seulement par la multitude des faits et des événements qu'il embrassait, car il n'a duré que deux heures et quart—je me prenais à regretter, au point de vue de l'art, que cette cause n'eût été portée devant un tribunal composé de trois ou cinq juges choisis dans Ontario ou Québec, devant un jury d'hommes brisés à ce genre de questions, et devant un public plus capable d'apprécier l'importance de la cause et le talent de ceux qui l'auraient dirigée.

"Malgré le trop peu de temps que M. Chapleau eut à sa disposition pour préparer sa cause, il eut de beaux succès oratoires. En plus d'une circonstance, on sentit un frisson parcourir tout l'auditoire; même ceux qui ne le comprenaient pas étaient émus par cette voix sympathique et expressive qui rend si bien tous les sentiments et toutes les émotions."

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SATURDAY, Oct. 31.

After routine, Mr. Chapleau said:—

*May it please Your Lordship, Gentlemen of the Jury:—*

In the evidence given in this case there are certain points raised. First as to the evidence objected to, I say that in the case *per se* evidence has been allowed which should not have been permitted. I refer to the evidence given by Bruce from Goulet. (His Lordship the Chief Justice here stated that on a second consideration of the matter, he had struck out all of Bruce's evidence in connection with Goulet's statements about the final disposition of Scott's body. If the evidence had been given while the deed was being committed, it would be regular, but it was told some time afterwards.) The second point is the proving of Scott's death. I want to quote a few authorities before the Court. We know the great maxim produced by Sir Matthew Hale as being the safest rule to follow. It goes to say that there is no murder if there is no death. There is a want of evidence in consequence of what is alleged, inasmuch as no one has stated that he has seen Scott dead, and no one has stated what has become of the body. The last edition of Archibald, 7th edition, page 271 and page 238, in 622, states that it must also be shown that the deceased died of wounds or other injuries given him, and within a year after he had received them, because if he had died after that time, it is fair to presume that the death might have proceeded from some other cause. I quote from Taylor on Evidence, page 199. After having spoken of some cases, the presumption of death of a person long missing, he goes on to say, "If the person has not been heard from for seven

years, the presumption of death is permissible." I also quote Taylor on Evidence, page 613: "A jury should not condemn if there is the shade of a shadow of a doubt." No court or jury has a right to act upon presumptive proof of the death of a party. In the same author on page 640-41, the same rule from Taylor is mentioned; the statement of absence from the country is only presumptive of death. These cases have been general. I will quote about circumstantial evidence. In a case which occurred in the reign of Queen Elizabeth, the circumstances showed that the party was guilty, the jury could not find that the man was not guilty, the evidence was only presumptive that the man had really died. But the party did not die. I will quote from Phillips on Evidence, the case of Miles Scales — a case in which the captain of a vessel had been beaten by one of the mates in the presence of the sailors; blood was found on the deck, but the body was thrown into the sea, death could not be proven, no body had been found; it turned up some years afterwards that the man was still alive. The author says the rule that the body must be found is absolute. I also maintain that the best evidence must be produced by the Crown. I maintain that the ruling of Hale must not apply strictly, and I must submit before the Court that the best evidence in this case has not been produced. The act was proved to have been done, that the man received wounds, but it has not been proved that these wounds caused death. It has not been proved that these wounds produced by bullets at twenty-five or thirty yards, fired from trading guns, caused death. At any rate it is open to question whether at that distance the man was shot by these trading guns. The best evidence should have been adduced. The evidence of that witness has not been received. The opinions of medical men are absolutely necessary. They rather than others, are prepared always to establish the cause of death. The Crown should have produced one medical man. This would have had more weight than the testimony of any one who was in the crowd. I maintain before the Court that the firing of a pistol does not convey positive evidence, unless a medical man's report was received, and why? I just put the question to the Rev. Mr. Young if death could have followed from the firing. When I put the question, whether in some cases that bullets might have traversed the body, of course he would not answer. I quote from Taylor on Medical Jurisprudence as to the effects of bullets in the use of firearms. The author quotes a case where the deflection of the balls did not produce death. It is only a few months since a case occurred in Montreal. A young man attempted to commit suicide by shooting himself in the breast. The bullet was fired in such a way that if it had gone in the usual way it would have produced instant death. Three weeks afterwards that man was walking in the streets as if nothing had happened. It was discovered that the bullet had deflected and lodged in the back. I put this case before the Court and before the jury. The same rule also applies in the case of gun shots.

I come to another point; it comes from the fact that the prisoner at the bar at the time of the shooting was then acting in his official capacity as Adjutant-General. I maintain most respectfully before this tribunal, that in a case of wilful homicide, or manslaughter, or assault, if he is guilty of anything, he is guilty of murder. Assault does not apply to his case.

I maintain that in the case in question that the prisoner acted in his official capacity in the so-called Provisional Government, by circumstances arising out of other circumstances which are termed by the authorities under the authority of a Government *de facto* recognized by the sovereign authorities and their representatives. I also maintain that the prisoner at the bar should have been tried for high treason and not for murder, if tried at all. In execution of the decree of the *de facto* Government, if amenable at all it should be high treason for which he should be first tried, if tried at all. (Mr. Chapleau desired that it should be understood in all these proceedings he does not wish it to be understood that he waives or considers the question of the liability of this jurisdiction overruled

by the judgment, but reserves to the prisoner that right if he desires it. In support of this he quoted a proposition laid down in evidence, though it is only submitted *en passant*.) I will quote from what may be termed the classical rule in the laws of nations, page 67. (M. Chapleau here quoted the passage.)

I wish to put it to your Lordship, the conversations given by Archbishop Taché as to the state of alarm and disturbance the country was in at that time. I wish to put in as a record a letter then written by Governor McTavish, dated the 4th September, 1869, in which the Governor has plainly stated the condition in which the colony was left. He certainly understands that the sovereign authorities and the Canadian representatives understood that the acts committed before the transfer would be excused. The letter of Archbishop Taché and the conversations he had, form what I now maintain. At the same time I refer to the report of their public acts and the report made by the Privy Council to the people of the mother country, the first dispatch between the Council and the authorities in Canada. I state as a proposition in this case that the movement was raised in a rightful way. I maintain before the Court that these proceedings and acts were carried out under lawful authority; that these men who came into the country under Gov. McDougall and Col. Dennis did not come in a lawful manner, and their acts were not done in a legal and lawful way. The first rising and the meeting of the 16th November were a perfectly lawful movement. The then declarations of Gov. McTavish must be taken into consideration. The armed movement which was raised by Col. Dennis in this country, and the arming of the people, were for unlawful purposes; that this movement was of such a nature as to justify the rising of the people then. The proclamation of Gov. McDougall on the 18th December was not sanctioned by the proper authorities in Canada and the sovereign authorities in England, and it has been proved to be illegal. It is not necessary for me to prove that the commission given by Gov. McDougall to Col. Dennis gave him the powers of a Lieut.-General for the North-West Territories. That commission gave him power to disturb the public peace, to burn down houses, to kill and destroy. I maintain that this proclamation was sufficient to justify any uprising of force to resist its provisions being carried on in the colony. I mean now to refer to the proclamation of the 8th of December. I say that proclamation was in effect the recognition of the rights of the people. It was issued at a time when there was no authority to justify it; at the time it was issued, the Hudson's Bay Company had no rights in the colony. At that time, in the month of December, there was in fact a recognition by the authorities of the Hudson's Bay Company, and it was well understood among the population and generally known that the Hudson's Bay Company did not assume power in the country, and did not afford protection to the citizens. That state of things continued up to the 25th of January. I maintain that the authorities were so much out of existence, that executions, judgments or writs of any kind were not issued. Jails were broken into and complete isolation throughout the country was known to be the case. In the month of January there was a kind of a convention of the whole people which continued to the 25th of January. That convention agreed to a certain Bill of Rights. I do not speak of the proclamation of Riel. In the first Bill of Rights which was drawn up there is a certain perfume, I may call it, which I do not sustain or admire. The Bill of Rights then framed is certainly a Bill of Rights which the settlers of this country had a right to present at the convention in January, and before they proceeded to the election they had a right to do so. We cannot act on presumptions. Before proceeding to the election of a President, they asked the advice and opinion of Gov. McTavish. One witness says he declared himself favorable to the election of a Government. Mr. Sutherland declares that the condition he was in rendered him powerless. I also maintain that during that time not one single writ or act of prosecution was issued against anybody. No one took legal proceedings against any one; no single writ of information whatever was issued. I say that these abstentions

from executive authority are sufficient to prove that there was no law or authority in the country ; that the declaration of Gov. McTavish was given in view of that state of affairs. It will be remembered that the 9th or 10th of February was the time when the declaration was asked from Gov. McTavish, and I find that just on the eve there was constituted a kind of Assembly ; that on the same day the people saw that they wished the difficulties in the country would come to an end ; that that Convention was recognized by all parts of the population, afterwards by the Government of Canada. The Adjutant-General was appointed by a regular authority, because it was understood that at the time of the election of the President that the power of the Hudson's Bay Company was at an end ; that the movement of the other parties was to upset that authority ; that the cause of the movement of the 17th of February was the Kildonan affair. It will be said that that movement dispersed itself. It will be argued that the people were going to their homes when on the 17th of February they were arrested and brought to Fort Garry. I maintain that their detention in the Fort was a right acquired by reason of the authority possessed by the Provisional Government. That in the present case the law as laid down in Weedon, page 36, applies. I insist that there was a Government recognized as a *de facto* Government, and that the armed movement in support of it was according to the authority of the then existing Government. I must now proceed to the detention and to the action of the Government during that time. The arrest was made in February. The delegates were chosen not only by the President and Council of that Government, but they were chosen by the Convention itself to go to Ottawa. *En passant*, I may observe that during all these meetings Judge Black was the chairman of the Convention, and left his seat only when he saw that Riel had been elected. Delegates were appointed to go to Ottawa at that meeting. There were as members of that Convention four or five persons who were members of the Council of Assiniboia. The delegates were appointed to go to Ottawa by the Government. I must regret the treatment that the prisoners received while they were in the Fort. In times of war and revolution, there is no help for these things. What have we seen in other countries ? Instead of the lives of four or five, we have seen revolutions sweep away the lives of four or five hundred. While we have wars and insurrections these things must last. During the time the delegates were sent to Ottawa, there occurred a fact that is the strangest of all which took place during the whole of the troubles. When people come from a country and are not familiar with constitutional law and practice, these men should have been treated as negotiators ; it is the law at least among civilized nations that they should receive the same treatment which is given to barbarians. They were dealing with a Government in complete fairness. When the delegates arrived in Ottawa, when they presented their papers, they were acting according to their papers, which had been given to them to act in their capacity as delegates, as negotiators on behalf of the Provisional Government. I know it will be argued that the Government of Canada never recognized them except as representatives of the people. I will maintain that when the negotiators went to Ottawa, the Government saw their credentials, that they were introduced to the Executive Council and formally received and recognized.

(Mr. Cornish here asked if this was another speech to the jury.)

I say that this recognition was a matter of fact, was a matter of good faith between the parties, that they passed treaties, and that they and the Government have been recognized by the letter and answer from Hon. Joseph Howe, Secretary of State for the Provinces. I know that the answer was given them to say that the Governor-General representing Her Majesty and the Privy Council in Ottawa, received these delegates. I know that that recognition was not a complete one. I have seen the letters of Sir Clinton Murdock and Lord Lisgar, and it would be against my duty to say that this should be doubted. They acted in good faith and were led to understand that they were in the full capacity of ambassadors. If there is blame upon some one, surely it is not upon them ; we