

THE FIRST STATE TRIAL IN LOWER CANADA.

The first State Trial in Canada is important because it gives us, first, an outline of the conditions of Lower Canada at the time of the French revolution, of the mentality of the people, of the intrigues of the French revolutionary agents, of the results thereof, and finally of the feeling of the United States towards England and Canada; secondly, because the trial itself of David Maclane and his barbarous execution are illustrative of these days and fully demonstrative of the progress made by civilization in the enforcement of the law.

In 1793, thirty years only had elapsed since the cession of Canada to England. The French population was small and poor—ruined by the wars—mostly uneducated—scattered in the forests along the St. Lawrence. Their only advisers were their priests; their only comfort their little church; their only asset the soil, to be conquered by their axes and their courage; their only heritage their faith and the great traditions of old France. These people were intelligent and economical, brave, laborious honest and peaceful, and in spite of the hard conditions of life, gay and happy.

To the military rule had succeeded the good and paternal administration of Guy Carleton. The Act of 1774 had given a full measure of justice and, politically speaking, the French population was satisfied. But in the meantime questions pregnant with interest and unfortunately also with great trouble, had arisen. Under the French regime the seigniorial exactions were very moderate, but after the conquest "several British immigrants," says Garneau, "who had purchased seignories from Canadian landholders when quitting the Colony for France, raised the rates and their example was followed by some of the Canadian seigneurs." Soon these abuses were carried to such a pitch that the inhabitants complained bitterly, and dissatisfaction was widespread. Another cause of dissatisfaction was the Road Act—a measure good in itself but burdensome to a poor people on account of taxes and especially by the imposition of hard statute labor. In the meantime the revolution was raging in France, throne and altar were shattered to pieces, and the revolutionary doctrines threatened to poison the whole world, and even our then humble little country had to suffer thereby.

The French Minister Genet, the representative of the Revolution, had been received with boisterous enthusiasm by the United States:

France was soon at war with England, and the United States had no sympathy for either England or Canada. Genet was free to act and soon his agents spread all over among the French population, exaggerating the wrongs, promising independence, the abolishment of the seignorial tenure—inciting the people to rise in arms—assuring them of the help of French arms and gold. The Catholic clergy and the educated class remained loyal to the core. The priests vigorously denounced the agitators and kept the mass of the people quiet, but small disturbances and riots took place in a few localities. In spite of all, good sense soon prevailed, and peace and order were never seriously menaced. Unfortunately, the new landlords (says Garneau) endeavoured to take advantage of temporary political inquietude to bring about their designs. "They feigned alarm at the propagation of revolutionary doctrines. They accused the Canadians of being disposed to rebel, hoping that by the fear such charges would create, they would succeed in softening in the Assembly the redoubtable enmity of the seignorial malcontents."

In 1797 Adet, the French Minister in the United States, continued in Lower Canada the agitation and the intrigues of his predecessors, Genet and Fauchet. His agents continued to mingle with the French people. Finally one of them, David Maclane, was arrested in the City of Quebec on the 10th of May, tried on the 7th of July, and executed on the 21st on the Glacis, near St. John's Gate, with all the barbarous practices of the time.

On the 24th of May, a special commission of Oyer and Terminer was issued by Prescott under the Great Seal of Lower Canada, empowering the Justices thereby assigned or any three of them to try all high treasons within the district of Quebec.

The Justices assigned were:

The Hon. Wm. Osgood, His Majesty's Chief Justice in the province; the Hon. James Monck; the Hons. Thomas Dunn, Jenkins Williams, Pierre Amable de Bonne, Paul Roch de St. Ours, Hugh Finley, Francois Baby, Joseph de Longueuil, Pierre Panet, James McGill, John Lees, Antoine Juchereau Duchesnay and John Young.

On Monday the 12th of June, the special commission was opened at the Court House in the City of Quebec and there were present Chief Justice Osgood and Justices Dunn, Williams and de Bonne, the Hon. Hugh Finley, the Hon. Francois Baby, the Hon. Joseph deLongueuil, Hon. John Young.

After the commission had been read the sheriff called over the panel of the Grand Jury and the following were sworn: F. Le-

Maistre (foreman), Peter Stuart, Jacques Perrault, N. Taylor, Louis Germain, John Coffin, H. Laforce, Comte Dupre, Chas. Pinguet, Louis Turgeon, James Frost, Geo. Allsopp, L. Duniere, J. Danford, A. Raby, K. Chandler, J. Craigie, A. Dumas, F. Filion, P. Purss, P. Langlois, J. Drapeau—thirteen French and nine English.

Then Chief Justice Osgood gave them his charge against the accused, wherein the following observations have a great historical importance:—

“In justice to the people of this province,” said he, “it should be observed that, from the first establishment of the British government in this Colony, down to a certain period, the crime of high treason, so far from being committed, had perhaps not been mentioned from the bench, or even held a place in the enumeration of offences to be likely attempted. It is therefore some consolation to reflect that the evil is not of native growth, but has been introduced by the insidious acts of mischievous foreigners.”

On the 14th of June the Grand Jury unanimously presented a bill of indictment of high treason against David Maclane, who was then brought to the Bar and informed thereof by the Court. Messrs. Pyke and Franklin at the prisoner's request were assigned to be his counsel, and the Court adjourned to Friday, the 30th of June, and on this latter date the accused was arraigned upon the indictment of high treason wherein it was stated:—

First, that he did conspire with divers persons unknown to solicit the enemies of the King to invade the province of Lower Canada;

Second, that he did solicit the King's enemies to invade the said province with ships and armed men;

Third, that he did conspire to raise a rebellion, and incited divers of the King's subjects to levy war and rebellion against the King in the said province and to assist the enemy in a hostile invasion;

Fourth, that he had collected information whether the King's subjects were or were not favourably affected, and whether they would or would not join the enemy;

Fifth, that he had acquired knowledge of the strength of the King's city, called Montreal, and how it might be attacked and taken by the enemy;

Sixth, that he had conspired with divers persons unknown to seize by surprise the walled and garrisoned city of Quebec, one of the King's fortresses;

Seventh, that he entered the walled and garrisoned city of Quebec, with intent to seize it by surprise, to cause a miserable slaughter of,

and destroy the King's faithful subjects, and to deliver the city into the hands of the enemy.

To this indictment the accused, having thrown himself upon the mercy of God and the country, pleaded not guilty, and on motion of the Attorney-General the trial was set for the 7th of July, and the Court then adjourned.

On the 7th of July there were present on the bench Chief Justice Osgood, Chief Justice Monck of Montreal, Mr. Justice Dunn, Hon. H. Finley, Hon. Francois Baby, Hon. Antoine Juchereau Duchesnay and Hon. John Young. Hon. J. Sewell, Attorney-General and Mr. Caron acted for the Crown in the prosecution and Messrs. Pyke and Franklin for the defence.

The Court opened at 7 o'clock a.m. precisely. David Maclane was placed at the bar. The jurors empanelled by the sheriff were called over—eleven were challenged on the part of the Crown, and twenty-four by the prisoner. The following gentlemen were sworn: John Blackwood, John Crawford, John Mure, John Jones, James M. Goddard, Henry Cull, John Painter, David Munro, James Irvine, James Orkney, Robert Morrigh, Georges Symes. Then Mr. Lind, Clerk of the Arraigns said: "David Maclane, hold up your hand. Gentlemen of the Jury, the prisoner David Maclane stands indicted (here he read the indictment of which I have presented already the substance). Upon this indictment he hath been arraigned and upon his arraignment hath pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are. Your charge is to enquire whether he be guilty of the felony and high treason whereof he stands indicted or not guilty. If you find him guilty, you are to enquire what goods or chattels, lands or tenements he had at the time of the felony and high treason committed, or at any other time since. If you find him not guilty, you are to enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his goods and chattels as if you had found him guilty. If you find him not guilty and that he did not fly for it, say so, and no more. Hear your evidence."

Then Mr. Caron addressed the jury on behalf of the Crown and was followed by the Attorney-General who gave them the law and the facts on which the charge was based and which were to be brought forth by the witnesses William Barnard, Elmer Cushing, Francis Chandonet, Thomas Butterfield, Charles Frichette, John Black and Herman W. Ryland. Barnard had met the accused for the first time in Vermont at dark in a house near the border line.

Maclane confidentially told him under a solemn promise of secrecy that his business was to bring about a revolution in Canada, and that the Canadians would have everything done for them for that purpose. He offered him to take the lead, adding that if Barnard undertook the task his fortune would be made.

A second interview took place at Montreal a few days later and again the matter was pressed upon Barnard, who this time informed Mr. McCord, one of the magistrates at Montreal. Barnard met the accused a third time at Laprairie, a village on the south shore of the St. Lawrence, about 9 miles above Montreal, on the second of November, when the same proposals were renewed and the promise made that an army would invade the province in the spring. He wanted to know where the seminary of Montreal kept their money, and wished to be informed who the principal merchants were and in what part of their houses they kept their cash.

Elmer Cushing the second witness kept a tavern called the "American Coffee House" at Montreal, and the accused stopped at his place on the 5th of November. Cushing observed that his clothes were covered with small burrs, and asked him where he had been. He answered that he had been on every part of the mountain, which might be made a place of great command over Montreal in case of war. Maclane then exacting a promise of secrecy, which was given, told the witness that there would be a severe attack upon the province early in the spring; that he was employed by the French Minister at Philadelphia in forwarding the plan; that the attack would be made by a fleet from France, which would bring from ten to fifteen thousand land forces. He went to his saddlebags, took out a pair of shoes, one of which had a hole near the toe, and pulled out a paper signed Adet. He assured Cushing he would have any reward he might ask for if he took an active part and that, if he ever revealed what he had heard, it should fare hard with him; that his life would be taken immediately.

Francis Chandonet, the third witness, was an American subject. He had met the prisoner at Watson's Tavern in the course of the previous summer, a little below "Ile aux Noix" and sometime also in the beginning of the winter. Maclane had come across Lake Champlain, and told the witness that he had come on most important business which he would reveal under promise of secrecy. He then told him he was employed by the French to sound the minds of the people, and that the plan was to secrete a quantity of arms and ammunition on rafts in the spring to be brought into the pro-

vince by Lake Champlain, and the St. Lawrence, that he thought a quantity might likewise be concealed in the rafts of firewood made in the Chateauguay River, and he pressed very hard upon the witness to take part with him, which the latter refused to do.

Thomas Butterfield, from Swanton, U.S., the next witness, was an accomplice. He had promised to assist Maclane in all his enterprises against Canada and also was under his pay. The prisoner had told him he and a man named Frichette were going to Quebec to lay some plan to take the garrison.

Frichette was then heard. He met the prisoner at St. John's, who asked him if he had horses to sell. Both went into the field where Frichette, being bound by an oath to secrecy, was asked by the accused if the Canadians were disposed to revolt, to which Frichette answered they were not desirous of war, and the prisoner then stated that he had come to take Quebec—that five hundred men with pikes could do it. He asked him to conduct him to Quebec through the land, to which the witness agreed. They passed behind the Fort of St. John's before daylight, and proceeded on the south shore road to St. Nicholas. They left St. Nicholas, and crossed the St. Lawrence to Wolfe's Cove. The prisoner sent Frichette from there to Quebec to bring one Mr. Black to him. When Mr. Black arrived he told the prisoner that Frichette had informed him of the intentions of his journey. He advised him to go back without making the attempt, as he thought it could not succeed as the Canadians were not disposed to rise and could not therefore be depended upon.

The prisoner afterwards informed Mr. Black he had a letter for him, and another person. Mr. Black opened and read the letters and advised the prisoner to tear them to pieces, and bury them, which was done. At Mr. Black's request he explained his plan of the taking of Quebec. The troops he said would be so surprised that they would not know which way to turn. Mr. Black told Maclane not to be afraid and to come to Quebec to his house, dressed like a gentleman, and take a walk about the town. The prisoner expressed his dislike to come into town, but Mr. Black insisted and finally Maclane consented to go. Mr. Black did not approve of his coming in company with him, to avoid suspicion. He wanted Frichette to bring Maclane to his house in the evening which accordingly was done. The prisoner desired to be called by the name of Felt, from St. John's, till he went to Mr. Black's.

Mr. Black then gave evidence. He corroborated Frichette and related to the Jury that the prisoner had explained his plan, which

was that of humanity. That he was sorry to see a great people labouring under the tyranny of England; that he proposed to push the British from the continent of America. He said he left Mr. Adet on the 7th of April, who was going to France on the 10th, and that both he and the Spanish minister were concerned in the measures. That besides these measures there were fifteen thousand men at the line ready at a nod. He inquired much concerning the property, public and private, that there was at Quebec, and he said the property was intended to be given to those who should take the city. Black advised him to come to town after dark. The prisoner finally consented and was conducted to his house by Frichette. As soon as Black came back to town he gave information to a magistrate, Mr. Young, and the prisoner was apprehended the same evening, about eleven o'clock at his house.

The last witness was Herman Witsius Ryland, Secretary to His Excellency the Governor-General, who made the arrest. This concluded the evidence of the Crown. The defence produced no witnesses. David Maclane made a long speech to the Jury in which he denied the charge, but unfortunately it was not conclusive. His two counsel made a strong appeal to the feelings of the Jury. The Attorney-General replied. Chief Justice Osgood then made a forcible address to the Jury, but very fair and moderate, summing up the evidence in a clear, precise and impartial manner.

Then the Jury withdrew for twenty minutes and returned. The Clerk of Arraignment then said: "Gentlemen answer to your names.

"Gentlemen, are you all agreed upon your verdict?" "Yes."

"Who shall speak for you?" "Our foreman."

"David Maclane hold up your hand. Jurors, look upon the prisoner; how say you—is he guilty of the felony and high treason whereof he stands indicted, or not guilty?"

Foreman: "Guilty."

"What goods or chattels, lands or tenements had he at the time of the felony and high treason by him committed?"

Foreman: "None to our knowledge."

"Gentlemen of the Jury, the Court discharges you and thanks you for your services."

The Attorney-General: "Upon the verdict as recorded, I humbly move for judgment of death against the prisoner."

Clerk of Arraignment: "David Maclane, hold up your hand. You have been indicted of felony and treason, have been arraigned and pleaded not guilty thereto, and for your trial have put yourself

on God and country, which country has found you guilty—what have you to say for yourself why the court should not give judgment of death upon you according to law.”

Prisoner: “I have nothing more to say.”

Clerk of Arraignment: “Crier, make proclamation.”

Proclamation being made, the Chief Justice pronounced the sentence of death as follows:—

“It remains that I should discharge the painful duty of pronouncing the sentence of the law which is: That you, David Maclane, be taken to the place from whence you came, and from thence you are to be drawn to the place of execution, where you must be hanged by the neck, but not until you are dead; for you must be cut down alive and your bowels taken out and burnt before your face; then your head must be severed from your body, which must be divided into four parts, and your head and quarters be at the King’s disposal—and may the Lord have mercy on your soul.”

The Attorney-General moved that a day should be fixed for the execution, and the Court appointed Friday, the 21st of July.

The trial had commenced at 7 a.m. and was concluded at 9 p.m. the same day.

On Friday, the 21st, the prisoner was taken from the goal and placed upon a hurdle which moved in slow solemnity towards the place of execution. At about a quarter after ten, the hurdle drew up close to the gallows. As soon as it stopped, Maclane rose up dressed in white linen and wearing a white cap on his head. The Rev. Mr. Mountain and the Rev. Mr. Sparks attended him, and with them he continued in fervent prayer for some minutes. He then informed the executioner that he was ready and was by him directed to ascend the ladder, which he immediately did. But the executioner observing that he was too high, he descended a step or two and then addressed the spectators in the following words:

“This place gives me pleasure; I am now going where I have long wished to be, and you, who now see me, must all follow me in a short time, some of you perhaps in a few days; let this be a warning to prepare for your own deaths.”

Then addressing himself to the military who were drawn up in a hollow square, he added: “You with arms in your hands, you are not secure here even with your arms. I am going where I shall be secure without them.” He immediately drew the cap over his face, exclaiming: “Oh! God, receive my soul. I long to be with my Jesus,” and dropped his handkerchief as a signal to the executioner,

who instantly turned him off. He struggled with death but a short time. The body hung for about twenty-five minutes, and was then cut down. A platform, with a raised block upon it, was brought near the gallows, and a fire was kindled for executing the remainder of the sentence. The head was cut off, and the executioner holding it up to public view proclaimed it "the head of a traitor." An incision was made below the breast and a part of the bowels taken out and burnt. The four quarters were marked with a knife but not divided from the body.

The whole of the execution took about two hours.¹

David Maclane was not a Canadian, but a native of Rhode Island. Kingsford, in his *History of Canada*, says:—

"If he is to be judged by the evidence given at his trial, the man appears to have been of unsound mind. With this supposition, it might be said that his sentence would have been more just had he been confined for life in an asylum as a criminal lunatic. There are, however, many circumstances to be considered, to interfere with the acceptance of this view. The plain truth is that it was held necessary that an example should be made to stay a mischievous agitation. No one can pretend to affirm that Maclane was innocent, and not engaged in attempts to disturb the public tranquillity. His depressed circumstances may possibly explain the part he accepted, that of agent in the interest of France, to foment rebellion. He entered Canada alone, and the men of whom he sought co-operation were in humble life and without influence. He was himself destitute of appliances to commit injury. The facts, however, show that much mischief was intended, and that there was a widespread organisation having its origin with the French Minister at Philadelphia. Although Maclane's career throughout was one of extreme folly, we are not called upon in modern times to judge him by his mental calibre, but according to the active and self-asserting part he played; and the position of the parties in Vermont who were implicated is perfectly explicable. They were desirous of obtaining the water communication by the St. Lawrence to the ocean, indispensable before the days of canals and railways, and having despaired of accomplishing their purpose by means of negotiations, they looked forward to attain their ends by these intrigues. Therefore Maclane suffered the penalty of the law from the necessity of an example to those inclined to follow in his steps."

¹The above reproduces in substance a portion of the report of the case as found in Vol. 26 of *Howell's State Trials*.

R. DESALABERRY.

Ottawa.