

*Report of the State Trials, Before a General Court Martial Held at Montreal in 1838–9* (Montreal: Armour and Ramsay, 1839) pages 3–6, 277, 355–363.

Retrieved from Google Books. However, this is widely available on-line and on CIHM. It is also at the Thomas Fisher Rare Book Library, University of Toronto.

After years of seeking constitutional change through peaceful means, patriots in Lower Canada attempted to overthrow the government. Colonial authorities responded by suspending habeas corpus, introducing martial law, and arresting hundreds. For those convicted, sentences included execution, deportation, or release under bail. The trials of rebels were spectacular displays of partiality: sentences often were based on circumstantial evidence, hearsay, and suspect witnesses. As a consequence, many of the accused were driven to what Murray F. Greenwood has called “‘defences’ of desperation.”<sup>1</sup>

## COURT MARTIAL.

### ANNO SECUNDO VICTORIAE REGINAE. CAP. III.

An Ordinance for the suppression of the Rebellion which unhappily exists within this Province of Lower Canada, and for the protection of the persons and properties of Her Majesty’s Faithful Subjects within the same.

WHEREAS a traitorous Conspiracy, for the subversion of the authority of Her Majesty, and for the destruction of the established Constitution and Government, hath unfortunately existed, within this Province, for a considerable time, and hath broken out in acts of the most daring and open Rebellion; And whereas His Excellency Sir John Colborne, Administrator of the Government of this Province, did lawfully, and by virtue of the authority in him reposed, by Proclamation, under his Hand and Seal at Arms, bearing date at the Government House in the City of Montreal, the fourth day of this present month of November, declare Martial Law to be in force in the District of Montreal, in the said Province, and as well before as since the said declaration of Martial Law in the said Province, the said Rebellion did greatly extend, insomuch that large bodies of armed Traitors did openly array themselves, and make the most daring and violent attacks upon Her Majesty’s Forces, and upon other persons in authority, and committed the most horrid excesses and cruelties on the properties and persons of Her Majesty’s loyal subjects; And whereas the said Rebellion still continues to rage in the said District of Montreal, and the parties therein concerned continue to desolate and lay waste the country, by the most savage and wanton violence, excess, and outrage, and the Civil Power is set at defiance, and the ordinary course of the justice and of the law of the land is stopped in the said District; And whereas it is expedient and necessary to provide a remedy for the speedy trial and punishment of persons offending in that behalf: Be it therefore Ordained and Enacted by His Excellency the Administrator of the Government of this Province, authorized to execute the commission of the

---

<sup>1</sup> Murray F. Greenwood, “The General Court Martial at Montreal, 1838-9: Operation and the Irish Comparison,” in Murray F. Greenwood and Barry Wright, eds., *Canadian State Trials*, vol. 2 (Toronto: Osgoode Society for Canadian Legal History, 2002), 292

Governor thereof, by and with the advice and consent of the Special Council for the affairs of the said Province, constituted and assembled by virtue of and under the authority of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, "*An Act to make temporary provision for the Government of Lower Canada,*" and it is hereby Ordained and Enacted by the authority aforesaid, that from and after the passing of this Ordinance, it shall and may be lawful for the Governor of the said Province, or the Person Administering the Government thereof, from time to time, during the continuance of the said Rebellion, whether the ordinary Courts of Justice shall or shall not at such time be open, to issue his orders to all Officers commanding Her Majesty's Forces, and to all others whom he shall think fit to authorize in that behalf, to take the most vigorous and effective measures for suppressing the said Rebellion in any part of the said District of Montreal, which shall appear to be necessary for the public safety, and for the safety and protection of the persons and properties of Her Majesty's peaceable and loyal subjects, and to punish all persons, who, before the passing of this Ordinance, that is to say, since the first day of the present month of November, have been, or were, or hereafter may be, acting, aiding, or in any manner assisting in the said Rebellion, or maliciously attacking the persons or properties of Her Majesty's loyal subjects in furtherance of the same, according to Martial Law, either by death or otherwise, as to him shall seem expedient for the punishment and suppression of all Rebels in the said District of Montreal, and to arrest and detain in custody all persons heretofore or now engaged in such Rebellion, or suspected thereof, and to cause all persons so arrested and detained in custody, to be brought to trial in a summary manner by Courts Martial, to be assembled under such authority, and to be constituted in such manner, and of such description of persons, as the said Governor, or Person Administering the Government of the said Province, shall from time to time direct, for all offences committed since the said first day of November, or hereafter to be committed, in furtherance of the said Rebellion, whether such persons shall have been taken in open arms against Her Majesty, or shall have been otherwise concerned in the said Rebellion, or in aiding or in any manner assisting the same; and to execute the sentence of all such Courts Martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

II. And be it further Ordained and Enacted by the authority aforesaid, that no act of this Ordinance, or of the powers thereby granted, which shall be done in pursuance of it, shall be questioned in any of Her Majesty's Courts of Justice in the said Province.

III. And be it further Ordained and Enacted by the authority aforesaid, that if any person, who shall be detained in custody under the powers created by this Ordinance, shall sue forth a writ of *Habeas Corpus*, it shall be a good and sufficient return to such writ, that the party suing forth the same, is detained by virtue, and under the authority of this Ordinance, and that in answer to any such writ of *Habeas Corpus*, it shall not be necessary to produce the body of the person or persons so detained in custody.

IV. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that nothing in this Ordinance contained shall be construed to take away, abridge, or diminish the acknowledged prerogative of Her Majesty, for the public safety, to resort to the exercise of Martial Law against open enemies or Traitors, or any powers by law vested in the Governor, or Person Administering the Government of the said Province, or of any other person or persons whomsoever, to suppress treason and rebellion, and to do any act, warranted by law for that purpose, in the same manner as if this Ordinance had never been made, or in any manner to call in question any acts heretofore done for the like purposes.

V. And be it further Ordained and Enacted by the authority aforesaid, that it shall and may be lawful for the Governor, or Person Administering the Government of this Province, by Proclamation under his Hand and Seal at Arms, from time to time to extend all and every the provisions of the present Ordinance to any other Districts, or parts of this Province, for such period or periods of time as to him may seem meet.

VI. And be it further Ordained and Enacted by the authority aforesaid, that this Ordinance shall continue and be in force until the first day of June next, and no longer.

VII. And be it further Ordained and Enacted by the authority aforesaid, that an Ordinance of this Province, made and passed in the first year of the Reign of Her Majesty, intituled, "*An Ordinance to declare and ascertain the period when the Laws and Ordinances made and passed by the Governor, or Person authorized to execute the Commission of the Governor and Special Council of this Province, shall take effect,*" be, and the same is hereby repealed, as to this Ordinance only; and that this present Ordinance shall commence and have effect within the said Province, so soon as the Governor, or Person authorized to execute the Commission of Governor of the said Province, shall have assented to and signed this present Ordinance.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and duly passed in Special Council, at the Government House in the City of Montreal, the eighth day of November, in the second year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of our Lord one thousand eight hundred and thirty-eight.

By His Excellency's Command,

W. B. LINDSAY,  
*Clerk Special Council.*

2

The prisoner Jacques Longtin begs respectfully to submit to the Court his extreme age, his weakness of intellect, proceeding as it is evidently from incipient, if not confirmed, dotage. Did I not, indeed, after having been forced to join a body of men, whose object I could not comprehend, display the conduct of a dotard on the arrival of the Hussars, persisting alone, as it is said, in the no doubt idle bravado of calling my comrades, who had fled, to attack a formidable body of highly disciplined Cavalry. Add to the weak state of my mind, the violence which was exercised towards me, and which could have been brought home to me by a witness in attendance yesterday, who had been compelled to join the armed band at the same time. The example of two other witnesses having been arrested, in consequence of their having given evidence of a similar tendency, deterred the prisoner's Counsel from exposing the safety of that individual, by compelling him to come forward. But the glaring improbability of a man of my age and weakness of intellect, forming, or acting knowingly in, any project of revolt, will, I trust, induce the Court to believe that nothing could have caused my appearance in that unlawful assemblage, but that extreme degree of violence, which appears, by the evidence, to have been exercised towards all the inhabitants of the northern part of St. Phillipe and St. Edouard, by the armed force which proceeded from the interior, on the night of the third of November last, sweeping all before it. The evidence does not tend to connect me, in any way, with what occurred at Vitty's house, so that second accusation must be considered as totally unsupported with regard to me, and, if found guilty of Treason, I confidently trust the Court will, at least,

recommend to the mercy of our gracious Sovereign, the case of a wretched old man, the father of twelve children, who has, already, by his long imprisonment [*sic*], expiated any guilt which may appear in his conduct.

SATURDAY, 26<sup>th</sup> January, 1839.

*Half past three o'clock*—The Court re-assemble agreeably to the orders of the Commander of the Forces, as contained in a letter from [t]he Deputy Adjutant General, dated 26th January, which is read and attached to these proceedings, marked M.

The Court does now sentence the prisoners in manner following, viz:

That Jean Baptiste Henri Brien be hanged by the neck till he be dead, at such time and place at His Excellency the Lieutenant General, Governor in Chief and Commander of the Forces, may appoint.

That Ignace Gabriel Chevrefils be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Joseph Dumouchelle be hanged by the neck till he be dead, at such time and place as his Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Louis Dumouchelle be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Jacques Goyette be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Toussaint Rochon be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief and Commander of the Forces, may appoint.

That Francois Xavier Prieur be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Joseph Wattier dit Lanoie be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General Governor in Chief and Commander of the Forces, may appoint.

That Chevallier de Lorimier be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Jean Laberge be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

That Francois Xavier Touchette be hanged by the neck till he be dead, at such time and place as His Excellency the Lieutenant General, Governor in Chief, and Commander of the Forces, may appoint.

JOHN CLITHEROW, *Major General,*  
*President.*

D. MONDELET,  
CHAS. D. DAY,

ED. MULLER, *Capt. the Royal,*  
*Joint and severally Deputy Judge Advocate.*

C.

*May it please the Court:*

Called upon at this moment, to plead to the charges preferred against me, I feel the utmost embarrassment as to the course which I should adopt.

Were I to follow the advice of my counsel, I would, by pleading my innocence, hazard the success of a protracted trial; but conscious of my guilt, yet knowing that it has not been of a character which would present features of revolting deformity, and that my conduct has not been degraded by cruelty or malignity, I feel that I should not protract the trial, by denying the charges, and, therefore, consider myself bound to plead guilty.

In so doing, Gentlemen, I trust that when you find that in my case there are many extenuating circumstances,—that I was not aware of the coming outbreak until the very moment when awakened from sleep, and called upon to join the desperate enterprise, then contemplated, I gave way to a mistaken enthusiasm,—to delusive dreams of national independence,—and, unhappily, forgot the allegiance which I owed to my Queen; and when it will be shewn, that soon conscious of my error, and regretting deeply the unfortunate course I had pursued, I returned to my home, and was in no way implicated in the after proceedings, which took place during that week—may I trust, that you, Gentlemen, in considering, with an indulgent eye, an offence committed in the impulse of the moment, will not condemn my young years to an ignominious end, but recommending my case to the favorable consideration of His Excellency the Administrator, will afford me an opportunity of making amends hereafter, by my faithful and loyal conduct, for that momentary and infatuated departure from my allegiance.

D.

The prisoners object to this evidence as being irrelevant to the accusation preferred against them,—that accusation having reference only to facts alleged to have taken place at St. Clement, while this evidence tends to establish circumstances which occurred without the limits of that parish.

E.

The prisoners, respectfully insisting on the illegality of this evidence, as referring to facts which occurred without the limits of the parish of St. Clement, humbly pray, that, if the Court do not reject this evidence, the objection which they now formally make to it, may, at least, be enregistered, in order that they may hereafter avail themselves of it, as by law entitled.

F.

DISTRICT DE }  
MONTREAL. }

{

LA REINE,  
vs.

J. B. HENRI BRIEN ET AUTRES.

François Xavier Prieur, un des prisonniers, étant dûment assermenté, depose et dit: Que le nommé. Cyprien Cholette, de Saint Polycarpe, est un témoin essentiel et nécessaire à la défense du deposant, en autant que le dit Cholette peut prouver que le dit deposant est demeuré chez lui, à Saint Timothé, pendant une partie de la semaine qui s'est écoulée, entre le trois et le dix de Novembre dernier, et autres faits qui, au meilleur de la connaissance du deposant, pourront lui être d'un grand secours sur sa défense. Que le dit lieu de Saint Polycarpe est situé à la distance de vingt lieues de cette ville, ou environ. Et le deposant ne dit rien de plus, et à signé. (Deux mots rayés sont nuls)

F. X. PRIEUR.

Assermenté devant moi,  
ce 14e Janvier, 1839.  
D. MONDELET, J. P. }

G.

ADDRESS OF TOUCHETTE, ROCHON, GOYETTE, CHEVREFILS,  
AND LABERGE.

*Gentlemen of the Court:*

The brief interval allowed us to prepare our defence, coupled with the indisposition of one of our Counsel, has deprived us of the advantage of fully discussing the evidence produced before you, which may affect us, either to incriminate or to justify.

But the high character of our Judges, and the indulgence extended towards us during our trial, warrant us to expect that every circumstance developed in the course of the tedious, and to us anxious, investigation, which may tend, in the slightest degree, to militate in our favour will have its due weight upon your deliberations.

As brave men, you must regard with an eye of generous compassion, the humble and unfortunate individuals who stand before you, charged with the greatest political crime, although, from their ignorance, wholly unconscious of the criminal character of the acts which have been imputed to them. We know that ignorance is no excuse for crime, before the human tribunal; but we feel confident, that though you may be convinced we participated in the late insurrectionary movements, which we so deeply deplore, you will, nevertheless, deem us worthy to be recommended to the clemency of our gracious Queen, whose noblest prerogative consists in the power of tempering with mercy the severity of the law towards those, who, though convicted, may yet be considered as victims, rather than criminals. Peaceable as we were in our habits—reproachless in our characters—unconscious of the plots previously formed against the Government—though found guilty, if we may be, of a momentary error, we will not, assuredly, after all our sufferings—not only in the loss of liberty and property, but in the persons we hold most dear, our houseless wives and starving children—we will not, assuredly, be condemned to a more severe punishment than a continuation of the painful imprisonment we have already endured.

H.

## DEFENCE OF DE LORIMIER.

### *Gentlemen of the Court:*

The evidence adduced before you in the course of this trial, although it goes to establish that I was in the company of the insurgents, during the late unfortunate disturbances in and about the neighbourhood of Beauharnois, cannot be so viewed as to convince you that I took an active part in the revolt; but rather tends to demonstrate the fact, that I remained with reluctance, and held no command whatever in the rebel ranks. For, although Feeny, in his testimony, states that I took an active part, and Lieutenant Parker says I appeared to be a leader, still, the assertion of the one, and the presumption of the other, are wholly incompatible with the fact that I openly declared my disapproval of what was going on at that time, as established by Roy, Henault, and Lieutenant Parker himself. Is it, indeed, to be supposed for a moment, that I could have been a leader of that party, while I lauded those who kept aloof, and openly disapproved of all that was done by it. I feel confident that the gallant young officer who testified against me, believed that I was a leader, but he only supposed me to be such, and you will not, Gentlemen, assume that as a fact, which has only been presumed by a witness. Cousins, it is true, has asserted that an individual he took for me, was armed with a sword. I had no means of disproving this assertion, which I solemnly declare to be false; but is it not rendered incredible by the fact of all the other witnesses, even those who remained during the whole week in the village, having declared that I was unarmed. There is one circumstance, however, which might lead you to infer that I *did* take a prominent and interested part in that unfortunate movement—I refer to the letter which Thayer has told you I read to the people at Baker's camp. This letter, says the witness, was said to come from Côte, and demanded a reinforcement for Odelltown. I will not dwell on the absence of all proof that Côte was one of the chief springs of the late insurrectionary movement, or that any rebel force was then in the vicinity of Odelltown, although the absence of that proof renders the testimony of the witness wholly nugatory in so far as regards the pretended letter; but I ask you, Gentlemen, whether, (if you believe any such letter was read,) the accompanying statement, that I gave no order for the reinforcement to be dispatched, and did not express any opinion as to the expediency or in expediency of the proposed measure, would not, of itself, afford sufficient proof of the fact, that I held no station of command whatever. The only inference you can, in justice, draw from the testimony of that witness, whose evidence stands in so suspicious a point of view, (bound as he was, by his hope of pardon, to say something against some one of the prisoners, and having said naught but this,) is, that the letter, though not addressed to me, was referred for perusal to me, as one of the few individuals present who could read. In fact, the whole tenor of the evidence adduced in this case, goes to shew most clearly that I was not a leader. I was not present at the taking of the steamboat, or of the arms of the prisoners; I gave no command of any kind whatsoever. Leboeuf's evidence, instead of proving that I had any controlling power, establishes most clearly, that when I found a sentinel wearied at his post, I could only answer to the complaint he made, that I would *endeavour* to obtain him a relief.

You find that the influence I may have attempted to exercise was not that of a commander in the rebel ranks, but solely that persuasion by which I obtained, not only the relief of the sentinel, but the protection of the persons and property of the prisoners. My entrance into the village after it was invested, was due to accident alone, and my only crime was that of being induced to remain for a few days in the midst of the insurgents—not to encourage any excesses which they might have been disposed to commit, but to repress, if possible, all acts of violence. I shall not complain of the briefness of the time allowed to prepare for my defence: your conduct

towards us, Gentlemen of the Court, since the opening of this trial, warrants me, that the feebleness of my defence will be supplied by the patience, impartiality, and justice, which will accompany your deliberations.

I

ADDRESS OF JOSEPH AND LOUIS DUMOUCHELLE.

*Gentlemen,*

Two unhappy men, brothers, allied alike by ties of blood and in the bonds of misfortune, are now compelled to address you, not in our defence—for to deny our guilt were useless and false—but to endeavour to obtain the recommendation of our case, Gentlemen, to the favourable consideration of His Excellency the Governor General.

In so addressing you, Gentlemen, we must look at the evidence produced against us, and see how far there are grounds for granting our request.

The evidence against me, Joseph Dumouchelle, is derived from the testimony of Colonel Brown, Ross, Feeny, and Bryson, who establish clearly, that on the night of the third of November, I acted as one of the leaders of that band of armed men, who took possession of Beauharnois.

It is but too true, Gentlemen, that, urged on by violent men, who now are in safety, whilst I am here to expiate my own offence, and atone for theirs—I, who had ever lived in good fellowship with all around me, and had ever borne on irreproachable character, did pat myself at the head of the insurgents; but I trust that my after conduct, the endeavours which I used, and happily with success, to prevent all destruction of life, and the character which I have established here before the Court, will recommend me to your merciful consideration.

The testimony produced against me, Louis Dumouchelle, Gentlemen, is that of Messrs. Brown and Ross, who prove,

1st, That I was seen actually employed amongst the insurgents on the night of the third of November.

2dly, That Ross saw me a prisoner in the hands of the volunteers, and that on my hailing the band behind the church, they answered my cry, and advanced upon the village.

My being among the rebels, I cannot, and it were useless to deny; but Mr. Ross's evidence was, I assure you, Gentlemen, partially, though I am confident, unintentionally, incorrect. I was not the person whom he saw a prisoner, but the confusion of the moment may satisfactorily account for the error into which he has fallen.

My good character and inoffensive habits, I have proved beyond all doubt, and I trust, Gentlemen of the Court, that your favourable consideration of my case will not be withheld from me.

J

BEAUHARNOIS, 21st *January*, 1839.

I hereby certify that Joseph Dumouchelle, of St. Martine, now on his trial for High Treason, delivered himself up to me voluntarily, on the twenty-sixth of November last, throwing



himself on my protection, and appearing to be excessively sorry for his past conduct, and expressing much contrition and repentance.

I have given this certificate at the request of his wife, she having stated to me that it was not known that he had constituted himself a prisoner, to enable him to claim any advantage to which this circumstance may entitle him.

R. H. NORVAL, J. P.