

TRIAL
OF
JOSEPH BÉRUBÉ AND CÉSARÉE THÉRIAULT,

HIS WIFE,

CONVICTED OF HAVING MURDERED BY POISON

SOPHIE TALBOT, THE FIRST WIFE OF BÉRUBÉ,

AT THE

CRIMINAL SITTINGS OF THE COURT OF QUEEN'S BENCH,

CROWN SIDE,

Held at Kamouraska, L. C., in November, 1852, before Mr. Justice
PANET ; together with comments upon the Law
and the Facts of the case.

LELIEVRE AND ANGERS,
LAW-REPORTERS.

QUEBEC:
PRINTED AT THE CANADA GAZETTE OFFICE.
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M. J. J.

Secrétariat

Quebec le 1^{er} Dec^r 58.

Cher Monsieur,

Je vous renvoie,
en vous remerciant, le bote
des notes que vous avez bien
voulu me transmettre dans
l'affaire de Perubé et sa femme.
En même temps j'eurois
devoir vous informer
qu'il a été au Gouver-
neur Général de commuer
la sentence des condamnés
en détention perpétuelle

dans le Penitencier Provin-
-cial -

Agitez, cher Monsieur
l'assurance de ma
considération distinguée

F. Villorin

L. Honorable
M. le Juge Pault

COURT OF QUEEN'S BENCH, }
CROWN SIDE. } KAMOURASKA.

Present : PANET, Justice.

1852. { REGINA,
vs.
BÉRUBÉ ET UX.

UPON INDICTMENT FOR MURDER BY POISONING.

November Term 1852.

Held :—That the description given by a person of his sufferings, while labouring under disease and in pain, is not deemed hearsay evidence, and may be admitted as original evidence.

The prisoner, Césarée Thériault, was arrested by the constable Chabot, and while in his custody and in his house, Gauvreau, a Magistrate, came in, and said in her presence, "She had better turn Queen's evidence," to which Chabot answered, "There are some preliminary proceedings to be adopted before ;"

Held :—That confessions made subsequently, on the same day, by the prisoner, to Chabot, to his wife, and to another constable, were not admissible in evidence, inasmuch as the prisoner was in the custody of these people, when Gauvreau spoke to her, and inasmuch as she might be under the influence of the hope held out to her by the said Gauvreau ;

That confessions made the next day to Chabot, while going to prison, were not for the same reasons, admissible in evidence ;

That a confession made the same day that Gauvreau spoke to the prisoner, to a Physician, having no authority over the prisoner, and without the presence of the Peace Officer, is admissible in evidence ;

That a Child, whatever his age may be, can be examined as a witness, if he can distinguish between good and evil.

Jugé :—Que la description qu'une personne malade fait de ses souffrances peut être rapportée comme une preuve originelle, et ne doit pas être considérée comme un ouï-dire.

La prisonnière Césarée Thériault, avait été arrêtée par le constable Chabot, et tandis qu'elle était sous sa garde et en sa demeure, Gauvreau, un Magistrat, entra et dit en sa présence : "Elle ferait mieux de se rendre témoin de la Reine," à quoi Chabot répondit : "Il y a des formalités préliminaires à suivre d'abord ;"

Jugé :—Que les aveux faits le même jour par la prisonnière à Chabot, à sa femme et à un autre constable, ne pouvaient pas être admis comme preuve, vu que la prisonnière était sous la garde de ces personnes, quand Gauvreau lui adressa la parole, et vu qu'elle pouvait encore être sous l'influence de l'espoir que Gauvreau lui avait fait entrevoir ;

Que des aveux faits le jour suivant à Chabot, iorsqu'on la conduisait en prison, ne pouvaient être admis en preuve pour les mêmes raisons ;

Que les aveux faits par la prisonnière, le même jour que Gauvreau lui avait parlé, à un Médecin qui n'avait sur elle aucune autorité, et hors de la présence des Officiers de Paix, pouvaient être prouvés ;

Qu'un Enfant quelque soit son âge, peut être examiné comme témoin, s'il peut distinguer entre le bien et le mal.

At the sittings of the Court of Queen's Bench, Crown side, held at Kamouraska, in November 1852, one Joseph Bérubé and Césarée Thériault, his wife, were tried upon a charge of

murder by poisoning, committed upon the person of one Sophie Talbot, the first wife of Bérubé. The poisons alleged to have been administered were phosphorus and arsenious acid or white arsenic. The crime was stated to have been perpetrated during the month of October 1851 : Sophie Talbot died during the night of Wednesday, the 29th October, 1851, after five days illness.

Joseph Bérubé was a farmer, aged about 45, who had settled formerly in the parish of l'Isle Verte, in the fourth Concession, and about 1849 had removed to the Township of Viger, situate in the rear of the said parish. His family consisted of his wife, Sophie Talbot, to whom he had been married for more than twelve years, and of three children, the eldest of whom was not more than eleven or twelve years old. In his immediate neighbourhood, lived with her father, Césarée Thériault, a young woman of about 15 or 16 years of age, who soon became his paramour,—and who appears to have been the occasion of the crime attributed to the prisoners.

At the time of Sophie Talbot's death, vague suspicions attached to the prisoners, which suspicions were encreased by the circumstance of their marriage which took place two months afterwards,—until a Coroner's inquest, the examination of the body of the deceased, and the evidence adduced by several witnesses, led to the arrest of the prisoners on the 2nd day of April, 1852, and subsequently to their trial and condemnation.

The following synopsis of the evidence adduced before the jury will make known the circumstances of this heinous crime.

ABSTRACT OF EVIDENCE :

Marceline Beaulieu :—Sophie Talbot is seized with sudden illness on saturday, 25th October, 1851, complains of unusual pains in the stomach—vomits and makes repeated efforts to vomit—next day same complaints—kept continually rising from her bed and lying down again—complains of palpitation of the heart and pains in her bowels—both prisoners were then present—said in his presence that her husband had sent for rum to warm her. Tuesday, witness sent for at the request of Bérubé—Mrs. Bérubé said in presence of her husband, that she had vomited blood the day before—that between sunday and monday her husband had given her some punch which did her no good—that on monday, she had vomited blood—complained of pains in her arms, loins and bowels—and of *coliques*—thick and clotted blood constantly flowing from her mouth—continued reaching, with little or no effect—complained of pains in her loins, in her sides and in all her limbs—palpitation of the heart, &c. Wednesday, same complaints, vomiting &c.—she became worse—was sinking—at 11 P. M. Bérubé came for witness, stating that his wife was very ill and that she raved—asked for a feather bed as his wife's bed was not comfortable—found her very ill—she died at midnight. Bérubé visited Césarée Thériault's father's house very often—almost every evening and every day, and at all hours of the day—for a year since witness has lived there. Césarée Thériault went sometimes to Bérubé, but not very often—Bérubé went oftener after the death of his wife to Thériault's—went next day after the funeral.

Fabien Boulé—was present for half an hour before Mrs. Bérubé died—Bérubé *was not there*—Berubé went often to Theriault's—no rats in the Township of Viger—new settlement—Sophie Talbot healthy woman—no rats in 4th Range either.

William Jarvis.—In September 1851, Bérubé wanted to purchase arsenic at witness' store, at Green Island, for the

return and told me it was a small box of *peppermints* which her *beau* Amable Ouellet had sent to her. Sometime after this, during the same day, I saw the prisoner Bérubé, and I asked him what was the box which he had given to Césarée Thériault. He made no answer. Sometime after I met him, and he took me aside, he told me *not to speak of that box to any one*. The same day, Césarée Thériault told me she would shew me the box. She did not shew it to me. She told me when I asked her to shew it to me that she had hidden it in the stump of a tree.

Pierre Chabot, Bailiff—Had the female prisoner in custody in his house, on the 3d April.—He did not threaten her in any way—the prisoner made a confession to him. Mr. N. Gauvreau, magistrate, had come to his (witness') house and had said to Césarée Thériault, that according to the proof made before the Coroner she had better turn Queen's evidence, (*she could not be Queen's evidence*, Ed.) witness then said to Mr. Gauvreau, that in his opinion that was not the time to speak of that, and that certain formalities had to be gone through first. Mr. Gauvreau went away and she made no confession then. About an hour after I learned that she had made admissions to my wife. I held out no promise or threat to her and she made me a confession then.

(Confession ruled out on the ground that she might have been influenced by what Mr. Gauvreau had said to her, he being a person in authority, and the confession being made to persons in whose custody the prisoner was.)

Witness arrested the female prisoner in a barn, in the township of Viger, where after searching for about an hour, they found her concealed in a heap of hay;—on our way down she said that she had heard that her sister Génoffe had made a strong deposition against her before the Coroner. She added: "*It is a great misfortune to be taken*

prisoner ; I did not know what I was doing ; he gave me to understand that there was no sin in it." I said to her : " you ought to know that if you did any harm it was a sin."—She answered—" *he gave me to understand that he would procure me my pardon.*" (This was said before she saw Mr. Gauvreau. Ed.) On our way from St. André to Kamouraska, on the sunday, while in the *voiture* between my assistant and myself, she began to cry ; upon asking her why she cried, she said to me—" *It is what I said about the little box that makes me unhappy.*" I said to her : He told you then that it was poison that was in it ? Is it true that you put some into the preserves ?—(*The answer of the prisoner is objected to as being a continuation of the admissions made after the expressions made use of by Mr. Gauvreau ; ruled out on the ground that the influence of Mr. Gauvreau's expressions might still subsist, and that the witness, (the bailiff Chabot,) being considered a person in authority, was present when they were uttered by Mr. Gauvreau.*)

Germain Talbot.—The brother of Sophie Talbot—lived as a servant with Bérubé before and at the time of his sister's death—some days before her death she complained of head ache—did not see her vomit—worked outside—The sunday before she died, Bérubé sent me for some rum to warm her—I gave it to him saying : here is the rum for my sister who is sick—He said : very well—I will prepare it. (*Je vais faire de quoi avec.*) He had something in his hands, but I did not see what it was. He prepared the rum, (*fit quelque chose avec*) and gave it to my sister.—When my sister received the preserves which had been brought to her by Génoffe Thériault, she said to Bérubé in my presence—" It is very odd that they should have sent me preserves in this way ; I did not ask for any thing,"—upon which he said—" *But do you think they would be wicked enough to put any thing in them that would do you harm ?*

I have been threatened by Augustin Thériault, the father of the female prisoner, in the presence of Bérubé, as follows :—He came to the prisoner's barn where I was, and I was going to the prisoner's house, were the latter was. He (Augustin Thériault) said to me : "*Is it true that it is you who let out (éventé) that we had given something to your sister to poison her ?*" I told him no !—that people suspected it on account of the preserves which had been sent from his house, and that the people said that it was I who had said so. He said to me : "I forbid you to speak of it because I will have you brought before the Criminal Court—upon that Bérubé said—speaking of me—"*we must have him taken up.*" Sometime after this I asked Bérubé what was the meaning of what he then said to me—He said : "It means not to spread that report—as little as you can—if you do, look out for yourself."

When the body of the deceased had left the house, Césarée Thériault came to it, and Bérubé said to her—"Here are my children who are left alone,—will you take care of them, while I go down to the funeral."—They then conversed together for sometime, but I did not hear what they said—Césarée Thériault then remained in the house—I do not know whether Césarée Thériault came to the house during the illness of the deceased, but she came often to it while her body was still there.

Cross examined :

Has been in the 4th range—never saw any rats there.

Narcisse—Illegitimate child of Augustin Thériault and the woman Julie Ouellet.

Interrogated by the Judge :

Q. How old are you ?

A. I will be six years old in the month of January.

Q. Do you know what an oath is ?

A. I do not understand that.

Q. Have you learned your Catechism ?

A. No,—but I am going to learn it.

Q. Is there a God ?

A. Yes.

Q. Do you know what it is to tell truth ?

A. Yes.

Q. Where are people punished who do not tell the truth ?

A. In Hell.

Q. Are people likewise punished in this world ?

A. Yes.

Q. What prayers have you learned ?

A. I do not understand that.

Q. Do you say your prayers sometimes ?

A. Yes, in the evening—before going to bed, and also in the morning—I say a part by myself, and my mother repeats the remainder to me.

Q. Is it a sin to tell a falsehood upon oath ?

A. Yes.

Q. Where will you be punished if you do not tell the truth upon oath ?

A. In Hell, and I might also be punished in this world.

Ordered to be sworn and examined :

I know Bérubé and Césarée Thériault who is my sister—Bérubé and my sister met together—I do not remember where it was—It is a long time ago—I remember seeing *a small box*—It was Bérubé who brought it and he gave it to

my sister.—I saw a little bit of it like that—(shewing the points of his fingers,) I wanted to see the little box—Césarée put it into the pocket of her dress. I told my sister Génoffe Thériault that I had seen Bérubé giving the small box and I said so in presence of Philomène Boulé and a child of Fabien Boulé.—The box in question was given in our house. There was no one but Césarée and myself in the house when Bérubé gave the little box. They spoke of Julie Ouellet, and Julie Ouellet is my mother.—They wished to kill her—I told this to my mother in company with *Montréaliste* (another child living in the same house) : they said they wished to kill her by poison.

Cross examined :

He is asked how long it is since he knows that there is a God—Answers—He has known it for five days.—I know what a sin is. He who commits a sin goes to hell.—I have not committed a sin, in doing what I have done just now.

Justine Talbot, wife of Elie Gagnon, went to see the deceased on Wednesday, the day she died.—Fabien Boulé and wife and Germain Talbot were present—Bérubé was there also, but *he went away in the course of the evening*. I was not there when she died—I went away because the approach of death and the sufferings of the deceased terrified me—I was then *enceinte*—I remained there about two or three hours—The deceased was then in bed—She told me she suffered much ; she made me place my hand on her heart that I might feel how her heart beat.

Solomée Morin, wife of Michel Thériault :—I went to see Sophie Talbot the day she died—Fabien Boulé's wife was there, and two of Boulé's children—Bérubé was not there—The deceased was very ill—we gave her tea which she vomitted easily—also bread, but she *could not swallow it*—chewed it and threw it out.

Génoffe Thériault in my presence asked Bérubé if it was true *that he had poisoned his wife as people said*—He made some answer, I think, but I did not hear what he said. Upon this *he hung down his head*. On this occasion Génoffe Thériault said to him that Germain Talbot had said, in Bérubé's father's house, that the preserves which Césarée Thériault had sent to the deceased had made her very sick, (*lui avait tombé sur le cœur*,) Césarée Thériault was then present during the conversation *and said nothing*.

Julie Ouellet—the mother of the boy Narcisse confirmed what the boy had said in his evidence, viz: that he told her that he had seen Joseph Bérubé give a small box to Césarée Thériault.

Lambert Ouellet—identifies the body.

Amable Ouellet.—Knows Sophie Talbot—died about All Saint's day, last year—*gave no box to the male prisoner about that time*, and *sent no box to Césarée Thériault*—*gave no peppermints to Bérubé for Césarée Thériault*, and *never sent any to Césarée Thériault*—knew Césarée Thériault and had spoken to her *about it*—had asked her in marriage about two months before the death of Sophie Talbot. He was known to be the *cavalier* of Césarée Thériault, and knows no other person who bears his name.

Cross examined :

It was generally said (*il passe*) that there were rats in the 4th range where I lived for a long time.

Bérubé, to my knowledge, lived on good terms with his late wife.

Re-examined :

I gave up courting Césarée Thériault about fifteen days before the death of Sophie Talbot.

Ed. Peltier.—Knows that there was an intimacy between Bérubé and Césarée Thériault ; about three years and a half ago Bérubé and I lodged in the house of Augustin Thériault, about the month of March, at that period, I had my bed on a *paillasse* on the floor along with Bérubé. He got up and I saw him lay himself across Césarée Thériault's bed. I mentioned this to others—I spoke of it to her father—after this the two prisoners continued to see each other often.

Cross examined :

When Bérubé went to Césarée Thériault's bed I think that her sister Génoffe was in bed with her.

Félicite Peltier.—Lived in the 4th range in the house which Bérubé had in that place from the 15th June to harvest-time last year—about three weeks before her death the deceased was sick at the 4th range to which she had gone down—said she had bowel complaint and was sick at the stomach—it nearly overcame her and she vomited often with forced reaching—the vomiting lasted about two days. I was in the house when she took sick—It was, as far as I can recollect about St. Michel's day (29th September) the same day on which she came down from the township—she was seized in the evening, and on the following day she was worse, and vomited. Next day, or the day after, her husband came to see her—he arrived in the evening and *left the following morning*—she got better, and returned to the township—she supposed it was cold which she had caught.

Cross examined :

Gave her rum and hot water during this sickness—it did her good.

There are a great many rats in the 4th range.

THE FOLLOWING IS THE EVIDENCE OF THE MEDICAL MEN :

Charles Timothé Dubé, of Trois Pistoles, Physician :—In the month of April of last year, (1851,) I was called upon by the Coroner to examine the body of a woman, said to be Sophie Talbot, the wife of Joseph Bérubé. I was assisted by Dr. Desjardins.—I myself opened the coffin in a room of the old Presbytery of L'Isle-Verte, in the presence of the Coroner, of the jury, and of Dr. Desjardins. Having opened the coffin, the corpse was laid upon the cover of the coffin, the Coroner then asked if any body could recognize the deceased, upon which Mrs. Fabien Boulé came forward and said she recognized her by a scar she had upon the cheek, and Dr. Desjardins stated as much. I observed myself that there was a scar upon one of the cheeks of the deceased. The corpse having been identified, we proceeded to the examination.

Upon opening the thorax and the upper part of the abdomen, I immediately perceived a very strong smell of garlic. To become certain that this smell proceeded from the stomach, I immediately opened it, and the same smell of garlic then became stronger. I observed upon different parts of the stomach, particularly towards the cardiacal part, near the wind pipe, some red spots which indicated that inflammation had taken place. In the middle of some of these spots, there were small white ones. Some of these spots were erosions or burns of the mucous membrane of the stomach. The small intestines also denoted by their interior that there had been inflammation. The colon, the first of the large intestines, was in about its natural state, but the upper part of the rectum, the last large intestine, was ulcerated and almost entirely out of order. The liver was in about its ordinary state. The biliary vessicle was in its natural state. The lungs were filled with blood and had black spots on them. The heart was in its natural state.

The strong smell of garlic indicates the presence of phosphorus, which is a deleterious substance and a very active poison. It is the principal ingredient in *Smith's Exterminator*. This composition is very hurtful and very dangerous to human life, very little is required to poison a person. The small white specks, seen in the middle of the spots, indicate the presence of arsenic.

From the examination alone of the body, apart from the symptoms of the disease described by the witnesses, I am of opinion that the deceased Sophie Talbot died of a disease which took its origin from a cause foreign to the animal organisation, that is to say, that some foreign substance must have produced it, and that substance must have been something corrosive or irritating. To the best of my knowledge and according to my observation I believe that phosphorus and arsenic were taken.

I did not remark upon the deceased any trace of any pre-existing organic disease, except the traces of acute inflammation which I have mentioned.

I put into a vial a part of what I found in the interior of the stomach: it was a slimy secretion deposited upon the coat of the stomach. I took the vial home with me and sealed it with my seal. I always kept it under lock and key, and I have since brought it with me to Kamouraska. Last thursday evening I opened the vial myself and gave it to Dr. Jackson. He put half of the contents into a crucible and added a little rain water and chloric acid. He placed this over a lamp with spirits of wine, and heated it to the boiling point, which had the effect of making the organic matter coagulate. After this he filtered the contents through a filtering paper, so as to separate the organic matter. The remains of what had been filtered were placed in another crucible and put over the fire. A few minutes after Dr.

Jackson threw into it two small pieces of very bright and very clean copper. After a few moments and when the whole had commenced to boil, the pieces of copper became of a lead colour. This lead colour indicated the presence of arsenic. To convince ourselves that this lead colour was not produced by the water or the chloric acid, we boiled another piece of copper in a mixture of water and chloric acid, and the copper remained perfectly bright. For the last test we used the same water and the same acid that we had used for the first operation. It was at night that this was done. This test is known as the test of *Reinsch*, it is one of the strongest ones to discover the presence of arsenic.

In consequence of the nature of phosphorus and the long time that had elapsed since the burial (5 months) it was impossible to ascertain the presence of phosphorus by any chemical process. Phosphorus is a substance which disappears. Arsenic is a metallic substance which can be discovered a very longtime after the burial.

I found the stomach and the intestines empty.

I have heard the evidence of Marceline Beaulieu, wife of Fabien Boulé, first witness examined in this matter. Vomiting such as that described by this witness, as having occurred to the deceased, could have had the effect of rejecting all the arsenic she might have taken. According to the symptoms described by this witness, the immediate cause of death is inflammation of the stomach, and this inflammation must have been caused by some substance foreign to the organisation, among these symptoms some correspond to those of poisoning caused by an irritating substance, and several of the symptoms are those produced by poisoning from arsenic.

I saw the prisoner at Green Island the day after the Coroner's inquest, the third of April last.

She was at the house of one Chabot, a Bailiff, I spoke to her in the presence of Dr. Desjardins, and we were alone with her. She told me something relating to the matter which is the cause of this trial. I did not make any promise or threat to her. Dr. Desjardins did not speak to her at all. This took place at about two o'clock in the afternoon. Probably the prisoner did not know that I was a physician. The only question I put to her was this: "How did this unhappy occurrence take place?" Mr. Gauvreau the Magistrate was not then in the house. I am under the impression that he had seen the prisoner before, but I have no personal knowledge of it.

(The proof of the avowals that the prisoner may have made is objected to on the part of the defence, because it is pretended that those avowals were made after the words spoken by the Magistrate Gauvreau, and which are repeated by the witness Chabot. The objection is set aside by the judge, upon the ground, that Dr. Dubé had no authority over the prisoner, and that no person in authority was then present.)

After I had said to her: "How did this unfortunate occurrence take place?" the prisoner said to me: He gave me a small tin box covered with paper which was pasted over to keep the cover on. I opened it: it was nearly rose colour, as hard as tallow: I put some three times with the blade of a knife, into the preserves, and each time that I took it, it smoked."

I asked her if she had put much of it; she told me that she had only put a little: this was all she told me, and I did not wish to know more. She cried a great deal.

The substance, of which the prisoner spoke to me, answers to *Smith's Exterminator*, the surface of it is nearly of a rose or flesh colour. The *Exterminator* is sold in boxes covered

with paper which is pasted. When any of it is taken out, a light smoke rises from it.

Examined on the part of the defence :

I never analysed *Smith's Exterminator*. Phosphorus, when exposed in the dark, becomes luminous, and when it is a longtime closed up, it acquires a reddish colour. I do not know if earth contains arsenic. There is phosphorus in the human system, not in its natural state, but in the state of phosphate of lime. The quantity of arsenic discovered by the experiment is not sufficient to take away life.

There are diseases which very nearly appear to be caused by poisoning. Gastritis appears very like poisoning. In this disease there is vomiting, palpitation of the heart, but not always colics. In these diseases you rarely, if ever, meet with the indications I have pointed out as denoting poisoning. The white spots, of which I have spoken, may possibly be found in the stomach of a person who has died without having been poisoned. These spots are then of a greasy substance ; but those which I found were too hard for that. These white spots, when they are not arsenic, disappear when submitted to the action of fire, but when they are arsenic, they evaporate and give out a smell of garlic.

I never opened the body of a person who died of inflammation of the stomach. In the present instance I do not think that the deceased was of a sufficiently strong temperament to produce the traces of inflammation which I found. I did not know the deceased, but from the examination I made of the body, I could judge of her temperament. The traces of inflammation which follow gastritis are not so distinct as those I have mentioned. In gastritis the vascular system is dilated, the mucous membrane is of a reddish colour, but there are no spots and erosions such as those which I remarked, and the œsophagus is less affected than the remainder.

Gastritis or inflammation of the stomach may be produced by a sudden change of temperature, or by injecting a cold liquid into the stomach while in a state of perspiration.

I do not think that, supposing the deceased had eaten garlic before her death, the smell of it could be discovered five months after.

Among the symptoms described, there are some which are peculiar to poisoning by arsenic, such as the contraction at the upper part of the œsophagus, accompanied by burnings which prevented the deceased from swallowing solid food.

Re-examined on the part of the prosecution.

Arsenic may easily enter into the composition of *Smith's Exterminator*, together with phosphorus.

Hospice Desjardins, of Isle Verte, Physician :—I was present at the *post mortem* examination of the body of Sophie Talbot ; I knew her well during her lifetime, I had been her medical attendant, and I knew her at once by her features and also by a scar she carried upon one side of her face.—This witness corroborates every part of Dr. Dubé's testimony. He states as his opinion, founded upon the inspection of the body of the deceased and the symptoms of the sickness such as described by the witnesses, namely, Marceline Beaulieu,—that Sophie Talbot, died from a severe inflammation of the stomach occasioned by the swallowing of an extraneous irritating substance, which must necessarily have belonged to the class of poisons called corrosive poisons. The witness identifies the remains of the deceased submitted to the experiments, and corroborates the confession made to Dr. Dubé.—He speaks of the white spots found on the stomach of the deceased as being arsenic.

Alfred Jackson, of the City of Quebec, Physician and Surgeon :—I am the lecturer on Chemistry at the Quebec Medi-

cal School, and have been so for the last four years. Since my arrival here Dr. Dubé has placed in my hands a vial containing substances which he stated were taken from the stomach of the late Sophie Talbot, the quantity was small, about two teaspoonful. This I divided into two equal parts, and submitted one to what is known as Reinsch's test : I introduced the organic matters into a porcelain capsule, a vessel made expressly for such experiments, and added pure water and hydrochloric acid : I boiled the contents of the capsule for about twenty minutes, to coagulate and destroy the organic matters, then filtered the whole by means of ordinary filtering paper. The liquid was again heated, and when near the boiling point, two slips of copper with bright and polished surface, were introduced in it. I continued to boil the liquid, and after some minutes perceived that the copper had changed colour ; it assumed the colour of lead or of polished iron. The process of boiling was continued for about twenty minutes, the slips of copper were then taken out, washed in pure water, and dried by means of filtering paper : they were then examined, but as it was evening, and the succeeding steps of the experiment are of a very delicate nature, they were put off until the following day.

The change of colour was indicative of the presence of a metal in solution, and was such as might be produced by the presence of arsenic ; but as there are other metals that cause a similar change of colour, I took the means in ordinary use to ascertain that in this instance it was due to the presence of arsenic. I introduced the slips of copper into a reduction test-tube, and submitted them to the heat of a spirit lamp. The heat soon disengaged the coating, which had previously covered it, from the surface of the copper.

As this coating was very thin, the result of the experiment was the production of a small quantity of a whitish sublimate that adhered to the internal surface of the tube. I recognized

in the deposit the appearance yielded by arsenic under similar circumstances. The quantity was not sufficient to enable me to submit it to very satisfactory tests. Nevertheless, in a solution treated by means of the ammonia-nitrate of silver, a very delicate test, I recognized the kind of precipitate yielded by arsenious acid, under similar circumstances.

I took some of the same water, and of the same acid used in the previous experiment, and submitted another piece of copper to the same kind of treatment, minus the contents of the vial: it remained perfectly bright. This proved that the substance which had discolored the copper in the first experiment was neither contained in the water nor in the acid, and consequently must have been contained in the matters in the vial.

Doctor Desjardins placed in my hands another bottle that was said to contain the stomach of the same woman, Sophie Talbot, one portion of it was subjected to the manipulation recommended by Reinsch. The mucous surface of the stomach appeared to have been scraped and washed; (1) and I observed to those around me that it was difficult under the existing circumstances to obtain satisfactory results. Reinsch's test yielded results very similar to those obtained in the first experiment, that is to say, the copper was stained of an iron gray colour, but the coating was not so thick or so well marked as in the first experiment.

Several other processes were resorted to, among them that recommended by Marsh, but no very satisfactory result was obtained. I likewise passed a stream of hydrosulphuric-acid gas, through a previously prepared solution of the suspected matters, but without marked results. These tests are of a less delicate character than that spoken of as Reinsch's test. The principal symptoms of poisoning are pain in the region of the

(1) It had been scraped and washed.

stomach, complained of by the deceased, bloody stools, pain and constriction of the gullet, preventing her from swallowing solid substances, and the clotted blood mixed with the matters rejected from the stomach.

These symptoms are generally met with in cases of poisoning by irritant substances, such as arsenic and phosphorus. From the *post-mortem* description of the internal parts of the body, given by the medical witnesses, I am of opinion that the deceased died of inflammation of the mucous membrane of the stomach, and that the said inflammation was caused by the introduction of an irritant or corrosive substance.

The smell of garlic mentioned by the medical men as being present at the time specified, is one peculiar to, and yielded by phosphorus. The small white particles mentioned as being present, do not, according to my experience, indicate much by themselves, as such particles are frequently met with in the stomach. When carefully examined, I think it is possible by the touch to discover if such particles be metallic or not. The Medical witnesses have stated that the superior portion of the rectum was in a state of disorganisation ; this inflammation and disorganisation, I look upon as one of the most marked effects of an irritant poison, more particularly that of arsenic. The inflammation described as being present in the stomach is frequently met with, but inflammation of the stomach conjointly with severe inflammation and disorganisation of the rectum, is only met with in extraordinary cases.

From the facts taken collectively—after a careful examination of the symptoms present during the illness, and of the cadaverous appearances, I am of opinion that the deceased died from the effects of an irritant poison.

I know *Smith's Exterminator* ; it is a violent poison, the base or active principle of which is phosphorus.

From the description of a box and its contents given in the evidence of Doctors Dubé and Desjardins, I am of opinion that the said box contained *Smith's Exterminator*.

I know of no agent by which we can detect the presence of phosphorus in the body after four or five month's inhumation, it is a volatile substance, decomposed by the contact of atmospheric air.

Examined by the defence :

The symptoms of poisoning by arsenic are various. I believe that the symptoms of poisoning by phosphorus are less varied than those of poisoning by arsenic. It is unusual to meet with an inflammation of both extremities of the intestine tube, the intermediate portions being healthy. In cases of ordinary inflammation, the inflammatory action spreads by contiguity. In gastro enteritis the symptoms are, vomiting, pain in the region of the stomach, dry skin, pulse small and hard, obstinate constipation, great prostration—palpitation of the heart is a nervous affection that may be produced by inflammation of some very important organ ; it is likewise seen in nervous diseases.

I have frequently examined the bodies of persons who have died of Gastritis, the appearance of the stomach varies according to the duration of the disease, the intensity of the inflammation, and the habits of the individual.

There is this difference between ordinary Gastritis and that caused by irritant poisons, that the disease in the latter case runs its course much more rapidly.

It is on record that traces of arsenic have been found in the soil of several old cemeteries. I believe that it was detected in two cemeteries in France, and likewise in England ; the reason is unknown. Traces of arsenic are not found in ordinary soil. There is no arsenic contained in the human

body although a contrary opinion obtained for a length of time. Orfila who had become a convert to this opinion, has since acknowledged his error, and even proved the cause of his error.

The quantity of arsenic detected by my experiments was small, inappreciable by the ordinary weights ; the quantity of matter acted upon was likewise very small. The quantity of arsenic found could not of itself cause death. The slips of copper used were not heated immediately before being introduced into the liquid, this would have interfered with the polished surface, but they had been previously heated so as to free them from the possibility of containing arsenic. They were introduced cold into the liquid, when it was near the boiling point. After the volatilisation of the lead-colored crust that adhered to the slips of copper, minute white points were seen to adhere to the internal surface of the reduction tube, those points I recognised by their octohedral shape as crystals of arsenious acid. I am of opinion that the slips of copper were covered with a film of metallic arsenic, which in the act of volatilisation became united with air, and converted into arsenious acid, which subsequently attached itself to the walls of the tube.

Re-examination :

Constriction of the throat, and difficulty of swallowing solid substances, are symptoms not met with in ordinary inflammations of the stomach.

Marquis and Michaud, both Physicians, are also of opinion that Sophie Talbot died of an inflammation caused by the taking of corrosive poisons.

Mr. Taché addressed the jury on behalf of the prisoners. The line of defence adopted by the prisoners consisted of a general denegation. It was pretended that the body of the

deceased had not been identified, that there was no proof of poisoning, and that, if there were such proof, the poison was not proved to have been administered by the prisoners.

The following is an abstract of the evidence adduced by the defence :

Jean Baptiste Morin, witness for the defence :—On the night of Sophie Talbot's death, Bérubé came down to the 4th range to his father's house to ask us to go for the priest, as his wife was dying. We went for him—in our way to Bérubé's we met the son of Augustin Thériault who told us she was dead.

Bérubé was very kind and complaisant to his deceased wife, and he refused her nothing—and on one occasion he even gave me money to purchase *apples and molasses to make preserves for her*.

Cross examined :

It was about the *beginning of October last year* that Bérubé gave me money to purchase apples and molasses. I bought some *and gave them to him* ; but I did not learn that preserves were made with them. I lived then with Bérubé in the house which he has in the 4th range of Green Island, and his deceased wife lived there at the same time.

A daughter of Bérubé, about eleven years of age, is examined.—She ate of the preserves which were brought to the deceased by Génoffe Thériault and they did not make her sick.

Cross examined :

She only tasted them.

The Counsel for the defence declared his evidence closed. MR. ANGERS, for the Crown, summed up the evidence,

and Mr. Justice PANET charged the jury, commenting : 1st. upon the evidence which had established that the death of Sophie Talbot had been occasioned by poison ; 2dly. upon the facts and circumstances which tended to implicate the prisoners, and lastly upon the confession of Césarée Thériault, as proved by Dr. Dubé, directing the jury to weigh this evidence with the greatest care and precaution, and impressing upon their mind that this evidence could only be received as against the prisoner Césarée Thériault.

The jury withdrew for half an hour, and returned a verdict of guilty against the two prisoners.

The Judge then pronounced the sentence of death upon the prisoners ; and the day of execution was fixed for the tenth day of December, 1852.

ANGERS, of Counsel for the Crown.

TACHÉ and HUDON, of Counsel for the Prisoners.

This case having been the subject of comments in the periodical press and elsewhere, and important questions having arisen as to the admissibility and sufficiency of the evidence, the testimony of the medical men, and the rulings of the presiding Judge, We publish the following review of this case, furnished to us by competent jurists, giving also an abstract of the main objections as to the legality of the proceedings such as have appeared in the Quebec Mercury, and other news-papers. Ed.

REVIEW OF THE CASE
OF REGINA VS. BÉRUBÉ ET AL.
Murder by Poison.

ARTICLE 1.—*Remarks on the Kamouraska murder case.*

ARTICLE 2.—*An answer to the above remarks.*

ARTICLE 3.—*A general review of the law and the facts of the Bérubé case.*

ARTICLE 1.

REMARKS ON THE KAMOURASKA MURDER CASE.
To the Editor of the Quebec Mercury.

§ 1. SIR,—I read in the “*Canadien*,” the report of the recent trial at Kamouraska, of one Bérubé and his wife, accused of poisoning the first wife of the prisoner Bérubé. These two unfortunate individuals have been found guilty and condemned to death, and I believe they are to be executed on the 2d proximo. As the evidence adduced has been, in part, given to the public, I have considered that I would be wanting in the obligation which every citizen owes to society, did I not call attention to the extraordinary species of evidence which has been allowed to be adduced against the prisoners.

No principle in law is more clearly established than that which rejects hearsay evidence ; yet the chief portion of the testimony contained in the “*Canadien*” allowed to be given against the accused, is wholly of this obnoxious character. I repeat that the stories of nearly all the witnesses produced against the prisoners, consist for the most part, *in statements made to them by the deceased*, when it does not, in the slightest degree appear, that she was in that state, which alone rendered such statements admissible. (1) The rule in

¶(1) Statements that a sick person makes of her sufferings are admissible in evidence—Phil. and Amos on Evid. p. 266.

relation to the admission of such statements, is equally as well established as the other, and is always laid down in the books, under the head of "Dying declarations" two words which at once convey to the mind, what the condition of the deceased must have been, at the time the statements were made. (1)

This rule in itself forms, after all, but an exception to the general rule, which rejects hearsay evidence. The general principle, on which the species of evidence termed "Dying declarations" is admitted was thus stated by Lord Chief Baron Eyre, in *Rex vs. Woodcock*, (2) "That they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced, by the most powerful considerations, to speak the truth. A situation so solemn and so awful is considered by the law, as creating an obligation equal to that which is imposed by a positive oath in a Court of Justice. It is essential to the admissibility of these declarations, and *is a preliminary fact*, to be proved by the party offering them in evidence, that they were *made under a sense of impending death*." "It is the *impression* of almost *immediate* dissolution, that renders the testimony admissible." Therefore, where it appears that the deceased, at the time of the declaration, had any expectation or hope of recovery, *however slight* it may have been, *and though death actually ensued in an hour afterwards*, the declaration is **INADMISSIBLE**," (3) "A belief that the party will not recover, (said Baron Hullock,) is not in itself sufficient, unless there be also the prospect of "almost immediate dissolution, *Rex vs. Butchell*, 3, C. & P. 629-31. In addition to these authorities, I shall merely add the following extract from the most eminent writers on the subject, on

(1) This was not the case of a Dying Declaration.

(2) 2 Leach's Cr. Cas. 556.

(3) East P. C. 458—9, Welborn's case.

the latitude thus allowed, (1) “ Though these declarations, when deliberately made, under a solemn and religious sense of impending dissolution, and concerning circumstances in respect of which the deceased was not likely to have been mistaken, are entitled to great weight, if precisely identified, yet it is always to be recollected that the accused has not the *power of cross-examination*, a power quite as essential to the eliciting of all the truth, as the obligation of an oath can be ;—and that when the witness has not a deep and strong sense of accountability to his master, the passion of anger, and feelings of revenge may, *as they have not unfrequently been found to do*, affect the truth and accuracy of his statements, especially as the salutary and restraining fear of punishment for perjury is in such cases withdrawn.”

Now, applying these principles to the facts of the Bérubé case, what do we find ? (2) Witnesses allowed to detail conversations with the deceased without one tittle of evidence being adduced to shew that she was under that sense of impending dissolution, which could alone render her declarations admissible. Where is the evidence of the proof of the circumstance mentioned by L. C. B. Eyre, as essential to the admissibility of these statements ? Where is the proof of this “ preliminary fact to be proved by the party offering them in evidence ?” Is it in the testimony of Génoffe Thériault, who swears that the deceased, at the time of some of these conversations “ *était sur le pied de son lit, parlait, riait avec nous, elle ne paraissait pas beaucoup souffrir et ne se plaignait pas trop* ?” (was sitting at the foot of her bed, speaking and laughing with us, she did not appear to suffer much, nor did she complain much ?) Or is it to be found in the testimony of Marceline Beaulieu, who swears that the deceased was, at

(1) Phil. & Am. Evid. 305-6 :—1 Phil. Evid. 292 :—2 Johns, 35, 36, per Livingston J.

(2) These principles cannot be applied to the Bérubé case ; there is no question there of dying declarations, but of the description given by the deceased of her sufferings.

the time of these statements, able to get up alone ; that she was still tolerably strong and that the deceased told her that her husband had a preference for the female prisoner, that she nevertheless, never said so in her husband's presence, and that the deceased made these complaints six or seven months before her death, while the indictment charged the prisoner with poisoning her some few days before she died ? I will not take up more time on this portion of the subject, but will pass on to another, contenting myself with merely asking what the effect of such testimony must have been on the minds of a jury composed in all probability of twelve uneducated men from the country, when I add that the same Marceline Beaulieu was allowed to state that the deceased told her "that the prisoner, Bérubé, believed that she was ill because there was poison in the potatoes which she had been given," and this in a case where the prisoner was charged with this very crime of poisoning ! (1)

Apart from this testimony, other evidence of a still more reckless nature seems to have been permitted. Thus we find the same witness saying "almost immediately after the decease of Bérubé's wife, it was said (on disait) that Bérubé and the female prisoner were going to be married ; and the members of the female prisoner's family said so ! Was this, or was it not, hearsay evidence ? To cap the climax however, we find Philomène Boulé, swearing "that on the Wednesday preceding the decease of the woman, Narcisse Thériault, a child, now aged 'about six years' (consequently at the time of statement he was scarcely five years old !) *told me* that the prisoner had given a small red box to the female prisoner, and that he (the child of five years old) believed that it was for the purpose of poisoning Julie Ouellet, his mother."

(1) The witness did not speak of poison in the potatoes, but of the poisonous effect of rotten potatoes.

As part only of the deposition of Pierre Chabot is published, I refrain from expatiating upon it, but even in that part, we have a constable swearing that the Magistrate endeavoured to induce the female prisoner to become "Queen's evidence" in consequence of the proof adduced before the Coroner ! To the honor of the *Constable*, be it said, *he* told the *Magistrate*, that "in his opinion the time had not yet come to do that, and that certain formalities must first be adopted"! Verily, if those gentlemen were made to change offices the public service would be benefitted.

In conclusion, I beg to state, that I do not believe I have made myself subject to the accusation of having commented upon the evidence while a portion of it only was before the public, because such testimony is illegal *per se*, and cannot be rendered legal by subsequent evidence, and I will add, that *it is possible* that the "preliminary fact" adverted to, may have been established, and if so, then the evidence may have been legally received and the prisoners duly convicted, but I can see no reason why so important a portion of the testimony should have been omitted in the report of a case, apparently so very minute and circumstantial, and which must have been handed for publication by some one who took notes of the trial. Should such however be the case, I shall be most happy to withdraw my strictures, and make the *amende honorable à qui de droit* ; but should the report be a correct detail of all that was adduced, and should it appear on further inquiry, that the other evidence which was tendered, was not sufficient in law to sustain the indictment, then I think it will become necessary to give another Court the opportunity of declaring, whether or not, the trial in question, was, in the words of Lord Denman, "a mockery, a delusion, and a snare?"

AN ADVOCATE.

To the Editor of the Morning Chronicle.

§ 2. SIR,—The whole report of the Bérubé case has now been published, and every one can judge for himself, how far the finding of the verdict was warranted by the evidence adduced. Far from being of opinion that the subsequent publication of the testimony has corrected the errors of the first portion, or shewn that I was wrong in commenting on it *piecemeal*, I am the more convinced that an erroneous course was adopted from the beginning—that evidence, of an illegal nature, and irrelevant in its tendency, was admitted,—that the minds of the jury were allowed to be influenced by considerations foreign to the subject of the accusation, and that in short, nothing has been established to warrant the admission of evidence which must have tended to convict the prisoners.

Not a tittle of legal evidence has been adduced to attach the poisoning to Bérubé. The testimony given at the trial connects him, in no wise, with the administration of either arsenic or phosphorus, or as the witnesses term it, "*Smith's Exterminator*." Two questions presented themselves at this trial. The first, whether Sophie Talbot had died in consequence of poison having been administered to her? and secondly, by whom this poison had been administered? The solution of these questions should have been attained by the usual predetermined and specific rules of inquiry, and this would have been more efficiently obtained in this manner, than by allowing the tribunal the uncontrolled liberty of action, which it seems to have preferred. The knowledge of a multitude of comparatively insignificant facts serves often rather to confuse than enlighten, and the wider the field of inquiry the greater the danger of mistake, from emotions created by irrelevant evidence. The very form of the inquiry is of vital importance as respects the security of society, for experience has shewn that this form was a necessary safeguard for such security.

Proceeding first to examine the value of the evidence adduced against Bérubé, we find it utterly worthless—I disdain again to return to the testimony of the child Narcisse, and even if his evidence were legally or reasonably admissible, there is no proof whatever to connect the box which he saw Bérubé give, with that out of which the female prisoner took the substance to mix up with the preserves—none whatever. (1) It was however conceived that it would fasten a *possibility* of the administration of poison upon him, could it be established that he had *purchased* poison of the description which, it is alleged, caused the death of his wife, and in order to effect this important object, two witnesses were examined. Their testimony was certainly of a formidable nature, for they both (Jarvis and his daughter) positively swear, that *they had no arsenic* in their establishment, when Bérubé asked for it, and that he *absolutely refused* to purchase the “*Exterminator*,” because he *found the price too high*? Now, a man, who, it is pretended, was so very anxious to get rid of his wife, would scarcely have hesitated to give *twenty pence* for a poison which would so effectually secure his object. Therefore, the only evidence offered to connect Bérubé with the procurement of the poison incontestably established that he obtained *none at all*. (2) When so many extraneous methods were resorted to, for the purpose of endeavouring to criminate him, why were not efforts made to discover the parties from whom the poison was obtained? Perhaps the immense amount of secondary and irrelevant evidence, which must have taken much time and pains to collect, caused this important fact to be lost sight of. There is, I may observe here, no proof whatever of the *administering of arsenic* by either prisoner. Even as regards Césarée Thériault, the evidence of *administration* is confined to the sub-

(1) *Contrà*, see Philomène Boulé’s evidence, and that of the child.

(2) There is other evidence connecting Bérubé with the crime.

stance from the box, *which it is supposed*, contained the *Exterminator*.

Having failed on this point, it became apparently necessary to shew that Bérubé was not on good terms with his wife, and strange to say, the only evidence in support of such a supposition is found in the *hearsay* evidence of Marceline Beaulieu, who was told by the deceased six or seven months before the crime is alleged to have been committed, that she was not happy, and yet, we have the positive testimony *under oath* of the said Marceline Beaulieu, Génoffe Thériault, Amable Ouellet, and Jean Bte. Morin, who swear “that Bérubé and his wife were always on good terms, and they lived happily ‘*comme il est bien rare*’—that Bérubé was always kind and complaisant to her—that he refused her nothing” *and all this to their personal knowledge* ; and the negative testimony of the brother and children of the deceased, who lived with her, and who yet say nothing of an unpleasant feeling existing between the parties.

Perhaps it may be urged that during her illness, he manifested the utmost indifference to her health, and evinced a desire to see her languish without any effort to succour or relieve her. The only evidence that I can find concerning this point is contained, 1st—in the deposition of the same Marceline Beaulieu, who says, that the prisoner sent for warm punch which revived his wife, and was given her by the witness herself, that he went to her house to get medicine for his wife, saying she was ill, and requesting her assistance, and imploring her to lend him a feather bed for his wife, as she had not a comfortable matrass—of his having procured *tisane* for her. 2nd—In the deposition of Génoffe Thériault, who proves that Bérubé went to her house during the night to inform her that his wife was ill, and that he wished to procure for her the last consolations of a dying christian. 3rd—In the depositions of Philomène Bérubé and

Germain Talbot, (the former the daughter, and the other the brother of the deceased) who confirm the statement of Marceline Beaulieu ; and 4th, in the deposition of Jean Bte. Morin, who proves that Bérubé requested him also to go for the *Curé* to attend his sick wife. If this ground of accusation be abandoned, perhaps, it will be said, that on the occasion of the *first illness* of the deceased (which took place when her husband *was absent*, and during which she exhibited symptoms similar to those observed during her last attack) Bérubé acted in a manner which evinced his anxiety to lose his wife. This is proved perhaps by the testimony of the deceased's daughter, Philomène, who swears, that when the prisoner heard of this illness, he went at once to attend his wife, and by that of Félicite Peltier, who confirms the deposition of Philomène, and adds that from what he did for her, his wife became better, and that he did not leave her until her illness had disappeared.

It is moreover evident from the conduct of Bérubé, that he was not at all desirous that his wife should eat of the preserves (supposed to be poisoned) for we find Philomène Bérubé establishing that "as some dirt had fallen into the preserves, and as the prisoner had put his hands into the cup to take it out, the deceased said that the preserves were too dirty, and that we should eat no more, upon which the *prisoner threw them away* and the *prisoner himself took them from my mother.*" And it is moreover clear, that neither Bérubé nor the female prisoner was watching that no efforts should be made to examine the preserves, for we find that either one or the other or both, absented themselves with some of the visitors, leaving the deceased with her friends, who, if anything peculiar was then discovered about these preserves, might have retained them for further investigation.

Dr. Dubé (as I have already mentioned in my last letter) was allowed to give in evidence an admission made by the

female prisoner, on the morning after the inquest. That admission was as follows: "He gave me a little box of tin, covered with paper glued on the seams—I opened it,—it was of a rose colour and of the consistence of suet. I took some three times on the blade of a knife and put it in the preserves, and each time that I did so smoke was produced. *I only put a little in the preserves.*" Now I have already shewn that this evidence could not affect Bérubé. Numerous authorities support this position. I shall content myself with simply referring to a few:—Rex vs. Fletcher, 4 Car. and P. 250 :—Rex vs. Hearne, 4 Car. and P. 215 :—Rex vs. Walkely, 6 Car. and P. 175 :—Rex vs. Appleby, 3 Stark, 33 :—(In this case, A. & B. were charged with the joint commission of a felony, and A, on his examination before a magistrate stated in the hearing of C, that he and B, jointly committed such felony, which B did not deny; and yet it was held that these circumstances were not admissible, as evidence against B,) Rex vs. Pountney, 7 Car. and P. 302 :—2 Russ. on C. p. 864, and Arch. 122. Besides it must be remembered that this so called admission was made *within some two or three hours after the inducement had been held out to this woman by the magistrate to confess*, and when she was in the custody of the very man in whose presence the inducement was made. (1) Now, it is undeniable in law that a second confession made under the same influence as the first is not receivable in evidence (Meynell's case, 2 Lewin, C. C. 122 :—Taunton, S. P. Sherrington's case :—Ib. 123, Patterson.) And it is quite needless for me to shew that this confession *must have been made* under the influence of this inducement, since the learned Judge refused to admit admissions made by this woman even twenty-four hours *after* the above admission made, *on the express ground* that the influence still predominated. (2) Reject this admission, and where

(1) This admission was made without the presence of Chabot.

(2) Not only upon this ground, but also upon the ground that the latter admissions were made in presence of persons in authority, from whom the prisoner might expect some benefit.

is the proof that Césarée Thériault administered any suspicious substance whatever ?

One would have thought that we had enough of *hearsay* evidence, and yet Germain Talbot is allowed to state conversations between him and Augustin Thériault (father to the female prisoner) which would tend to criminate the accused, for they convey threats on the part of this Augustin Thériault, against the witness if he should speak against the female prisoner. (1) Throughout the whole course of the evidence, we find constant efforts made to keep before the mind of the jury, that an illicit connexion existed between the two prisoners during the lifetime of the deceased, and that even so long as three years and a half ago Bérubé was on improper terms of intimacy with the female prisoner, (then between 12 and 13 years of age.) This is appropriately followed up by evidence that the female prisoner became *enceinte* about a fortnight after the interment of the deceased. What had all this to do, with the charge of *poisoning* ? Were the prisoners bound to maintain their character for chastity, or defend their lives on a charge of murder ? Truth and justice require that the verdict of a jury should result wholly from the evidence, and that the evidence should *relate solely to the fact charged*—Did the prisoners poison the deceased ? The fact of their having or not having done the deed cannot depend upon the ideas which the jury may entertain of the conjugal fidelity of one of the parties. This evidence indicates the nature of the course adopted—facts established, without compunction, relevant or irrelevant—a fearful advantage being obtained over the unfortunate prisoners—their case prejudged in the minds of the jury with evidence of no legal value—their previous history pretended to be related, perhaps distorted—and thus making the question of their guilt or innocence to turn, *not upon the evidence*

(1) These threats were made in presence of Bérubé, who, it is proved, joined in them.

adduced respecting the deed, for the supposed perpetration of which they were then being tried, but upon the notion which the jury might form as to their former conduct and character. The safeguards which experience and forethought have discovered and suggested, for the protection as well of the accused as of the society which arraigned them, have been departed from ; the dictates of humanity and of common justice, violated ; and a court of justice assembled to decide upon the life or death of two fellow creatures converted into a scene wholly repugnant to the spirit and the letter of our institutions.

I alluded, *en passant* in my last paper, to the supposed *identity of the corpse of Sophie Talbot*. One can understand the necessity of having legal proof of this fact. The necessity, or utility of establishing *the identity of the coffin* is not quite so clear. However, Lambert Ouellet, was examined on this point. He swears “ that he filled up the deceased’s grave, after the coffin had been put in, that it was he who took up the coffin at the inquest, that the coffin so taken up is the same that was put in *as containing* the body of Sophie Talbot. The coffin had been painted with the soot of smoke when it was put in the ground, and was black ; when it was taken up the soot and black were gone.” (1) In other words, he says, “ I buried a *black* coffin and I dug up a *white* one !” *The identity of the coffin is established by proving that it was wholly different from the one said to contain the body !* Now, this proof must have presented itself to the jury under a *sylogistic* form something like this. “ The coffin buried was a *black* one ; but the coffin dug up, was a *white* one ; therefore the *latter* contained the body of the deceased !”

It is not my intention to comment on the evidence given by the Medical Gentlemen, for, I take it, sufficient has been shewn, to establish that in consequence of

(1) These had been effaced by moisture.

illegal evidence having being received against the prisoners the verdict rendered against them is illegal. I shall merely say, that even arguing upon the facts *supposed* to be proved, there is no evidence as to the quantity of the *Exterminator* administered in the first place, only "a little," it is proved, was put into the preserves; 2o. the deceased only took two or three teapoonsful of the preserves; whereas the whole quantity consisted of about three fingers in depth of a bowl. Here would arise the chief question, whether the quantity taken (supposing the preserves contained poison) was sufficient to destroy life?

There is no evidence on this point—on the contrary, all the Medical Gentlemen agree in stating that in so far as the Arsenic is considered (and there is no proof of the *administration* of that substance) the quantity discovered was not sufficient to destroy life. Now, no Phosphorus was discovered in the body at all, because (say these gentlemen), it is a volatile substance, and yet great stress is laid on the fact of a strong smell of garlic arising from the body, said to proceed from this very substance. It is somewhat difficult to find a smell remaining months after the substance which has produced the odour has disappeared. One would think that the accessory could not exist without the principal. Now the odour of garlic would arise from Arsenic when heated, and yet this fact seems to have been wholly slurred over. I shall not say a word, either, of a confusion which seems to have taken place between the classification of Arsenic and Phosphorus, as irritants and corrosives. I regret nevertheless that other portions of the body were not subjected to examination. The brain and spinal marrow might have been looked at, for Arsenic could affect both. This was the more necessary as the symptoms are not always clearly indicative of the poison taken. Another very singular circumstance connected with this poisoning is, that although the female prisoner and the witnesses Génoffe Thériault, Philomène Bérubé, and

another girl, partook of the preserves, yet, *they did not suffer from the effect of it*. They, (and the deceased likewise) found they had a good taste. (1) Now, if they really contained this *Smith's Exterminator* which has so very offensive a smell, (and so powerful as to be quite perceptible 5 months after the substance itself ceased to exist,) can it be true that in the eating of the preserves, the smell was not discovered? The Medical witnesses do not appear to have been asked within what period of time poison usually proves fatal! The stomach was preserved, but had been so much scraped by the other gentlemen (who nevertheless admit that they had not the necessary instruments to carry out the experiments) that Dr. Jackson could not establish any thing satisfactory by an examination. Besides, it is quite possible, that it may have been preserved in Alcohol, which would have seriously embarrassed an analysis of its contents. A very delicate experiment was resorted to for the purpose of ascertaining whether the substance contained in the vial given by Dr. Dubé to Dr. Jackson, taken from the stomach of the deceased, was impregnated with poison—I allude to “Reinch’s Process.” “In the application of this ingenious process (2) the *solid or liquid* supposed to contain arsenic *is boiled with one-sixth part of pure muriatic acid*, and a slip of bright copper foil is then introduced.” I trust, I may be pardoned, if I say that I cannot understand why in the experiment made by the Medical Gentleman on the substance contained in this vial, “he added water,” to the acid? More particularly as the same author says, “One great advantage is, that we are not obliged to dilute the liquid in the experiment, and there is no loss of arsenic;” for he adds: “the deposit of arsenic is materially affected by the quantity of water present, or, in other words, the degree of dilution.” I regret moreover, that *but one piece of copper* was introduced into this substance,

(1) Upon this point, read the answer to these remarks.

(2) Taylor’s Medical Jur. p. 91.

for, since the quantity obtained was so small as to be “*inappreciable*” in weight, a continuation was advisable ; because, says Taylor : “ If enough should not be apparent from one piece of copper, *several* may be successively introduced. A large surface of copper may be in this way at once covered, and the arsenic collected.” Taylor speaks of another experiment for the purpose of determining the presence of arsenic, viz : that of cutting the liver, spleen, and kidneys, into very small pieces, and subjecting them also to Reinsch’s process. It is a pity that all these organs were not subjected to the test. One of the medical gentlemen (who has nevertheless given an enlightened testimony) admits that he never heard of the presence of arsenic in the soil of Cemeteries—yet, Taylor says, (p. 95) that it is established by the researches of several toxicologists, that such soil often contains a compound of that substance.

I have already objected to “ hearsay evidence ;” before concluding, I have also to object to an “ opinion” given by a medical witness, apparently in answer to a question, not within the scope of those in which his *opinion* would be receivable. The gentleman in question says, “ From the description of a box, of which mention has been made by Drs. Dubé and Desjardins, *I am of opinion* that this box contained *Smith’s Exterminator*.” Now this witness was no more qualified than any layman to give an *opinion* in relation to this matter—it was not a question of medical science or skill—for although *the box* might have corresponded *with the boxes* which contain the “ *Exterminator*,” yet, there is nothing inconsistent with this fact in supposing that this very box may have contained tooth-powder or any other substance. A medical witness should “ remember that his conclusions are to be based only upon *medical* facts—not upon moral circumstances, unless he be specially required to express an opinion with regard to them, when they are of a medico-moral nature. Further, they must

be based only on what *he has himself seen or observed.*" (1) Did it become absolutely necessary to indentify this box and the substance it contained, I submit that the identical *John Smith* himself might, failing other evidence, have been produced.

And now, I shall finish my correspondence on this subject, in the words of the reviewer of Madame Lafarge's case, published in the Edinburgh Review. "The quantity of irrelevant matter introduced on this trial is absolutely marvellous, while the facts stated in evidence which really related to the issue, are in the same proportion few, and for the most part insignificant." And now, I ask with that writer "whether it would be safe, whether it would conduce to the security of society at large, to deem the prisoners guilty, upon evidence which in itself is so untrustworthy, and received in a manner so well calculated to destroy the little value it might otherwise have possessed?" Looking back through the whole evidence, carefully weighing each separate item adduced, trying its worth by every test which the experience of ages has suggested, I am satisfied that there was not sufficient evidence to prove that the deceased came to a violent end; still less to shew that the prisoners were the guilty cause of her death. The system employed served to increase, not to allay alarm; it made criminals, without proving them to be guilty; and thus it will teach the people to feel, that not only are they exposed to the assaults of the wrong-doer, but that they are also liable to incur even greater harm from the very means intended for their protection.

The termination of the Kamouraska trial arrives at last, after having occupied from Saturday till Friday of the following week. The Judge reads his notes, and addresses the jury; that body retire, and return into Court after a deliberation of *half an hour*, and in the midst of the general anxiety, these

(1) Taylor's Medical Jur., p. 62.

men pronounce a verdict of guilty against the man and the woman. The Judge pronounces the sentence of death against the prisoners. A dread emotion prevails in the Court, and the tears of the condemned mingle with those of the spectators, and the day which is to close the mortal existence of two human beings is proclaimed. All is over. The father of three helpless children—the mother of an infant babe, are conducted to prison, there to remain till they undergo the last punishment which the power of their fellows can inflict. Silenced now are the fancies that entered the heads of their neighbours, hushed are the conjectures of the gossiping crones. The work is done. THE PREROGATIVE OF MERCY STILL REMAINS ! Shall these people be executed, and the press of this district maintain silence ? (1)

“ AN ADVOCATE.”

ARTICLE 2.

An answer to the Remarks of an Advocate.

So much has been written and published touching this unfortunate affair that it would seem necessary to have done with it ; nevertheless as every thing that has been said upon the subject, has been so said *Exparte*, it will no doubt be allowed one who was present at the trial to make a statement in elucidation of truth and in the interest of justice.

It is perhaps late, but it must be borne in mind, that it would not have been right to express an opinion at a time when the fate of the prisoners was undecided, and was still in the hands of the Government. Moreover the period of time which has now elapsed must have had the effect of smoothing down the ill feelings which certain publications must have given rise to.

(1) A large number of petitions in favor of a commutation having been sent from the District of Kamouraska, the prisoners have had their sentence commuted into an imprisonment for life in the Penitentiary.

It is necessary to observe, at the outset, that the evidence as published in the *Canadien* and as published in the *Journal de Québec*, and upon which several comments have been made, is not correctly given : certain errors have crept in, certain omissions have been made. It is confused and obscure, this is not attributable to the reporter, but to circumstances over which no control could be exercised.

The reporter has omitted certain answers of the boy Narcisse Thériault to the questions put to him by the Court upon the closing of his evidence. An important omission has been made in relation to the evidence of one Chabot to whose testimony a number of objections were made, which were all maintained by the court, by reason of its being in presence of Chabot, that Gauvreau, the Justice of the Peace, suggested to the female prisoner the propriety of her becoming a witness for the Crown. It is reported nevertheless, that one of these objections was set aside, such is not the case. The reason of this, no doubt, involuntary error, is that the examination of the witness was continued upon matters which had preceded the pretended admission which was attributed to the female prisoner. In the address to the jury, it was plainly said that the statements made to Chabot could not be received, those only made to Dr. Dubé being admissible. The Court distinctly stating to the jury the reasons for deciding that the admissions to the constable Chabot could not be received, and the ground for admitting those made to Dr. Dubé.

The points raised in relation to this trial are reducible to four principal ones.

1. That the Court had admitted hearsay evidence, which ought not to have been taken.

2. That the evidence of a child who did not understand the nature of an oath had been admitted.

3. That the admissions made by the female prisoner to Dr. Dubé, after it had been suggested to her, that it would be better that she should become a witness for the Crown, had been illegally admitted by the Court.

4. And lastly. That as to the prisoner Bérubé, there was no sufficient proof of his participation in the crime charged.

FIRST POINT.

In supporting the first point, it has been pretended that nothing was clearer in law than the rule which rejects hearsay evidence, and that nevertheless the principal part of the evidence received against the parties accused was evidence of that description.

It has been repeatedly said that the evidence given by most of the witnesses produced, consisted of what had been said to them by the deceased, concerning her state of health, and that it did not appear that she was in that state which could alone render her statements admissible ;—namely, under the impression of impending dissolution.

The writers upon the subject did not perceive that dying declarations were not in question, but that the matter under consideration was the symptoms affecting a woman alleged in the indictment to have been poisoned. It is to be regretted that they did not advert to the following authority from the work cited by them, else they would have found that :—“ Wherever
“ the bodily or mental feelings of an individual are material
“ to be proved, the usual expressions of such feelings, made
“ at the time in question, are also original evidence....
“ and whether they were real or feigned, is for the Jury to
“ determine.... So also, the representations made by a sick
“ person of the nature, symptoms and effects of the malady

“under which he is laboring at the time, are received as
 “original evidence. If made to a medical attendant, they
 “are of greater weight as evidence, but if made to any
 “other person they are not rejected on that account.” (1)

It has been said :—

“Thus, we find the same witness saying, immediately
 “after the decease of Bérubé’s wife, it was said that Bérubé
 “and the female prisoner were going to be married, and the
 “members of the family of the female prisoner said so!!!”
 and then, “was this or was it not, hearsay evidence.” This
 evidence was admissible; upon consulting Roscoe on evi-
 dence, the following passage will be found,—“Where how-
 “ever the peculiar circumstances of the case are such as to
 “afford a presumption that the hearsay evidence is true, it is
 “then admissible.” (2)

In the present case, the presumptions were strong, the pri-
 soners were in the habit of meeting, and they were soon
 after married.

In answer to similar objections the same author is referred
 to, he says :

“Where the inquiry is into the nature and character of a
 “certain transaction, not only what was done, but also what
 “was said by both parties during the continuance of the
 “transaction is admissible, for to exclude this, would be to
 “exclude the most important evidence. In this case, it is
 “not the statements of those persons, unconnected with the
 “fact which is received, but it is the declaration of the parties
 “to the fact themselves, or of others connected with themselves
 “in the transaction, which are admitted for the purpose of
 “illustrating its peculiar character and circumstances.”
 It has been argued that the portion of the evidence of
 Philomène Boulé, in which she states that the boy Thériault

(1.) 1 Greenleaf, on Evidence, p. 102.

(2) Roscoe, on evidence, p. 22.

had told her that the male prisoner had given a little box to the female prisoner, ought not to have been admitted; this objection will be hereafter adverted to.

SECOND POINT.

That the evidence of a child who did not understand the nature of an oath had been admitted.

It is well in the first place to examine the Law which settles this question.—Roscoe, p. 114, writing upon the subject, expresses himself thus:—"At one time, their age (*of children*) was considered as the criterion of their competency, and it was a general rule that none could be admitted under the age of nine years, very few under ten."

The error lies in having taken the old rule as law, and all the citations up to the case of Brazier in 1779 are not applicable, as the law now stands;—and it seems not to have been observed that it was in that very case that the new rule was adopted. Roscoe points this out; he says: "Subsequently all the Judges agreed that a child of any age, if capable of distinguishing between good and evil, might be examined upon oath, and that a child of whatever age could not be examined unless sworn. This is now the established rule in all cases civil as well as criminal, and whether the prisoner is tried for a capital offence or one of an inferior nature."

This is the criterion by which the admissibility of the evidence of a child, whatever his age may be, must be tested, namely, whether he is capable of distinguishing between good and evil, and not by his capacity to give a correct definition of an oath. Another authority may be here cited: Phillips, on evidence, in his first volume p. 20, after having

referred to Blackstone, says: " It seems however impossible
 " to lay down any general rule on the subject, applicable to
 " all cases. A prisoner may be legally convicted on such
 " evidence alone, and unsupported, and whether the account
 " of the witness requires to be corroborated in any part or to
 " what extent, is a question exclusively for the Jury, to be
 " determined by them on a review of all the circumstances
 " of the case, and specially of the manner in which the child
 " has given his evidence."

The following is the preliminary examination of the child,
 as extracted from the notes of the presiding Judge :

Q. What age are you ?

A. I shall be six years old in the month of January.

Q. Do you know what an oath is ?

A. I do not understand that.

Q. Have you been to Catechism ?

A. No, but I am about going.

Q. Is there a God ?

A. Yes.

Q. Do you know what telling the truth is ?

A. Yes.

Q. Where are people punished, when they do not tell the
 truth ?

A. In hell.

Q. Are people also punished in this world.

A. Yes.

Q. What prayers do you know ?

A. I do not understand that.

Q. Do you say your prayers sometimes ?

A. Yes, at night, before going to bed, and also in the morning. I say one part alone, and mamma makes me say the rest.

Q. Is it a sin to tell stories under oath ?

A. Yes.

Q. Where would you be punished, if you did not tell the truth under oath ?

A. In hell, and I would also be punished in this world.

Upon this, the Court overruled the objection made to the hearing of this witness, who was then sworn. He was then asked by the Court if he was obliged to tell the truth, and he answered he was.

It must be recollected that the admissibility only of the witness is in question ;—his evidence will be reviewed later.

Although this child was unable to give a definition of an oath,—it is nevertheless plain from his answers,—that he knew what obligation was imposed upon him by his oath, and how he could be punished for false swearing, as well in this world as in the next, and that he was capable of distinguishing good from evil.

According to the authority taken from Roscoe and from Phillips, the evidence of the child having been taken, it was exclusively within the province of the jury to say whether, taking into account all the circumstances of the case, and the manner in which the evidence had been given,—the statements of the witness required any and what corroboration.

It was therefore right in the Court to take this evidence. The law gave the judge a discretionary power to that effect, as it gave the jury the power of deciding how far the evidence required corroboration. The evidence of Génoffe

Thériault, Julie Ouellet, and Philomène Boulé, and the admissions of Césarée Thériault, concerning the box in question, all corroborate the testimony of the boy Narcisse.

THIRD POINT.

That the admissions made by the female prisoner to Dr. Dubé, after it had been suggested to her by Mr. Gauvreau, the Justice of the Peace, that it would be better that she should become a witness for the Crown, have been illegally admitted by the Court.

Upon this important question, as upon many others, the jurisprudence has been improved, as appears by the following passage :

“ On this subject, (confessions) the law has proceeded to a scrupulous nicety, which the good sense of the Judges has recently inclined to restrain.” (1)

Upon the occasion of the decision of the twelve judges in the case of Regina vs. Baldry, Crown cases reserved of 1852, Baron Parke is reported to have made the following observations :

“ The decisions to that effect have gone a long way. Whether it would not have been better to have left the whole to go to the jury, it is now too late to inquire, but I think there has been too much tenderness towards prisoners in this matter. I confess that I cannot look at the decisions without some shame, when I consider what objections have prevailed to prevent the reception of confessions in evidence, and I agree with the observation of Mr. Pitt Taylor, that the rule has been extended quite too far, and that justice and common sense have too frequently been sacrificed at the shrine of mercy.” (2)

[1] Dickenson's Guide to the Quarter Sessions, by Talfourd, p. 524, 5th London Ed.

(2) XII. Engl. Reports in Law and Equity, for 1852, p. 598,

This serves to explain some of the older authorities such as they are found in Starkie : " Where a confession has once been rendered by such means, all subsequent admissions of the same or like facts must be rejected, for they may have resulted from the same influence." (1)

Let us continue to examine the law upon this subject ; it is clearly stated in the following passage :

" The only questions in these cases, are, was any promise of favor, or any menace or undue terror, made use of to induce the prisoner to confess. And if so, was the prisoner induced by such promise or menace &c., to make the confession attempted to be given in evidence. If the judge be of opinion in the affirmative upon both these questions, he will reject the evidence. If on the contrary it appears to him from circumstances, that although such promises or menaces were held out, they did not operate upon the mind of the prisoner, but that his confession was voluntarily made notwithstanding, and he was not biassed by such impressions in making it, the judge will admit the evidence." (2)

In the case under consideration, a constable by the name of Chabot having arrested the female prisoner, took her to his house where Mr. Gauvreau, a Justice of the Peace, told her she had better become a witness for the Crown ; about twenty minutes afterwards Mr. Gauvreau left, without the prisoner having made any admissions, but subsequently she made admissions to Chabot, which she repeated the next day, while he was taking her to Kamouraska. The Court refused to receive those admissions, because the suggestion of Mr. Gauvreau had been made in the presence of the constable, who was a person in authority over the prisoner.

[1] 3d Starkie's Evid. 49.

(2) Archbold, p. 112.

The circumstances under which the admissions to Dr. Dubé were made, were altogether different ; (1) the question of the admissibility of this confession became one of great delicacy—It was received in evidence under the following authority, which goes further than was necessary to admit the confession made to Dr. Dubé : “ If after the promise has been “ made such circumstances should take place as to induce “ a presumption that a subsequent confession has not been “ made under the influence of that promise, there appears to “ be no reason for rejecting the confession, because the “ person to whom it is made is the same to whom the “ former confession was also made.” (2) Dr. Dubé was not the person to whom the admissions of the female prisoner were made in the first instance, he was a stranger, invested with no authority, who had made neither promises nor threats.

The Court had to choose between the opinion of Starkie above cited, and the last quoted from Roscoe, which is more consonant with the more recent decisions indicated by Talford, who states that, in matter of confession, the law had proceeded to a scrupulous nicety which the good sense of the judges had recently inclined to restrain.

In August, 1843, the Court of Queen's Bench, at Quebec, presided by Sir JAMES STUART, Chief Justice, tried one Jacob Cline, upon an indictment for stealing a sum of money from his master, Dr. Racey, who proved the theft, stated that having suspected the prisoner, he said to him that, if he would return him his money, he would not move further in the matter, upon which the prisoner made an admission. The prisoner was then taken to the police station. A second witness, Robert Russel, proved that, while the prisoner was in the police station, having been questioned touching the matter,

(1) See the evidence of Dr. Dubé, as reported *anté* p. 224.

(2) Roscoe's Evid. p. 43.

he had made a second confession. It is right to observe that the witness Russel was a person in authority, being then the Chief of Police, but he had neither threatened the prisoner nor had he made him any promise. The Chief Justice was of opinion that the confession made to Russel was admissible and sufficient to convict the prisoner.

The decision of the Court at Kamouraska is manifestly analogous to the case of Cline.

FOURTH POINT.

That as to the prisoner Bérubé, there was no sufficient proof of his participation in the crime charged.

After having thus answered the objections made to the admissibility of the hearsay evidence, and of the evidence given by the boy Narcisse Thériault and by Dr. Dubé, in relation to the confession of the female prisoner, it is necessary that this fourth and last point should be examined in order to ascertain upon what evidence the Jury, who are the only Judges of the sufficiency or insufficiency of such evidence, relied, in returning a verdict of guilty against both the prisoners.

The first question to be solved was whether the deceased, Sophie Talbot, the first wife of the prisoner, had fallen a victim to poisoning. Now this important fact, indeed the principal one in the case, was proved beyond the possibility of a doubt by the evidence of five medical men. Their evidence is not conjectural, it is positive and corroborated by the presence of arsenic in the stomach of the deceased as ascertained by Doctor Jackson, by means of the Reinch test, and by Doctor Desjardins, who states in his evidence, "I took one of those small white points, I placed it upon a live coal and it remained solid and capable of being crumbled. Hence I inferred that it was a mineral sub-

“ stance.” The presence of phosphorus in the stomach of the deceased was ascertained by a strong smell of garlic and went to confirm the opinion of the medical men : their evidence affords an opportunity of citing a judicious observation made by Roscoe :

“ Upon this subject (proving murder by poison,) in general it may be taken that where the testimonies of professional men are affirmative, they may be safely credited, but where negative, they do not appear to amount to a disproof of a charge otherwise established by strong and independent evidence.” (1) Nevertheless it is objected that there was no examination of the brain, or of the spinal marrow or *of the heart*, (2) again the small quantity of arsenic found in the stomach is remarked upon, and lastly it is observed that the wife of Elie Gagnon had not identified the body of the deceased. It must be recollected however that Doctor Desjardins, who knew her well, having attended her during illness, recognized and identified her as well by the general cast of her countenance as by a scar which she bore upon her face.

It is to be observed that the evidence of the medical men is corroborated in a remarkable manner by the confession of the female prisoner to Doctor Dubé. (3) The Judge in commenting upon the evidence observed to the Jury that it was necessary to seek the proof of Bérubé's guilt, in the testimony of Narcisse Thériault, Génoffe Thériault, Philomène Boulé and Jean Baptiste Morin.

There is abundance of strong presumptive evidence to shew that the two prisoners had a common interest in removing the obstacle to their union ; this presumption is ren-

(1) Roscoe on Evidence, 645

(2) This is an omission of the reporter ; the heart was examined, and found in its natural state.

(3) See Doctor Dubé's evidence *Suprà*, page 227.

dered stronger by the fact that the body of the deceased had scarcely left the house to be carried to the place of interment when Bérubé brought the female prisoner to his house to take care of his children, and as shewn by the evidence of the physician having charge of the Gaol at Kamouraska, it must have been but a short time after the interment of the deceased, Sophie Talbot, that the female prisoner became with child, which child was born in Gaol, and is not disavowed by the prisoner.

In order to understand the whole of the transaction, it is necessary to look further back. Joseph Bérubé, the prisoner, had a lot of land in the fourth range of *Isle Verte* ; he had been residing there with his wife for a number of years, when some three or four years before the trial, which took place in November 1852, he undertook to clear a new land in the township of Viger, a distance of nine miles from his land in the fourth range; at that period, there was no other house in this settlement, but that of Augustin Thériault, the father of the female prisoner. Bérubé worked during the day upon his land, and in the evening he slept at Thériault's. Even at that period two witnesses, Edouard Pelletier, and Solomon Marquis, observed the preference which the prisoner manifested for Césarée Thériault. Pelletier says he had seen the prisoner laying across Césarée Thériault's bed. Marquis states that the prisoner occasionally conversed with Césarée Thériault and that he seemed to be fond of her. In 1851, the prisoner's late wife spent the summer upon the land of the fourth range, and her husband worked at his establishment in the township of Viger. He would go down to the fourth range on Saturday and would return on the Monday. One day, somewhere about the latter end of September, the deceased had gone to the township of Viger and had come down again ; she fell ill, " she complained and the next day she threw up,

“ she then said that she had pains in her body and that she
 “ was sick at the stomach, she was ill in this way, for some
 “ three or four days.” The witness, Félicite Pelletier, who
 relates these facts, says : “ that after suffering for sometime
 “ she would throw up ; this continued for a couple of days ;
 “ the ensuing day or the third day, her husband came to see
 “ her, she did not throw up in large quantities, it was
 “ phlegm more than anything else. I believe that about
 “ a fortnight afterwards she returned to the township.”

At that period, this new settlement consisted of the family
 of Augustin Thériault, the house of Joseph Bérubé, the
 prisoner, which was upon the neighbouring farm to Thériault's,
 and on the other side was the house of Fabien Boulé. Augustin Thériault's family consisted of Césarée Thériault, the female prisoner, Génoffe Thériault, her sister,
 and of a boy of the name of Narcisse Thériault, the natural son of a woman of the name of Julie Ouellet, whom this child recognized as his mother, in the same way as he recognised Césarée Thériault as his sister. There was living in the neighbouring house one Fabien Boulé, his wife, Marceline Beaulieu, and their daughter Philomène Boulé, who have all been heard as witnesses as well as Génoffe Thériault and Narcisse Thériault.

Génoffe Thériault, in her evidence, states that preserves were given to the deceased ; that she died the week after, and that these preserves had been given by the female prisoner, &c., &c. (1)

There are two distinct facts, worthy of notice, in the evidence of the boy, Narcisse Thériault, (2) the first of these facts is the giving of a small box by the prisoner to the female prisoner at some given period which the witness is unable to indicate ; the second is the statement he makes of what

(1) See her evidence *Suprà* p. 215.

(2) See his evidence *Suprà* p. 220.

was said in his presence in relation to his mother Julie Ouellet. It is further to be observed that the child states that he informed Génoffe Thériault of what had been said before him, in presence of Philomène Boulé, and a child of Fabien Boulé, and that he also told his mother. It cannot be presumed that he was a long time before making these communications ; and in fact upon referring to the evidence of Génoffe Thériault, (1) it will be found that in a conversation with her sister, the female prisoner, she mentioned the statement made to her by the boy in relation to this box.

Upon referring to the evidence of Philomène Boulé, (2) it will be found that, among other things, she says : “ Upon “ the Wednesday preceding the death of Sophie Talbot, the “ boy Narcisse Thériault, who is now about six years old, “ stated to me and to Génoffe Thériault that the prisoner “ had given a little red box to Césarée Thériault, and that “ he thought it was to poison his mother, Julie Ouellet.”

This evidence has been strongly objected to, notwithstanding the authority to the effect that “ the declarations of a “ witness at another time may be adduced to invalidate or “ confirm his evidence by showing that he varies in his state- “ ments, or has maintained a uniform consistency in his nar- “ ration. (3)

It is also to be remarked that in the conversations mentioned in this evidence, the one with the female prisoner, and the other with the prisoner, neither the one nor the other denies the statements made by the child to the effect that he had seen the prisoner give a little box to the female prisoner ; it is true that she denied this in the first place, but admitted afterwards that she had got a box, but that it was a box of peppermints which her *beau* had sent her, which was proved

(1) *Suprà* p. 216.

(2) *Suprà* p. 216.

(3) 1 Chitty's Criminal Law, 569.

to be false ; Amable Ouellet or Ouellon, having been produced as a witness, denied the fact upon oath, at the same time admitting that he had paid attention to the female prisoner ; with respect to the prisoner, he is first silent, and then secretly requests, that nothing may be said of the little box ; this occurred on the Wednesday preceding the day upon which Génoffe Thériault took the preserves to the deceased, and consequently before any suspicions existed against the prisoner. These precautionary measures of the prisoner, and the false statement made by the female prisoner show concert between them, in adopting means to prevent inquiry with respect to this mysterious box, of which the female prisoner was shortly after to make such fatal use.

It is manifest that the evidence of the boy, upon the two principal facts he was made to speak to, namely, the giving of the little box by the prisoner to the female prisoner, and as to the contents of the box, is fully corroborated ; for it is to be presumed that the child who stated the truth with respect to the giving of the box, must have done the like when he stated that they had said, *that they wanted to make her die by poison*. It is therefore satisfactorily proved that when the box was given by the prisoner to the female prisoner, something was said of poison, and this proof is corroborated by the false statements of the female prisoner, and the prisoner's request that nothing should be said about it. It is true that the boy understood that the intention was to kill his mother by poison ; but after events have shown that his mother was not in question, but that the intention of the prisoners was to remove a person, who stood in their way, and who in fact was removed by poisoning. It must be recollected that it was the second day after, towards evening, that the female prisoner sent apple preserves to the deceased ; that after eating of these in the evening, she fell ill the next day, which was a saturday, and that she died the wednesday following. It has been proved that there

were no apples or apple trees in the township, the settlement being of too recent a date : then from whence came these apples ? The prisoner, upon his defence, proved by his servant, one Jean Bte. Morin, that the prisoner had given Morin money to purchase apples and molasses to make preserves ; this witness states that having bought these things he gave them to the prisoner, but that he has no knowledge that preserves were made with them.

The witness resided upon the land in the fourth range ; the preserves were made afterwards in the township. It is not proved anywhere that the deceased had asked for preserves ; it was merely said that preserves would be made for her. Why did not the prisoner get these preserves made at his own house, rather than at the house of his neighbour ?

The presiding Judge in commenting upon the evidence did not follow the order in which it had been produced. He in the first place read and remarked upon the evidence of the witnesses, who proved the death of the deceased by poisoning,—namely, the evidence of Marceline Beaulieu, Fabien Boulé, Louis Caron, Jean Bte. Côté and Lambert Ouellet, part of the evidence of Drs. Dubé and Desjardins and of Drs. Jackson, Marquis and Michaud. He then considered the testimony affecting the prisoners, abstaining however from mentioning the confession of the female prisoner until the conclusion of his remarks, observing to the jury, that if they were of opinion that the confession had been made by reason of what had been said by Mr. Gauvreau to the female prisoner, they were bound to reject it, and to consider the case upon what had been proved, independently of the confession in question, which amounted to nothing in so far as the male prisoner was concerned. That if they entertained the opinion that the confession was a voluntary one, and not made upon the suggestion of Mr. Gauvreau, it was conclu-

sive evidence against Césarée Thériault. This confession made to Dr. Dubé is found in his evidence.

It must be admitted that the proof as to Bérubé is entirely circumstantial, and that it may be viewed by some as having less weight than the evidence produced against Césarée Thériault ; but that was not the question. The matter really at issue was this, was the proof sufficient ; now the jury were the sole judges of that question. If Bérubé had claimed his right to sever, he might have had a greater chance of escaping a condemnation, which has so justly overtaken him, for he would have been tried by another jury, before whom nothing could have been said of the confession of his fellow prisoner. However the Court and the jury had nothing to do with the mode of defence adopted by him.

Considering this case with reference to the evidence produced and the various facts disclosed, it is not extraordinary that the jury should have declared Bérubé equally guilty with the female prisoner.

The following quotation is deemed applicable to the case :

“ The accumulative strength of circumstantial evidence
 “ may be such as to warrant a conviction since more cannot
 “ be required than that the charge should be rendered highly
 “ credible from a variety of detached points of proof, and
 “ that supposing poison to have been employed, stronger de-
 “ monstrations could not reasonably have been expected
 “ under all the circumstances to have been produced. (1)

* * *

(1) Loft on Gilbert's Evid. p. 352.

ARTICLE 3.

A GENERAL REVIEW OF THE LAW AND THE FACTS OF
THE BÉRUBÉ POISON CASE. (1)

In offering you some observations on the above case, I may, perhaps, be performing, in your estimation, a thankless office, as they may tend to renew the discussion of a subject already too much prolonged, and to provoke the thunders of certain journalists whose strictures have already so much enlightened the public. It may, however, afford some justification for trespassing upon your indulgence, that the English Press, which has so fully canvassed the subject, has never given to the public any English version of the evidence to enable them to apply the arguments advanced on either side. This first and important step has been overlooked ; but as the accompanying translation has partially supplied this desideratum, a fresh review of the whole case may not be out of place.

Some of the writers have commented upon the regularity of the proceedings at the trial, in relation to the admissibility or inadmissibility of certain portions of the evidence, as disclosed in the published report of the trial in the newspaper, *Le Canadien* ; others upon the insufficiency of the evidence in the main features of the case and the incompleteness of the medical testimony negatively considered. Certain newspapers have assailed the conduct of the administration in this matter, as indicative of a settled policy to abrogate, indirectly, the death penalty, from which it is inferable that, in their opinion, the facts *per se* did not justify the application of the prerogative of the crown in favor of the condemned, and that the sentence of death ought to have been carried into execution ; and then, *faisant volte face*, and in the same breath, they say that if the evidence was of such a nature as palpably not to warrant any conviction

(1) Prepared for the Quebec Gazette by a gentleman of the profession.

at all, (by which hypothetical *if*, they insinuate that such was its character,) the prisoners ought to have received a free pardon.

The case is surely not so mystified as not to be susceptible of some clear and distinct view;—it must necessarily be classed under some one of the following: first, it was one in which the Law ought to have been allowed to take its course; or secondly, one in which the exercise of the prerogative was obviously called for, in order to temper justice with mercy by a commutation of the punishment, without reference to the nature or the degree of such commutation; or lastly, it was one in which, by reason that the accused had not had a fair trial, or that there was no evidence whatever to warrant a conviction, a free pardon ought to be granted. To those who are of opinion that the numerous commentators upon the *Bérubé Trial*, and the propriety of the commutation of the sentence, have each adopted one distinct, intelligible view of the case, followed up by a clear and consistent line of argument in illustration of such view, the following notice will be deemed a work of superelevation. To those who have studiously kept the public in the dark by arguing every possible contradictory phase of the case, any attempt at a plain analization of it will be highly distasteful, as being calculated to defeat their object. Not one of the various critics has taken a stand upon any well defined ground; yet in the judgment of every candid and impartial man, the conclusion to become to must be based upon some of the foregoing categories; it cannot indiscriminately partake of *all*, and hence at once the necessity and the apology for inflicting upon your readers a few more observations on this already hacknied case.

Joseph Bérubé, a man of the age of forty-five, and Césarée Thériault, his wife, of the age of fifteen or sixteen, are

charged with the murder, by poisoning, on the 29th October, 1851, of Sophie Talbot, the former wife of Bérubé. (1)

The legality and admissibility of portions of this evidence have been very much criticised, on the grounds :

1. That statements made by the deceased, while not under the apprehension of immediate dissolution, were allowed to be proved.

2. That hearsay evidence was admitted.

3. That the examination of a child, not conscious of the obligations of an oath, was permitted.

Newspapers are not the proper channel for a full discussion of these points. Men of legal knowledge and practical experience, after having made them the study of a life, require pages for their complete elucidation ; it would require volumes to bring them down to the comprehension of ordinary laymen. Editors, whether lay or professional, forget that the Poet's advice as to the Pierian Spring is as applicable to a little *law* as to a little *learning* ; and whether convinced or not, they consider it chivalrous to die game—in error, rather than to form an exception to the general obduracy of their class. Calling themselves the guardians of the lives and liberties of their fellow men, they yet hold the supremacy of the laws and the purity of the administration of justice as ever second, in their estimation, to the gratification of their political animosity. On questions of law and evidence we must be content with the *conclusions* of those who have written *ex professo* on the subject.

1. As to the first objection, it is based upon a total misapprehension of the character of the evidence. There was

(1) For the facts of the case, we refer the reader to the selected portions of the testimony included in our report. [Ed.]

no question of "dying declarations" in the case ; none had ever been made—none were offered in evidence.

2. The description given by the deceased of her sufferings, while labouring under disease and pain, is not deemed hearsay evidence (1). "The expressions of a person affected with bodily pain or illness, relative to his health and sensations, have been considered to be in their nature original evidence ; such expressions being ordinarily the natural consequence and the outward indication of existing sufferings. The representations of a patient to his medical attendant, who has an opportunity of observing whether they correspond with the symptoms to which they refer, appear to be entitled to greater weight than if made to an inexperienced person, and to afford a stronger presumption that they are genuine. But although not made to a medical man, they appear to be admissible evidence. (2)

"Words and writings appear, perhaps, more properly to be admissible as part of the *res gestæ* when they accompany some act, the nature and object or motives of which are the subject of inquiry. In such cases, words are receivable as original evidence, on the ground that what is said at the time affords legitimate, if not the best means of ascertaining the character of such equivocal acts as admit of explanation, from those indications of the mind which language affords. For where words or writings accompany an act, as well as in the instances before considered when they indicate the state of a person's feelings or bodily sufferings, they derive their credit from the surrounding circumstances and not from the bare expressions of the declarant. And the language of persons at or about the time of their doing a particular act, in the same manner as their demeanor or gesture, is more likely to be

(1) Phillips and Amos, p. 201.

(2) *Ibid.*, p. 206.

“ a true disclosure of what was really passing in their
 “ minds, than their subsequent statements as to their in-
 “ tentions even if such statements would not be excluded
 “ on other grounds.” (1)

“ Whenever the bodily or mental feelings, of an individual
 “ are material to be proved, the usual expressions of such
 “ feelings, made at the time in question, are also original
 “ evidence, and whether they were real or feigned, is for
 “ the Jury to determine, So also the repre-
 “ sentations by such a person of the nature, symptoms and
 “ effects of the malady under which he is laboring at the
 “ time, are received as original evidence. If made to a
 “ medical attendant, they are of greater weight as evidence,
 “ but if made to any other person, they are not on that
 “ account rejected.” (2)

3. The objection as to the admissibility of the child is one
 which does not so much depend upon positive authority as
 upon the discretion of the Judge after an examination of the
 witness. (3)

“ But in respect to children there is no precise age, within
 “ which they are absolutely excluded on the presumption
 “ that they have not sufficient understanding. At the age
 “ of fourteen, every person is presumed to have common
 “ discretion and understanding until the contrary appears,
 “ but under that age, it is not so presumed ; and therefore in-
 “ quiry is made as to the degree of understanding which
 “ the child, offered as a witness, may possess ; and if he
 “ appears to have sufficient natural intelligence and to have

(1) Greenleaf Ev. § 102, Hearsay.

(2) Greenleaf Ev. § 49, of the relevancy of Ev.

“ But in trials by Jury, it is the province of the
 “ presiding Judge to determine all questions on the admissibility of evidence to
 “ the Jury, as well as to instruct them in the rules of law, by which it is to be
 “ weighed. Whether there is any evidence or not, is a question for the Judge ;
 “ whether it is sufficient evidence, is a question for the Jury.”

(3) 2 Greenleaf, Section 367 p. 464.)

“ been so instructed as to comprehend the nature and effect of
 “ an oath, he is admitted to testify, whatever his age may be.
 “ This examination of the child, in order to ascertain his
 “ capacity to be sworn, is made by the judge, at his discre-
 “ tion, and though, as has been just said, no age has been
 “ precisely fixed within which a child shall be conclusively
 “ presumed incapable, yet, in one case, a learned judge
 “ promptly rejected the dying declarations of a child of four
 “ years of age, observing, that it was quite impossible that
 “ she, however precocious her mind, could have had that
 “ idea of a future state, which is necessary to make such de-
 “ clarations admissible. On the other hand, it is not unusual
 “ to receive the testimony of children under nine, and some-
 “ times even under seven years of age, if they appear to be
 “ of sufficient understanding; and it has been admitted
 “ even at the age of five years.” (1)

In the present instance, the answers of the boy Narcisse as reported, evidently shew a belief of punishment in another world as the consequence of a false oath. The degree of intelligence exhibited by him during his preliminary examination was matter for the consideration of the Judge. We must presume that it was sufficient, and the

(1) 4 Black. Com : 214. “There is no determinate age at which the oath of a child ought either to be admitted or rejected. Yet where the evidence of children is admitted, it is much to be wished, in order to render their evidence credible, that there should be some concurrent testimony of time, place and circumstance, in order to make out the fact: and that the conviction should not be grounded, singly on the unsupported accusation of an infant under years of discretion.”

1. Phillips Ev : 20, after citing Blackstone, adds, “ It seems however impossible to lay down any general rule on the subject applicable to all cases. A person may be legally convicted on such evidence alone and unsupported; and whether the account of the witness requires to be corroborated in any part, or to what extent, is a question exclusively for the Jury, to be determined by them on a review of all the circumstances of the case and especially of the manner in which the child has given his evidence.”

“ Roscoe, 144. “ Subsequently all the Judges agreed that a child of any age, if capable of distinguishing between good and evil, might be examined upon oath, and that a child of whatever age could not be examined unless sworn; this is now the established rule in all cases, civil as well as criminal, and whether the prisoner is tried for a capital offence or one of an inferior nature.”

subsequent corroboration of his testimony by other witnesses relieves the point from any embarrassment. The weight to be given to his evidence was matter for the consideration of the Jury. Either they have given credence to his testimony, or they have deemed the case complete without it.

These points disposed of, how stands the case ?

In the first place it is negatively and conclusively established, from the whole tenor of the evidence, that no suspicion whatever attached to any other individual than the two prisoners. Then what are the facts of an incriminating and suspicious character given to the Jury upon which their conclusion must be presumed to be based ? The death of Mrs. Bérubé occurs on the 29th October, 1851, after five days illness. The two prisoners intermarry two months after she is consigned to the tomb. On the 22d August following, Césarée Thériault is delivered of a full grown child, the paternity of which is not made a question, and the birth of which, in the ordinary course of nature, points significantly to the occurrence of a particular fact sometime between the 16 and 22 November, 1851,—some five or six weeks before the marriage, and less than a month after the death of the first Mrs. Bérubé. In the interval between her decease and the month of April following, suspicions of foul play having arisen, the body is exhumed on the 2d of that month and a *post mortem* examination is had under the direction of the Coroner. At the trial, four Medical men unhesitatingly depose that in their opinion her death was caused by poison. It is needless to dilate on this branch of the case, the evidence was such that the Jury could not possibly doubt or disbelieve it. The important inquiry then comes to be, was this poison taken accidentally, or was it administered maliciously, and if so, by whom was the foul act committed.

As to the female prisoner, the admission voluntarily made by her, and proved to be without coercion or threat of any kind,

or the promise of any favour, and properly admitted in evidence, coupled with the other facts brought out in the case, place the matter beyond doubt. She prepares the poisoned apples; sends them unasked, with special and peculiar instructions for the use of the victim of the plot; she conceals the suspicious box and prevaricates about it repeatedly, marries the suspected murderer, and when the affair explodes, and a Warrant issues for her apprehension, she is found hidden in a heap of hay in a neighbour's barn, and confesses her crime. With such damning evidence, it would be a waste of time,—an unwarrantable reproach to the Judge and Jury, and an insult to common sense, to impugn the correctness of the verdict.

Then as to the male prisoner:—The evidence in cases of murder by poisoning must ever be eminently of a circumstantial nature. Homicides by the discharge of fire arms, or the wound from a deadly weapon and the like, where death supervenes instantaneously, can be fully proved by an eye witness. The crime is begun and consummated, and the whole tragic scene passes *à vue d'œil*. In such cases the fate of the slayer depends solely upon the credibility of the witness. Not so in cases of poisoning. The diabolical design is conceived and matured in secret. The deadly drug is generally administered by some supposed friendly hand. It is not the result of an act of violence, the commission or the consequences of which may transpire by accident. The death by poisoning constitutes the final and fatal accomplishment of a multiplicity of designs and little acts, formed and executed in the dark, and which might pass unobserved, were it not for the appalling *dénouement* which crowns them. To expect that the conduct of the poisoner is to be marked in traces of blood, as in a case of murder by violence, established by circumstantial evidence, is to look for that which never can be had. The more difficult the nature of the proof, the more closely is every act and expression of the accused to be scanned. Even the most

trifling unexplained incident in his conduct, of a nature to raise a presumption or a suspicion of guilt, and forming part of a great chain, is entitled to grave consideration. In the present instance, the absence of any effort whatever on the part of Bérubé to prevent a fatal termination to his wife's illness, whilst it was his bounden duty, and that he had it in his power to make strenuous exertions to that end, rises in judgment against him. In September, 1851, he is in quest of arsenic to poison rats where none existed ;—he declines taking *Smith's Exterminator*, which is expressly prepared for that purpose, because it is too dear ;—the price was *twenty pence* ! He brings a small box resembling that containing *Smith's Exterminator*, to the female prisoner, when there is no one in the house with her but a child, and speaks of *killing some one by poison*. The youth of the witness, though it weakens his testimony, tends to confirm it in this, that it accounts for Bérubé's want of caution in communicating his instructions to his accomplice. He is proved to have employed his servant, residing some miles from his own house, to purchase apples and molasses for him in the beginning of October, for the purpose of making preserves for his wife ; which, however, he never brings to his house, nor even procures to be made, unless they be those proved in the case as the medium for conveying the poison which was to end her days. There were none to be had at Thériault's, and no one knows where else they came from. His accomplice makes apple preserves at a brook distant about an acre and a half from her father's house, in which last she certainly might have made them more conveniently. It is not often we hear of preserves being made in the fields in the cold season at the end of October, and within a stone's throw of a dwelling house. During the process of making the preserves, he passes by the brook without speaking to, or even appearing to recognize his future wife. The preserves are sent to his house by the female prisoner, with directions of

a singularly precautionary character, for the use of the unfortunate invalid, who did not expect them, who had never solicited them ; and when she expresses to him her very natural surprise at this act of gratuitous attention, he infers an insinuation on her part, which her words do not certainly convey, and exclaims : “ Do you think they would be “ wicked enough to put any thing in them which could “ harm you ! ” Some dust or filth is *said*, though not seen, to have got, no one knows how, into the bowl containing the preserves, which he professes to remove by inserting his own soiled fingers into them, and this little pantomime terminates by the sick woman desiring that they should be thrown away. The bowl was then in his hands, having taken it from his wife’s, and he then casts away that small but important remnant, which would have gone far to establish his innocence, or rivet his guilt. After eating of the preserves she becomes seriously ill, with violent and continued reaching, severe bowel complaint, and spitting and vomiting of blood, for which, instead of sending for a medical man, he procures and administers *hot rum punch* which he prepares himself, having something else in his hand which he puts into it, and then gives it to the suffering invalid. During the five days of her severe and painful illness we do not hear much of him ; he appears not generally to have been absent from the house, but is not often in attendance at the sick bed ; but whenever it is necessary to prepare hot rum punch for a woman vomiting blood, or to superintend the disposal of an insignificant and valueless quantity of *innocuous* apple preserves, he is ever the presiding genius. On the last evening of her life he is away, knowing that she is dying, and leaves her to the tender care of her neighbours. He professes to go in quest of a minister of religion, but calls at Boulé’s, who was at his own house, and twice at Thériault’s to ascertain the hour,—an important inquiry in the breast of a man whose bosom partner for

fifteen years was about to bid adieu to him and to the world. He probably dislikes deathbed scenes. He travels some miles to commission another person (probably none of his immediate neighbours would have gone !) to fetch the priest ; but having the good fortune to be surrounded by persons whom *his* severe affliction does not deprive of their presence of mind, they despatch a messenger to meet the Priest, (though no one but himself could be procured to go for him on the near approach of the closing scene,) to inform him that it is too late, in order no doubt to save him the fatigue of a short journey and the pain of beholding a dead body. It was perhaps just as well that the Priest should not be sent for until it was too late ; and then of what use was it that he should see the body after death ?—Priests are dangerous witnesses ; they sometimes possess a knowledge of medicine, and are generally quick sighted and deeply conversant with the springs of human action. During his wife's illness the future Mrs. Bérubé is not seen but once at the sick bed, but is a frequent visitor while her remains are still lying at the house. On the day of the funeral, after the body has started for its final resting place, she returns, and Bérubé, who still lingers there, converses a good deal with her, but is not heard. He tells her, however, that he is about to proceed downwards for the funeral and begs of her *to take care* of his children, who happen respectively to be of the ages of *eleven, twelve and thirteen*. On the wednesday preceding the Saturday on which his wife is taken ill, he is asked, by the witness Philomène Bérubé, *what was that box which he had given to Césarée Thériault*. He makes no answer, but sometime afterwards, on meeting the witness, he takes her aside and desires her *not to speak of that box to any one*. After his wife's death, he is asked if it was true *that he had poisoned her as people said* ; he makes some kind of answer which is not heard and *hangs down his head*. He is then informed that Germain Talbot had said at his (the prisoner's) father's

house that the preserves which Césarée Thériault had sent to the deceased had completely turned her stomach (*lui avait tombé sur le cœur.*) Césarée Thériault is there, *and is silent.* He is afterwards present at an interview between the said Germain Talbot and Augustin Thériault, the father of the female prisoner, in which the latter holds out threats to Germain Talbot, and forbids his speaking of *the poisoning of his sister*, and menaces him with a criminal prosecution. Bérubé then says: “We must have him taken up,” and on being afterwards asked by Talbot what he meant by these words, he says: I mean that you are not to spread that report—“as little as possible.”* If you do, it will be a bad job for you, (*ça n’ira pas bien.*) Add to this, not the shadow of a suspicion is attempted to be fastened, even by the prisoners, on any other individual.

During the trial, not a single solitary redeeming fact of trait is brought out in favor of Bérubé. On the contrary his unfortunate wife is dangerously ill during five days; he makes no attempt to procure medical aid, not even the consolations of religion, until he knows it is too late; and before her dead body is consigned to the tomb, he installs his paramour in the place which the former so recently held, as the protectress of his children. He is in direct terms accused of her murder in presence of his accomplice; *he* hangs down his head—and *she* is silent!

Such are the circumstances brought out in evidence against the elder prisoner, enveloping him in a web of damning facts, unpierced by a single gleam of innocence, or a doubt of guilt.

If this then be the evident conclusion derived from a mere perusal of the evidence, with what show of reason or justice can we underrate or impeach the judgment of those who possessed the incalculably superior advantage of *hearing* the

* (*Sic.*)

evidence, and scrutinizing the demeanor of the witnesses, as they uttered their testimony. If the discussion of this case in the public prints could be believed to have been conducted with a single eye to the discovery of truth, and with an unbiassed desire to shield two human beings from the dread sentence of the law, under a strong and sincere conviction of their innocence, or even their insufficiently ascertained guilt, the task would be eminently praiseworthy. But the party writers, who have labored to give the case so much notoriety, have neither the candour to admit, nor the tact to conceal, that their sole aim is to vilify the constitutional advisers of the Governor General for having extended mercy to the condemned. They impugn the conduct of the judge and the jury for acts done by them in the conscientious discharge of a solemn public duty. They calumniate the Administration for having advised a commutation of the punishment, ascribing their decision to a settled determination to abolish the death penalty, without reference to the justice or injustice of each particular case; and while they are thus so very lavish of their abuse, they do not attempt, nor deem it at all necessary to attempt any review of the proceedings calculated to convince a single individual outside of the little pandemonium in which their clumsy strictures have been concocted, either that the case was one utterly destitute of evidence to sustain the conviction, or that it was devoid of any circumstances calculated to prevent these two individuals from expiating their atrocious crime on the scaffold. At one time, they would seem to uphold the regularity of the proceedings, the sufficiency of the evidence and the justice of the verdict, and they cry aloud for the blood of the convicts; at another—they anathematize the witnesses, the judge and jury, and demand a free pardon for these much injured victims of judicial and ministerial persecution, and insist that instead of being sent to the Penitentiary, they ought to be restored to liberty, and the greetings of that com-

munity which they have never outraged, and from which they have been so harshly expelled !!

This latter notion they found upon the fact of certain apparently inadmissible evidence having been received at the trial. This plea is altogether untenable. Were it practicable under our system to have reserved the case for the opinions of all the Judges, as in England, the conviction in the present instance, could not have been set aside upon such ground, as ruled in the case of *Reg. vs. Ball*, R. R. c. c. 133. The Judges there said: "Whether the Judges, on a case reserved, would hold a conviction wrong, on the ground that some evidence had been improperly received, when other evidence had been properly admitted that was sufficient of itself to support the conviction, the Judges seemed to think, must depend on the nature of the case and the weight of the evidence. If the case were clearly made out by proper evidence, in such a way as to leave no doubt of the guilt of the prisoner in the mind of any reasonable man, they thought that as there could not be a new trial in felony, such a conviction ought not to be set aside, because some other evidence had been given which ought not to have been received; but if the case, without such improper evidence, were not so clearly made out, and the improper evidence might be supposed to have had an effect on the minds of the jury, it would be otherwise. The conviction in this case was held right."

But the Bérubé conviction was not brought under the revision of all the Judges to be tested on the strict rules of law and evidence; it was submitted to the deliberate consideration of the Representative of the Sovereign, the fountain as well of justice as of mercy, for the purpose of determining whether such portions of the evidence, though not very material, may have influenced the minds of the jury and opened the door for a commutation of the extreme penalty of the

law. Where, then, is the individual in the community who under such circumstances, would impute it as a crime or a blunder to His Excellency or his advisers, that on the smallest doubt being raised on this head, they applied a principle which is invariably observed in the administration of English criminal justice, by leaning to the side of mercy and giving the prisoners the benefit of that doubt. In any case, however, those who inveigh against the decision of the Ministry ought to tell us, whether their act be obnoxious to the charge of being too lenient or too sanguinary. While they labour from day to day to excite public indignation against them, these writers omit to state on which side the Ministry have erred ; whether they ought to have allowed the executioner to do his work, or to have let loose upon society two individuals of whose guilt no unprejudiced mind could entertain a doubt. The proper regard due to the tribunals of the country, the purity of the administration of criminal justice upon which our lives and our liberties depend, and the policy and the wisdom of holding out a salutary example as a warning to evil doers, are, in the opinion of these writers, ever second to the gratification of their spleen and their hatred towards their political opponents. Without caring one straw for the fate or the feelings of the unfortunate beings who are the objects of their hollow sympathy, they continue to buoy up their hopes at the expence of truth, justice and public morality. Instead of endeavouring to induce an acquiescence in the justice of their sentence, some remorse for their crime, and a sense of gratitude for the mercy extended to them, the manifestations of which coupled with good conduct hereafter, could alone inspire any just hope of a further remission of the punishment, these sapient expounders of the law prefer keeping up a perpetual agitation of the question for political purposes, even though it should harden the guilty against repentance, and incite the wicked to the commission of further crimes.

To conclude—let all the circumstances of the crime and the trial of the Bérubés be considered in whatever light they may, and however conclusive the evidence against the male prisoner may be deemed, the guilt of the female prisoner, as established at the trial, is undoubtedly, relatively speaking, more fully ascertained than that of her older accomplice. Then, upon such a case being brought under the review of the authorities, coupled with the objections made to certain portions of the testimony, which were entitled to consideration *with respect to Bérubé*, though not as regards the other prisoner who had confessed her crime, what was, I ask, the sure and obvious course to be pursued ! What course would these writers have recommended under such circumstances ? To pardon or commute the sentence of the elder convict ? To permit *him* who was the sole instigator of the foul crime, and who had perseveringly and remorselessly brought it to a guilty consummation—to go scathless, and to send his unfortunate dupe, a young woman of the age of sixteen, to the scaffold. *Such* a dispensation of mercy would have been met with one shout of indignation from one end of the Province to the other. On the other hand—immediately to have granted a free pardon to one legally and justly convicted upon her own confession, of the crime of murder, and to another also convicted of the same crime, and who, although he did not confess, was infinitely the greater criminal of the two, would have dealt such a blow to the administration of criminal justice, and would have been such an outrage upon common sense and decency, as no man would have dared to defend. Every individual in society capable of forming an opinion, whose judgment is not warped by egotism, vanity or party spirit, and who brings his mind to bear upon the subject with calmness, and an honest desire to arrive at a fair and impartial conclusion, must know and in his heart believe, however much he may pertinaciously assert

the contrary, that the course adopted by the Governor General under all the difficulties of the case, was at once the most wise and the most just, and assuredly the most humane, and that any other course would have been obnoxious to the most serious objections.

If I have thus attempted a review of the Bérubé case and of the propriety of this commutation, you are not to suppose that I have done so for the purpose of defending the administrator of the Government or his advisers. I have nothing to do with them, nothing to say to them. I know not and care not whether my observations be palatable to them or not ; I know not and care not what was *their* view of the case, nor what the motives which actuated them. I am bound however to suppose they coincide with those which I have attributed to them and by which alone I can suppose any man to be governed whose heart and head are in the right place.

R.

Quebec, February, 1853.

