

**Native Judgments:  
John Bunn and the General Quarterly Court in Red River**

by

**Jillian McConkey**

A Thesis submitted to the Faculty of Graduate Studies of  
The University of Manitoba  
in partial fulfilment of the requirements of the degree of

**Master of Arts**

Department of History  
Joint Master's Program  
University of Manitoba/University of Winnipeg  
Winnipeg, Manitoba, Canada

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## **Abstract**

Historians of Red River have neglected key records that shed light on the community as it developed before 1870. This thesis uses the records of the General Quarterly Court of Assiniboia, minutes of the Council of Assiniboia, the *Nor'-Wester*, and genealogical resources to depict the state of law and society in Red River. It focuses on the years when John Bunn, Red River's first (and only) native judge, led the court. Red River's legal and administrative records portray individual lives and community concerns and reveal the laws that governed the settlement and how people made use of them. It finds the Metis community taking the helm of Red River's institutions of governance from the Hudson's Bay Company and reflects a society with a relatively stable and representative government that laid the foundation for a court that strove towards moderation and fairness in mediating disputes and protecting community interests.

## Acknowledgments

This thesis has taken too long to finish, and I am grateful to many friends, family, and colleagues. First and foremost, I thank Norma Hall, who was (and is) always willing to talk about Red River and share her encyclopedic knowledge of the community and its history. I could not have done this without her encouragement. Mary Jane McCallum has been a great friend ever since the U-Haul trip to Winnipeg that we never took, and the many good times and stimulating discussions we shared helped to shape my experience at the University of Manitoba and somehow also my thinking about Red River and history more generally. Friend and colleague Gerry Hallowell took the time to read and comment on a draft of the thesis with his usual grace and tact. My former colleagues at UTP, especially Bill Harnum and Virgil D. Duff, were supportive from the start. I must even thank friends Bob, Colen, and Richard, who never thought I would actually finish – they made sure I proved them wrong. I am also grateful to Carol Adam for her infinite patience, and to my committee, Jean Friesen, Jarvis Brownlie, and Russell Smandych for their insightful comments and advice. My supervisor, Adele Perry, gave generously of her time and expertise and deserves extra thanks for her patient encouragement. My mother, Leslie, and my father, Stephen (the first McConkey to go to university), combined great expectations with, eventually, the forbearance to let me to go at my own pace. Of all the things that they have given me, the most valuable might be the travel gene that took me first to Winnipeg where I began this thesis and lately to Abu Dhabi where I finished it. Finally, I thank Bill for always being there, no matter where I am.

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## Introduction

The events that transpired in and around 1870 – the transfer of Rupert’s Land, and with it the Red River Settlement, from the Hudson’s Bay Company (HBC) to Canada and the Metis resistance to the foreseen loss of self-government – marked the end of one era and the beginning of another in the northwest. In Red River, newcomers from Ontario and elsewhere infiltrated lands and institutions developed and occupied by generations of earlier inhabitants: Aboriginals, Metis, those early Selkirk settlers, and retired HBC employees and their families.<sup>1</sup> Much has been written of this period. In fact, the writing of Red River history (and the early history of the Canadian prairies in general) seems dominated by this period of transition from the long fur trade period of exploration and Native-newcomer contact to the coalition of the Dominion of Canada and a new kind of relationship with Aboriginal peoples.<sup>2</sup> The history of the Red River Settlement has thus been framed – and determined – by its origins in the fur trade and the armed, ill-fated, political resistance to its annexation to Canada in 1870.<sup>3</sup> So, the Hudson’s Bay Company looms large as the predominant factor in Red River’s development, and the diminished

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<sup>1</sup> On Canada’s westward expansion, see Doug Owram, *Promise of Eden: The Canadian Expansionist Movement and the Idea of the West, 1856–1900* (Toronto: University of Toronto Press 1980).

<sup>2</sup> For a survey of the shifts in Native–non-Native relations, see J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, 3rd ed. (Toronto: University of Toronto Press 2000).

<sup>3</sup> Manitoba officially became a province of Canada in 1871.

Metis character of the settlement after 1870 often overly determines the history of the era that came before.

Examinations of Red River's fur trade origins have yielded many valuable insights,<sup>4</sup> though they have not done much to contradict earlier generalizations of a community of English-speaking Metis and retired fur trade officers who were sycophants to the HBC mixing uneasily with French-speaking Metis who maintained a more 'primitive' lifestyle that provided labour and provisions for the Company.<sup>5</sup> The settlement is seldom viewed as one governed by leadership from both English and French-speaking Metis communities – one that saw itself as self-determining and, at least in some ways, independent from the Company and on equal political footing with Canada.<sup>6</sup> The HBC may be considered a 'coercive state,'<sup>7</sup> but this holds true mainly at its posts where company justice was governed more by economy than by law.<sup>8</sup> In Red River,

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<sup>4</sup> See, for example, Jennifer S.H. Brown, *Strangers in Blood: Fur Trade Company Families in Indian Country* (Vancouver: University of British Columbia Press 1980)-Sylvia Van Kirk, *Sylvia, 'Many Tender Ties': Women in Fur-trade Society in Western Canada, 1670–1870* (Winnipeg: Watson & Dwyer Publishing 1980).

<sup>5</sup> See, for example, George F.G. Stanley, *The Birth of Western Canada: A History of the Riel Rebellions* (1960; reprinted with an introduction by Thomas Flanagan, Toronto: University of Toronto Press 1992); Marcel Giraud, *The Métis in the Canadian West*, trans. George Woodcock (Edmonton: University of Alberta Press 1986; first published as *Le Métis Canadien* by Institut d'Ethnologie, Museum National d'Histoire Naturelle, Paris 1945).

<sup>6</sup> From 1841 until Confederation in 1867, this technically refers to the Province of Canada, the British crown colony comprising Canada East and Canada West (formerly Lower and Upper Canada).

<sup>7</sup> See Tina Loo on HBC authority in British Columbia, *Making Law, Order, and Authority in British Columbia, 1821–1871* (Toronto: University of Toronto Press 1994).

<sup>8</sup> R.C. Macleod, 'Law and Order on the Western-Canadian Frontier,' in *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West*,



the situation was different. Though the settlement was endorsed by the HBC as a site for retired members to settle (with their Aboriginal wives and families) and as a base for labour and supplies, and technically governed by HBC appointees, the growing population in fact took on a life of its own. At the other end of the spectrum, inquiries into the causes of the 1870 Resistance<sup>9</sup> and the lively debate over westward migration<sup>10</sup> have also generated much useful information, but they have caused historians to emphasize divisions within the community and focus attention on the Metis who left, creating an abrupt (and artificial) ending for the history of Metis settlers in Red River.<sup>11</sup> These histories tend to pass over the preceding decades, during which at least two generations lived and worked in a society that did not presume its own end.<sup>12</sup>

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ed. John McLaren, Hamar Foster, and C. Orloff (Regina: Canadian Plains Research Institute 1992): 99.

<sup>9</sup> See, for example, Frits Pannekoek, *A Snug Little Flock: The Social Origins of the Riel Resistance of 1869–70* (Winnipeg: Watson & Dwyer 1991); W.L. Morton, ed., *Alexander Begg's Red River Journal and Other Papers Relative to the Red River Resistance of 1869–1870* (Toronto: Champlain Society 1956).

<sup>10</sup> See, for example, D.N. Sprague, introduction to *The Genealogy of the First Metis Nation: The Development and Dispersal of the Red River Settlement, 1820–1900* (Winnipeg: Pemmican Publications 1983); Gerhard Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century*. (Toronto: University of Toronto Press 1996).

<sup>11</sup> More wide-ranging and detailed historiographies of Red River, thankfully, exist: D.N. Sprague, 'Historiographical Introduction,' *Canada and the Metis, 1869–1885* (Waterloo: Wilfrid Laurier University Press 1988); Thomas Flanagan, 'Introduction,' in Stanley, *Birth of Western Canada*; and Frits Pannekoek, 'Metis Studies: The Development of a Field and New Direction,' in *From Rupert's Land to Canada*, ed. Theodore Binnema, Gerhard Ens, and R.C. Macleod (Edmonton: University of Alberta Press 2001).

<sup>12</sup> Red River citizens, eager to escape their technical rule by the HBC, at various times advocated for the settlement to become an independent crown colony and for annexation to Canada and to the United States. 'As Others See Us,' *Nor'-Wester*, 28 January 1860; 'The Land Question,' *Nor'-Wester*, 14 March 1860; 'Red River as a

It is hard to resist the pull of the big, romantic themes that bookend Red River history, but it has meant neglecting the more staid middle years. As a result, part of the historical record has also been overlooked. The records of the General Quarterly Court (GQC) in Red River are rich with details of the dynamics of Red River society and the daily lives of its citizens. Along with the contemporaneous records of the Council of Assiniboia, the court records offer a glimpse of Red River during a period that, for the most part, remains unexplored. The work in this thesis exists in the gap between the prevailing extremes of Red River history. It welcomes the window into Red River's neglected middle years afforded by the records of its legal and administrative institutions and attempts to convey what is found therein: a diverse society engaged in various (and not necessarily exclusive) kinds of economic activity – the buffalo hunt, agriculture, fur trade industries, and commerce; a society made up of families and neighbours who at times shared labour and resources and who at other times found themselves at odds with one another; and, finally, a society with a relatively stable and representative government that laid the foundation for a court that, for the most part, strove towards moderation and fairness in mediating disputes and protecting community interests.

Historians have often seen relatively simplistic and stereotypical divisions between the different racial, linguistic, and religious communities in Red River,<sup>13</sup> and to

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Crown Colony,' *Nor'-Wester*, 14 June 1860; see also Charles N. Bell, 'Some Red River Settlement History,' *MHS Transactions*, ser. 1, no. 29; 'Isbister, Alexander Kennedy' and 'Corbett, Griffith Owen,' DCB Online.

<sup>13</sup> See, for just one example, Pannekoek, *A Snug Little Flock*, which portrays a gossip-ridden community divided along sectarian lines and under undue influence of the clergy (which, though represented on the Council of Assiniboia, only made one appearance in the GQC, as defendant in a case for defamation that ultimately is dismissed for want of jurisdiction, see *Margaret Bouvette vs Pere Aubert*, 16 February 1854, GQC 2:63–64).

some degree these certainly existed, as they have done in any non-homogeneous community. But the court records more often reveal the more complex interaction based on kinship, geography, and labour – whether at the fort, on the boats, in the fields, or on the plains. Divisions do come to the fore, the most obvious being with Aboriginals living outside of established Red River society and thus seen to be in need of stricter regulation.<sup>14</sup> But the Aboriginal population rarely appears in the court records, and in the court and in council, one sees also an attempt to protect their rights and at least tolerate their lifestyle – as long as it did not result in criminal acts that encroached on the rest of Red River’s population. The court does accept the testimony of Aboriginal witnesses and there are a few instances in which the plaintiff is Aboriginal, and the discrimination against Red River’s Aboriginal population seen in targeted legislation on alcohol and the imposition of harsher sentences tends to occur early on and falls off during the years that are the focus of this thesis.<sup>15</sup> More obvious in the period under study here is the divide between established Red River settlers and relative newcomers from the UK and Canada

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<sup>14</sup> In identifying magistrates, plaintiffs, defendants, and witnesses, I have chosen to use certain terminology, which admittedly is not perfect: where the court records use Indian, I have used Aboriginal; where the records use halfbreed, I have used Metis (the court records did not differentiate between French and English-speaking Metis, and neither do I); I use native more generally to mean born in the northwest.

<sup>15</sup> Given the infrequency with which Aboriginals came before the court, this thesis contributes little, if anything, to work in Aboriginal history; the best work on this subject is Russell C. Smandych’s study of Aboriginal people and the court in its early years in ‘The Exclusionary Effect of Colonial Law: Indigenous Peoples and English Law in Western Canada, 1670–1870,’ in *Laws and Societies in the Canadian Prairie West, 1670–1940*, ed. Louis A. Knafla and Jonathan Swainger (Vancouver: UBC Press 2005); Smandych also, with Karina Sacca, presents a quantitative study of Aboriginals before the courts in ‘The Development of Criminal Law Courts in Pre-1870 Manitoba,’ *Manitoba Law Journal* 24, 2 (1994/5).

who came with the Royal Chelsea Pensioners (soldiers requested by the HBC to ‘protect’ the community) and as young merchants who meant to make their mark in the west.

From 1844 to 1869, the General Quarterly Court in Red River served a burgeoning and predominantly Metis community. Red River’s population had increased to over 4000 by 1841 and to more than 11,000 by 1871, with many families now into (at least) their second generation in Red River. In 1871, the census counted 5720 French Metis, 4080 English Metis, and 1600 non-Metis (the sources do not include figures for the Aboriginal population).<sup>16</sup> Much of the population had at one time worked together, or played together, not to mention built up houses, churches, schools, a library, and a few shops.<sup>17</sup> Occupations included trading, independently or for the HBC, hunting, fishing, farming, and freighting and provisioning, for the Company and for the town. In 1859, the first newspaper in the northwest began operations in Red River. The *Nor’-Wester* regularly reported on court proceedings, especially before 1865, listing basic details of cases heard and sometimes reporting extensively on the more sensational cases.<sup>18</sup> By arrangement with the Council of Assiniboia, the newspaper also printed updates on laws and regulations in the settlement to keep the population informed.

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<sup>16</sup> Sprague, *Genealogy*, 15; George F.G. Stanley, *Louis Riel* (Toronto: Ryerson Press 1963): 7–8.

<sup>17</sup> See, for example, W.J. Healy, *Women of Red River: Being a Book Written from the Recollections of Women Surviving from the Red River Era* (Winnipeg: Women’s Canadian Club 1923). By 1856 there were 56 merchant shops in Red River (Ens, *Homeland to Hinterland*, 89).

<sup>18</sup> Coverage of testimony from *Queen vs Griffith Owen Corbett*, 19–28 February 1863, GQC 2:241–272, 3:1–10, for instance, lasted several issues (*Nor’-Wester*, March–May 1863).

The Council of Assiniboia represented the formal institution of government in the settlement. With the *Canadian North-West*, E.H. Oliver produced the only work that is exclusively devoted to the ‘Pioneer Legislation’ and constitutional development of the northwest. His two-volume work charts the development of state institutions in Red River (and the larger northwest territory), from ‘the coming of the Selkirk colonists, the development of the Council of Assiniboia, the passing of the Hudson’s Bay Company as a governmental body, the enactment of the Manitoba Act, and the abolition of the Legislative Council.’<sup>19</sup> Oliver’s work is invaluable for the documentary evidence it provides on the council and its members. These records show that the council, rather than being under the thumb of the HBC, as is often cited,<sup>20</sup> in fact passed regulations for a growing infrastructure – roads, bridges, mills – to serve Red River settlers, and in doing so put Company money into local pockets for their erection and maintenance. It also attempted to protect the local (non-fur trade) economy, encouraging the production of foodstuffs – even its regulations aimed at curbing the consumption of liquor were tempered with its support of local manufacture.

According to Oliver, committed to a documentary report of primary sources and with access to the full written records of council: ‘the Council of Assiniboia and not the Hudson’s Bay Company is the pioneer in the political and social legislation of the prairies.’<sup>21</sup> True, the council was set up by the Company and its councillors were

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<sup>19</sup> E.H. Oliver, *The Canadian North-West: Its Early Development and Legislative Records*, vol. 1, Publications of the Canadian Archives, no. 9 (Ottawa: Government Printing Bureau 1914): 1: 29

<sup>20</sup> Sprague, *Genealogy*, 25, for example, refers to the council as a ‘puppet government.’

<sup>21</sup> Oliver, *Canadian North-West*, 1:23

appointed by the Company's Governor, and at first, according to one notable resident, Donald Gunn: 'The majority of the Council ... were, no doubt, the wealthiest men in the colony and generally well informed,' but as they were HBC men, the public 'never ceased to inveigh against' their arbitrary appointment and 'never placed that degree of confidence in the Council that they would have done, had its members been from all classes ... A Representative Council was loudly demanded by some.' However, Gunn also acknowledged that most laws that were passed at the council's first meeting 'gave some satisfaction for a time.'<sup>22</sup> Perhaps this can be attributed to the fact that though the councillors were associated with the Company, they were also members of the community. Though appointed from the outside, they lived on the inside and were accountable to their friends, neighbours, and fellow citizens as much as, if not more than, to the Company and its Board of Directors in London. W.L. Morton attests to as much when he notes that although the Company and Colonial Office could legislate for Red River, 'the executive and legislative government of Assiniboia was left to its own Government and Council.' Especially after 1840, 'the administration of the Colony was thus separated as far as possible from that of the Company as it had not been before.'<sup>23</sup>

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<sup>22</sup> Donald Gunn, *History of Manitoba* (Ottawa: Roger Maclean): 289. Donald Gunn started working for the HBC in 1813 at the age of 16. He married Margaret Swain, a Metis daughter of an officer, and in 1821 they joined the Selkirk settlers in Red River. He was schoolmaster in St Andrew's for eighteen years, had charge of the local lending library, and was active in the courts as a juror. Later, he was appointed to Manitoba's provincial legislative council; see George Bryce, 'Worthies of Old Red River,' *MHS Transactions*, ser. 1, no. 48.

<sup>23</sup> W.L. Morton, 'Introduction,' *London Correspondence Inward from Eden Colvile, 1849-1852*, ed. E.E. Rich (London: Hudson's Bay Record Society 1956): xlvi-xlvii

However various settlers felt about the Council of Assiniboia, and however their opinions may have changed over time as its composition changed, the community, like any, also had its own informal means of governance:

‘From the commencement of the settlement ... we may say that the community held together without any other rule to guide its members than the golden [rule] ... It is true ... we had a dignitary bearing the title of Governor who had his staff of senators who ... were to make laws to regulate the actions of the settlers. They were the sole judges of the laws, and were entrusted with the power of executing their own sentences. Yet, although the colonialists were composed of various nationalities and professing different creeds, such was the kindly feeling and good faith that existed among them that legislators, judges and bailiffs found very little to do, except when called upon to defend the Honourable Company’s exclusive right to deal in furs.’<sup>24</sup>

This statement is somewhat misleading as to the business of the courts being especially taken up with HBC concerns,<sup>25</sup> since the court was kept relatively busy, and not with cases concerning the HBC, but it does suggest a general – and not surprising, even common-sense – commitment of people to get along in the place where they chose to put down roots. Other factors influencing this that must also be acknowledged would be the

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<sup>24</sup> Gunn, *History of Manitoba*, 287

<sup>25</sup> In the recorded history of the GQC, the HBC appears as plaintiff only six times, mostly in cases of breach of contract.

large family networks and kinship ties among settlers, and, not least, the governing system long in place among those involved in the buffalo hunt.<sup>26</sup>

Most histories of Red River do not dwell on the structures of governance that existed before the Province of Manitoba. The institutions and their operations are often glanced over, except to paint them as an irrelevant arm of the HBC or to highlight a few sensational cases. A few works, however, do address the administration of law in Red River. *Substantial Justice* presents a history of Manitoba's legal profession up to 1970 and provides a brief but useful 40-page summary of some of the landmarks in the evolution of formal justice in the settlement.<sup>27</sup> *The Struggle for Recognition: Canadian Justice and the Metis Nation* is similarly brief in its outline of justice in Red River before 1870; however, there are three essays that do provide a useful foundation for further study in their outline of Metis influence on the development of indigenous 'systems of equitable justice in the nineteenth century.'<sup>28</sup> These two works cover a broad swath of both time and place, so their attention to nineteenth-century Red River is necessarily limited. Roy Stubbs's *Four Recorders of Rupert's Land* is fully dedicated to the law in Red River, but it is primarily biographical and gives most attention to the early years of

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<sup>26</sup> On the law and authority of the buffalo hunt, see, for example, Ens, *Homeland to Hinterland*, 40; Henry Youle Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858* (London: 1860): 111.

<sup>27</sup> Dale Gibson and Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670–1970* (Winnipeg: Peguis Publishers 1972)

<sup>28</sup> Manitoba Metis Federation, Samuel W. Corrigan and Lawrence J. Barkwell, eds., *The Struggle for Recognition: Canadian Justice and the Metis Nation* (Winnipeg: Pemmican Publications 1991); see, especially, essays by Mike Brogden, 'Criminal Justice and Colonization,' 1–6; Lawrence J. Barkwell, 'Early Law and Social Control Among the Métis,' 7–38; and Brogden, 'The Rise and Fall of the Western Métis in the Criminal Justice Process,' 39–61



the court under Recorder Adam Thom.<sup>29</sup> Kathryn Bindon also highlights Adam Thom's contribution to, and domination of, Red River's justice system.<sup>30</sup> More recently, H. Robert Baker provides a welcome re-evaluation of Adam Thom's influence on Red River law.<sup>31</sup>

Fortunately, there are also a few contemporary accounts from Red River settlers that discuss the law and government in their community before 1869: the histories written by Alexander Ross and Donald Gunn, and the recollections of the *Women of Red River*.<sup>32</sup> Although we lack direct evidence from the majority of Red River settlers, these accounts and the court records go some way to filling this gap – they can at least tell us who participated in the legal system; who was prosecuted in the public interest, and for what; and who made use of it to protect private interests, believing it to be of some personal benefit. The records of the General Quarterly Court provide details about individual lives and community concerns.<sup>33</sup> The council records reveal the laws put in place to govern the

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<sup>29</sup> Roy St George Stubbs, *Four Recorders of Rupert's Land: A Brief Survey of the Hudson's Bay Company Courts of Rupert's Land* (Winnipeg: Peguis 1967)

<sup>30</sup> K. Bindon, 'Hudson's Bay Company Law: Adam Thom and the Institution of Order in Rupert's Land, 1839–54,' in *Essays in the History of Canadian Law*, vol. 1, ed. D. Flaherty (Toronto: University of Toronto Press 1981)

<sup>31</sup> H. Robert Baker, 'Creating Order in the Wilderness: Transplanting the English Law to Rupert's Land, 1835–51,' *Law and History Review* 17, 2 (summer 1999)

<sup>32</sup> Alexander Ross, *The Red River Settlement: Its Rise, Progress, and Present State* (London: Smith, Elder, and Co. 1856); Gunn, *History of Manitoba*; Healy, *Women of Red River*. The published letters of fur trade officers also offer some contemporary accounts, though these are limited by the authors' usually short residence in Red River; see, for example, Rich, *Colville Correspondence*.

<sup>33</sup> It must be noted that the information that can be gleaned from the court records is governed by the summary nature of the entries and the conventions and biases of the court clerk; however, the records are formal and consistent in their representation of the proceedings: for most of the court's history, they were written by one man, court clerk

settlement; and in the frequency with which certain issues arise (regulation of liquor, for example), in voting patterns (unanimous or contested), and in settlers' petitions and council's responses to them, one gets a sense of the issues of concern to inhabitants and how council dealt with them. The *Nor'-Wester* newspaper can also complement these accounts. Notwithstanding the potential biases of the paper's owners, editors, and individual contributors, the newspaper can fill in our understanding of the proceedings of courts and government: what was covered, and to what extent, reveals what the editors thought was of interest to their readers; and the descriptions of trials often provide details missing from the more bare-bones court records. (The court records, for instance, do not report that the courtroom was filled with people for certain cases, nor do they repeat interjections from the bench or the spectators' reaction to testimony.) Both the council records and the *Nor'-Wester* are deserving of further study.

The period under investigation here takes into account the first two decades of the GQC record, but focuses on the years 1858–1861, when John Bunn is acting Recorder and when the court records can be supplemented by *Nor'-Wester* reports. All cases heard by the GQC under Bunn's guidance from 1858 to 1861 are discussed in detail, but data and details from cases heard from 1844 up to 1869 are used to identify patterns and help provide a context for Bunn's term. John Bunn was a native of the country, active in community government, doctor to the settlement, well respected by the community, and not least, the man considered to be the third Recorder of Rupert's Land. Before now, the

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W.R. Smith. Each case entry first identifies the plaintiff(s) and defendant(s), followed (at least until 1858) by a list of the jury members, and then proceeds with a summation of the charge, the name of the witness, details of the witness's swearing-in and testimony given, the jury's decision, and finally the sentence. One frustrating aspect of the records is the absence of any record of interjections from the Bench or explanation behind decisions on sentencing.

controversial figure of Adam Thom, the first Recorder of Rupert's Land has received the most scrutiny as Red River's lawmaker. However, a closer consideration of the court and the goings-on in the settlement during Bunn's tenure provides a more particular lens through which local understandings and conditions in Red River can be better understood and sheds new light on a significant but neglected period in Red River history: the years after its formal settlement and before its annexation to Canada – years of growing maturity and independence for this small but lively community.<sup>34</sup>

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<sup>34</sup> Drawing on data from the first two decades of the GQC records allows a broad picture and certain patterns to emerge, but focusing on the details of the cases heard during Bunn's tenure as Recorder permits more attention to individuals. This work attempts to put a human face on a community so often discussed in generalities and stereotypes. To do so, it makes extensive use of quotation directly from the court record and attempts to identify participants to depict Red River's legal system and the people affected by it as fully as possible. The basics at least of people's identities have been pieced together from details in witnesses' testimony, census records, the *Genealogy of the First Metis Nation*, and online biographical and genealogical resources.

## Chapter 1: Red River's General Quarterly Court

The first meeting of the Council of Assiniboia took place in June 1815. After 1835, when control of the district passed formally from Selkirk to the HBC, the council grew in membership and governing capacity, increasing its number of sessions and its representation from the community. When the council convened in April 1835, for instance, of the eleven in attendance, at least six were married to Aboriginal or Metis women, and two were Metis: Dr John Bunn and Cuthbert Grant, leader of the mostly French-speaking Metis at White Horse Plains.<sup>35</sup> In March 1853, François Bruneau was the second French-speaking Metis appointed to council.<sup>36</sup> Red River's Catholic and Protestant clergy were also represented on the council after 1835.

Perhaps most significantly at that meeting in April 1835, at least for the purposes of this thesis, the council implemented the framework for a local justice system, with provisions for the courts and courthouse, judicial boundaries and magistrates, and a constabulary. The new council created four judicial districts, each with a justice of the

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<sup>35</sup> E.H. Oliver, *The Canadian North-West: Its Early Development and Legislative Records*, vol. 1, Publications of the Canadian Archives, no. 9 (Ottawa: Government Printing Bureau 1914): 274; Margaret Arnett Macleod and W.L. Morton, *Cuthbert Grant of Grantown: Warden of the Plains of Red River* (Toronto: McClelland and Stewart 1963); D.N. Sprague and R.P. Frye, eds., *The Genealogy of the First Metis Nation: The Development and Dispersal of the Red River Settlement, 1820–1900* (Winnipeg: Pemmican Publications 1983): Table 1

<sup>36</sup> Oliver, *Canadian North-West*, 1:66

peace appointed from council. Over the years, these districts were occasionally reshaped in response to the needs of the settlers and the availability of people willing to serve as magistrates, and new magistrates were appointed as needed. Magistrates tended to be elite members of the communities they served and if they were not already members of the Council of Assiniboia, they were soon sworn in as such. These magistrates held petty courts quarterly, at which they heard all civil cases where the debt or damages did not exceed £5. Unfortunately, records from the petty courts, if kept, are not now available; what meagre information exists can only be gleaned from brief, sporadic notices in the *Nor'-Wester* during the 1860s. In 1837, in response to concerns that the growing population required a more formal institution to settle disputes and administer justice in the community, the council established the General Quarterly Court (GQC) for more serious cases,<sup>37</sup> and magistrates became even more entrenched in the administration of law in Red River.

These justices of the peace were one of the foundations of local justice and the arbitration of disputes in the community and, with juries, in the courtroom. HBC governors (usually the Governor of Assiniboia) were formally recognized as President of council and the court and were usually also present at court sessions, though none's term was as lengthy, nor their involvement as sustained, as many of the magistrates. Council members participated as magistrates to varying degrees. The court records chronicle their

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<sup>37</sup> Minutes of the Council of Assiniboia, 19 February 1835, Minute Book 1832–1862, Hudson's Bay Company Archives (Winnipeg), E 16/2. See also Oliver, *Canadian North-West*, 1:267. When the GQC was formally established in 1837, council set forth details regarding the types of cases it would hear, reorganized the judicial districts, appointed magistrates, and arranged for the purchase of 'three copies of Burn's Justice and three copies of the Magistrates Manual.' Minutes of Council, 16 June 1837; Oliver, *Canadian North-West*, 1:280–81

presence, the regularity of which can suggest their interest and influence in the court, and their acceptance within the community. Four men stand out:

Doctor John Bunn, an anglo-Metis born in the northwest in 1803, served as a justice of the peace (JP) in 186 cases between 1844 and 1861; he also appeared in court twice as a witness and twice as coroner. Farmer, shopkeeper, and independent freighter Robert McBeath had first come to Red River as a child in 1815 with his parents and other Selkirk settlers. He served the court for eighteen years (1845–1863), first as a juror in ten cases and then as a JP for 127 cases (he was also called as a witness three times).

Francois Bruneau, a French-speaking Metis born in the northwest, was a successful farmer who served the court for ten years (1853–1863), as a juror in five cases and then as JP in 124 cases. And finally, Thomas Sinclair (1810–1870), the Metis son of HBC Chief Factor William Sinclair, served from 1845 to 1863, appearing 13 times as a juror and as JP in 101 cases.<sup>38</sup> Especially notable is the fact that, with Governor McTavish, these four men alone ran the General Quarterly Court during the years between the official appointments of Francis Johnson and John Black as Recorder of Rupert's Land.

From 1839, a Recorder was appointed to serve the court as judge. Each Recorder was equipped with formal legal training and was appointed by the HBC to act as judge and oversee GQC trials and sentencing. The Recorder shared responsibility for court proceedings with the other court officials: the Grand Jury that was made up of magistrates for each court session.<sup>39</sup> The GQC also had regular juries made up of men

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<sup>38</sup> Sprague, *Genealogy*, Table 1; Oliver, *Canadian North-West*, 1:61–68; DCB Online; HBCA Biographical Sheets.

<sup>39</sup> Dale Gibson and Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba, 1670–1970* (Winnipeg: Peguis Publishers 1972): 27. For the bulk of cases that came to the GQC, there were at least three magistrates present to assist the Recorder.

from the community to hear evidence and decide on guilt or innocence, while the Recorder and magistrates oversaw proceedings and intervened when necessary to clarify a translation or point of procedure.<sup>40</sup>

Recorders and councillors were the men of means who headed the courts, but it was the juries who decided the outcome of each case, and it was these decisions that had the greatest impact on the people who came before the court.<sup>41</sup> The jury was also a place where people not represented on council could nonetheless exert influence and participate in the governance of their society.<sup>42</sup> Donald Gunn noted of Red River's jury system that 'that public institution became an indispensable portion of the court, and contributed greatly to reconcile the public mind to the court and to the decisions given in it.... Jurymen formed a link between the governing class and the governed.'<sup>43</sup> Red River was a place where 'everybody [knew] everybody'<sup>44</sup> and an imprudent choice of jurors would

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<sup>40</sup> See, for example, *Alexe Henry vs Pierre Genvenne*, 21 February 1856, District of Assiniboia, General Quarterly Court Records, 1844–1872, Archives of Manitoba, MG.2, B4-1, vol. 2:94–95 [GQC 2:94–95].

<sup>41</sup> H. Robert Baker, 'Creating Order in the Wilderness: Transplanting the English Law to Rupert's Land, 1835–51,' *Law and History Review* 17, 2 (Summer 1999), attests to the importance of juries to the administration of law in Red River: 'the law [was left] in the hands of the juries, who settled cases according to their own notions of law and order. Quite simply, order from above gave way to order from below.'

<sup>42</sup> Donald Gunn, for instance, was never appointed to the Council of Assiniboia, and his staunch views against them are well-known, however, he participated regularly in the court and is on record as a juror more than any other citizen (nineteen cases between 1847 and 1863).

<sup>43</sup> Donald Gunn, *History of Manitoba: From the Earliest Settlement to 1835; and From 1835 to the Admission of the Province into the Dominion*, by Charles R. Tuttle (Ottawa: Roger Maclean 1880): 292

<sup>44</sup> Alexander Ross, *The Red River Settlement: Its Rise, Progress, and Present State* (London: Smith, Elder, and Co. 1856): 380

have been subject to criticism from the community, and it seems the sheriffs and magistrates were careful to avoid generating controversy in their selection.<sup>45</sup> Gunn remarked that ‘the Sheriff, as a rule, called out the most intelligent men in the community to act.’<sup>46</sup> The twelve-member juries were also almost uniformly equal in representation from Red River’s French- and English-speaking population. At first, juries were often evenly French and English, but later they were often predominantly English or French, depending on the language spoken by the plaintiff and defendant.<sup>47</sup> Juries were often also representative in terms of ethnicity: predominantly Metis if the case featured a Metis or Aboriginal plaintiff or defendant, Scottish if the central players were so, even soldiers in cases featuring soldiers. From 1858, jury members were no longer named in every case, but the fourteen years before had set the precedent for juries to be as representative as possible of the plaintiffs and defendants at trial. At times, the records also note the presence of interpreters to translate between French, English, and Aboriginal languages. The impression given by the available details in the court records is of a court (with few exceptions) attempting a fair and impartial proceeding for all participants.

Some biographical detail about the Recorders themselves may be helpful. There were officially three Recorders in Red River between 1844 and 1869. Adam Thom was

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<sup>45</sup> In his work on law and justice in the Niagara district, David Murray notes similarly that ‘The key criteria had always been “the general standing and repute” of those selected,’ and that ‘even a hint of impropriety in the selection of jurors could invite public comment.’ David Murray, *Colonial Justice: Justice, Morality, and Crime in the Niagara District, 1791–1849* (Toronto: University of Toronto Press 2002).

<sup>46</sup> Gunn, *History of Manitoba*, 292

<sup>47</sup> Juries were made up of propertied men, drawn from a list that was maintained by the sheriff. See especially, GQC record book, 1863–1871, and sheriff’s jury book, 1863–1869, in which juror lists were maintained and payments to jurors were tracked.



appointed in 1839, after provisions were first made for a full-time judge, and served for a tempestuous decade before he was finally dismissed. Born in Scotland in 1802, Thom studied law in Montreal while he was also editor at the Montreal *Herald*, and was admitted to the Bar of Lower Canada in 1837. While in Lower Canada, he was instrumental in the preparation of the Durham Report, which is now largely remembered for its assimilationist intent and insensitivity towards French rights. Thom was known as a ‘stern, uncompromising man’ who was hostile ‘to the use of the French language or French institutions in a British colony.’<sup>48</sup> During his tenure in Red River, there were complaints about his poor administration and harsh treatment of the native inhabitants. Thom was finally sanctioned and suspended from his position after the infamous 1849 trial of free trader Guillaume Sayer, during which a number of Metis settlers presented a petition for his immediate removal and ‘replacement by someone who would address the Court in both French and English.’<sup>49</sup> Back in the court again a year later, Thom once again provoked controversy and outrage by acting as judge, witness, and counsel for the defendants in another of Red River’s now famous trials (a defamation suit against Captain Pelly and his wife).<sup>50</sup> Following this debacle, Governor Caldwell finally dismissed Thom. Until a new Recorder could be appointed, Caldwell took over as president of the court. On his position as acting Recorder, Caldwell reported that ‘I

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<sup>48</sup> Gibson and Gibson, *Substantial Justice*, 27, 28–29

<sup>49</sup> *Ibid.*, 37. Sayer was convicted of trading outside the HBC’s monopoly, but the jury’s recommendation for mercy and the community’s vehement reaction left little action available to the HBC and essentially opened the door to independent trading thereafter.

<sup>50</sup> *Christopher Vaughan Foss vs Augustus Edward Pelly and wife, and John Davidson and wife*, 16–18 July 1850, GQC 1:181–221

administered justice as far as hearing what was said, but ... instead of charging the jury..., I merely desired the clerk of the court to read the proceedings to refresh the memories of the jury, and I left them to decide the question.’<sup>51</sup>

Four years later, in 1854, Thom was replaced by Francis G. Johnson, ‘one of Montreal’s leading barristers,’ whose bilingualism and ‘reputation for propriety’ made him more acceptable to the people of Red River. Johnson served as Recorder until 1858, when he decided to return to his law practice in Montreal. During his time in Red River he showed ‘a talent for mixing with all elements of the community,’ and in 1856 he married a local woman.<sup>52</sup> Johnson’s brief tenure as Recorder was uneventful – he heard just 29 cases over four years, and none at all for six sessions – the only time in Red River’s history that the court heard no cases. Johnson returned to Winnipeg in October 1870 as the first Recorder of the new province of Manitoba, and for a brief time in 1872 served as Lieutenant Governor of Manitoba.

Another four years passed before John Black, aged 45, was appointed Recorder in 1862. He remained until 1869. Black had first come to in Red River in 1839 as Thom’s assistant and was appointed Chief Trader in 1848, but he moved to Australia in 1854 to serve as Minister of Lands in New South Wales before returning to the northwest. Black is said to have ‘possessed undisputed integrity and courage.’<sup>53</sup> When he took over as

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<sup>51</sup> From Minutes of Evidence taken before the Select Committee on the Hudson’s Bay Company, 1857, quoted in E.K. Williams, ‘Aspects of the Legal History of Manitoba.’ *MHS Transactions*, ser. 3, no. 4 (1947–48).

<sup>52</sup> Gibson and Gibson, *Substantial Justice*, 43. See also, Roy St George Stubbs, *Four Recorders of Rupert’s Land: A Brief Survey of the Hudson’s Bay Company Courts of Rupert’s Land* (Winnipeg: Peguis 1967), especially 60, 62, 87.

<sup>53</sup> Gibson and Gibson, *Substantial Justice*, 49

Recorder, he announced in a letter to the *Nor'-Wester* that the local court should be responsive to the conditions of the settlement and avoid 'subtle refinements and ingenious technicalities' and strive instead to attain 'substantial justice.'<sup>54</sup> During Black's tenure as Recorder, the courts were increasingly –and primarily – occupied with debt cases (see chapter 7). Interestingly, Black is only recorded as present, as JP, at the GQC for four sessions in the fifteen years before he left for Australia.

### **John Bunn: Doctor, Coroner, Magistrate, Councillor of Assiniboia (1803–1861)**

In the *Dictionary of Manitoba Biography*, J.M. Bumsted describes John Bunn as a surgeon and civil servant. He is also generally regarded as the third of four Recorders of Rupert's Land, serving as such between Johnson and Black's tenures, from 1858 until his death in 1861.<sup>55</sup> Accounts of his death in the *Nor'-Wester* and the minutes of the Council of Assiniboia suggest that the community too regarded him as the Recorder, but he was never officially appointed as such. His abiding influence in the courts and on council, however, is too great to ignore: John Bunn must be considered Red River's first native-born judge.

Bunn was born in the northwest, the son of Thomas Bunn, a Scottish HBC clerk, and Phoebe Sinclair, a Metis woman. With his sister, Harriet, he was one of the first four

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<sup>54</sup> *Nor'-Wester*, 11 September 1862

<sup>55</sup> See Stubbs, *Four Recorders*, which is the main source for this era in Gibson and Gibson's *Substantial Justice*. Stubbs does not mention that Bunn was not officially appointed Recorder.

pupils at the HBC's school at York Factory, which opened in 1808.<sup>56</sup> Sent to Edinburgh and educated at the Royal College of Surgeons, John Bunn returned to Red River and married Catherine Thomas in 1829. Their young son Thomas (Jr) was born a year later, just five years before Catherine passed away at the young age of 24. The 1835 census shows John Bunn's father, Thomas Sr, living in St Paul with a family of four in possession of ten cattle, one farm implement, one cart, and four acres under cultivation.<sup>57</sup> Thirty-five years later, the 1870 census reveals that John Bunn's son Thomas Jr (1830–1875) was living in St Clement with four children aged 2 to 15 (his eldest is named John).<sup>58</sup> Thomas Jr's only appearance in the records of the GQC was as a juror in May 1858 (while Francis Johnson was Recorder), but he later succeeded W.R. Smith as clerk for the council and the court (1865–1869/70). He continued his service to the court after Manitoba joined Confederation as clerk to the first session of the new General Quarterly Court in May 1871.<sup>59</sup> Like his father, Thomas was active in government: appointed to the Council of Assiniboia (1868), named secretary of state in Riel's provisional government (1869/70), and elected MPP for St Clement in December 1870. Dominion land surveyors in 1870 recognized seven riverlots occupied by Bunns, totalling over 850 acres in St Paul

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<sup>56</sup> Sylvia Van Kirk, *'Many Tender Ties': Women in Fur-trade Society in Western Canada, 1670–1870* (Winnipeg: Watson & Dwyer Publishing 1980): 104; Stubbs, *Four Recorders*, 92

<sup>57</sup> Sprague, *Genealogy*, Table 2

<sup>58</sup> *Ibid.*, Table 4

<sup>59</sup> J. Bumsted, *Dictionary of Manitoba Biography [DMB]* (Winnipeg: University of Manitoba Press 1999): 39

and St Clement.<sup>60</sup> In all, the Bunns were a successful, community-minded Metis family who had gained in stature in Red River.

While Adam Thom has received the most attention,<sup>61</sup> John Bunn's contribution to the administration of justice in Red River is unparalleled. He was first invited to council in February 1835 'to assist with [his] advice in its deliberations' to 'put the administration of Justice on a more firm and regular footing than heretofore.'<sup>62</sup> In 1851, his advice on the state of the local law would again be sought. Bunn served on the Council of Assiniboia from 1835 until his death in 1861. He appeared for the first time as Sheriff of Assiniboia and attended 61 meetings. During his tenure, he was appointed to the Board of Public Works in 1835 (of which he became chairman in 1856), the Committee of Economy, the Committee of Finance, and the Committee to report on the State of the Law in 1851.<sup>63</sup> As chairman of Public Works, Bunn was responsible for presenting (and getting approval for) numerous motions granting more and more money for roads,

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<sup>60</sup> Sprague, *Genealogy*, Table 5

<sup>61</sup> Williams, 'Legal History of Manitoba,' for instance, gives 23 paragraphs over to Thom (much of it on the Sayer trial), but just two sentences to Johnson, one to Bunn, and two to Black. Stubbs, *Four Recorders*, gives Thom full credit for instituting and developing law in Red River and calls him 'the father of the Bench and Bar of Western Canada' (44); K. Bindon also asserts Thom's importance to Red River law in 'Hudson's Bay Company Law: Adam Thom and the Institution of Order in Rupert's Land, 1839–54,' in D. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: University of Toronto Press 1981), and most recent surveys have followed her lead. Baker, 'Creating Order in the Wilderness,' provides the only counterpoint to this history, asserting (correctly) that 'Adam Thom's legal contributions are far less impressive than others have assumed' (4). Unfortunately, in his attempt to reinterpret Thom's position in history, Baker does not move beyond 1851 and gives Bunn only fleeting mention.

<sup>62</sup> Oliver, *Canadian North-West*, 1:266–67

<sup>63</sup> Oliver, *Canadian North-West*, 1:61–62

bridges, and other public infrastructure in the growing community of Red River.<sup>64</sup> John Bunn was first sworn as a Councillor of Assiniboia in March 1836. As councillor, he served as magistrate (from 1837) and then president (from 1850) of the Lower District petty court. He was present at the General Quarterly Court for all but seven of the sessions held from its first recorded session in November 1844 until his sudden death from a stroke ('apoplexy') in late May 1861.

In the *Dictionary of Manitoba Biography*, J.M. Bumsted writes: 'Bunn supported orderly administration and the development of local infrastructure, especially roads, and he was regarded by Governor Eden Colville as "the most sensible man in the Settlement" ... Bunn was always proud of his mixed-blood heritage and of the progress of Red River. In 1847 he won a prize for the best cheese in the Settlement.'<sup>65</sup> Of his last court session on 21 May 1861, conducted just days before his death, the *Nor'-Wester* wrote: 'The late Dr Bunn conducted the examination with his usual ability and discrimination. The people will feel the want of his sound judgment and sagacity, when the court next sits.'<sup>66</sup>

His stature and influence in Red River were also attested to in *Nor'-Wester* reports of his death and funeral: 'He was universally esteemed, and was a most efficient officer. He was unquestionably the first and foremost of our magistrates in point of ability, and the blank occasioned by his death will be strongly felt both on the bench and in the Council Chambers. Besides his efficiency as a civil officer, his medical services

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<sup>64</sup> Ibid., Minutes of Council, passim

<sup>65</sup> Bumsted, DMB, 39

<sup>66</sup> *Nor'-Wester*, 01 June 1861, 3

had acquired for him a great popularity.’<sup>67</sup> His popularity is reflected again in a notice about his funeral in the next issue: the paper reported that Bunn’s funeral took place ‘with all the solemnity and public respect due to the deceased. The procession was as large and respectable as ever accompanied the remains of any in this Settlement ... Rich and poor, officials and non-officials, French and English, Catholic and Protestants – all joined heartily to pay their respects to one who in life had endeared himself to all alike, by his frank and generous conduct, his faithful and benevolent services and his great public usefulness.’<sup>68</sup>

Similarly, the first resolution of the 08 June 1861 meeting of the Council of Assiniboia recorded his colleagues’ unanimous regard: ‘before proceeding to the business of the day, the Council join unanimously in recording their deep sorrow at the sudden and unlooked for death of their late friend and colleague Dr Bunn. They feel how great a loss the Council and Community have sustained by his removal by the hand of God from his many, and active duties. They would acknowledge the valuable services which he has rendered for a long period as a member of Council and also as Chairman of the Board of Works, nor would they forget the efficient manner in which he has for a more limited time discharged the duties of Sheriff and those of Recorder and Coroner. They are painfully conscious of how difficult it will be to supply his place in the various offices which he filled with so much credit to himself, and so much advantage to the whole Settlement. They trust that to his family and friends the universal expression of regret, the very marked respect shown by every class and condition on the day of interment, may

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<sup>67</sup>Ibid., 2

<sup>68</sup>Ibid., 15 June 1861, 3

prove some consolation (however inadequate) under their heavy bereavement.’ They agreed to send a copy of the resolution ‘with the heartfelt sympathy of every member of Council’ to the members of Dr Bunn’s family.<sup>69</sup>

### ***John Bunn and the Law in Red River***

In 1836 (and re-affirmed at subsequent meetings), at the meeting at which Bunn was sworn in as a councillor, he and fellow councillors resolved to make council minutes public.<sup>70</sup> At first, council merely agreed to make proceedings public by distribution via the magistrates; this was later amended to include distribution via constables as well; by posting on church doors; by display at both Fort Garry and the courthouse; and, after 1859, by publication in the *Nor’-Wester*. Two sessions later, in June 1837, council requested that HBC Governor George Simpson purchase three copies each of *Burn’s Justice and the Magistrates Manual*.<sup>71</sup>

In 1851, with Adam Thom and Rev. Louis Lafleche, Bunn was responsible for the compilation and consolidation of the laws in Red River. The resulting legislation formed

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<sup>69</sup>Oliver, *Canadian North-West*, 1:478

<sup>70</sup>Oliver, *Canadian North-West*, 1:278

<sup>71</sup>Richard Burn, *The Justice of the Peace and Parish Officer* (London, Printed by W. Strahan and M. Woodfall for T. Cadell, 1770). *Burn’s Justice* has been described as:

‘the most important work of a legal scholar ... A useful compendium which went into many English editions, and was also popular in the Colonies ... In the mid-eighteenth century the local Justice of the Peace was the most important figure in the administration of the civil and criminal law throughout the country. Burn’s *Justice of the Peace*, which went through numerous editions, and was widely circulated, did much to standardise practice. In the text of the book Burn drew up numerous examples of legal forms to fit the many tasks and duties of the justice ... [that] would have done much to streamline and standardise legal procedure ... and represented an important step forward in social and legal administration’ (from [www.abebooks.com](http://www.abebooks.com)).



the basis of local law in Red River, with few subsequent amendments, for the next two decades. The 1851 legislation updated the basis for Red River law from the laws of England at the time of the HBC charter (1670) to the laws of England as of the Queen's accession (1837) 'so far as they may be applicable to the condition of this Colony ... till some higher authority, or this Council itself, shall expressly provide ... to the contrary.'<sup>72</sup> The 1851 legislation contained forty-six statutes aimed at local governance, culled from the various resolutions passed by council, at least since 1835 when the courts were first created and the Council of Assiniboia passed into what Oliver calls 'the Company Period.' These were put forth in simpler language, without unnecessarily complex provisions and without repetition or redundancy. One other important aspect of the revised code was the incorporation of article 46, which aimed to temper the 'almost despotic privilege' of the council president, the Governor of Assiniboia, by ordering that '[u]nless the votes be unanimous to the contrary, no motion shall be carried without having been twice read, on two different days.' The revised code was carried unanimously at the July 1852 council meeting and was posted, as directed, at churches, Fort Garry, and the courthouse. Thus, in one place for the first time, Red River residents had straightforward access to their law, one based on more current British law and adapted to local conditions and concerns, and made more accountable to the community than to the HBC. Following Bunn's death, council again acted to review and consolidate the laws (publishing them in the *Nor'-Wester*), but the resulting 1862 regulations closely followed the existing 1851 laws.

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<sup>72</sup>Oliver, *Canadian North-West*, 1:378 (resolution 34)

John Bunn is notable among Red River's magistrates for his attendance at all but 7 of the 61 sessions of the General Quarterly Court that were held between November 1844 and his death in 1861. Five of these 'missed' sessions were between May 1849 and July 1850, when he had resigned as magistrate. Bunn's letter of resignation was announced at the July 1849 council meeting, and his importance to the court was made clear when the council questioned whether the General Court should proceed with its next session as usual.<sup>73</sup> No reason is given for his resignation, but it follows immediately after the Sayer trial and council's response to it.<sup>74</sup> Bunn's resignation leads to changes in the magistracy of petty courts and, interestingly, to council's affirmation that the General

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<sup>73</sup> In response, council resolved that the June 1837 measure (which assigned magistrates to petty court jurisdictions and legislated that the GQC 'consist of the HBC's principal representative ... together with not less than four Magistrates') be suspended, and that 'in future, the Supreme Court shall consist of the Governor and Council, with the aid of a Jury'; further, petty courts were to be held by Alexander Ross and two other councillors ('at the same time and place as heretofore.') Oliver, *Canadian North-West*, 1:280, 353–54.

<sup>74</sup> The Sayer trial and its repercussions (especially for the HBC) have been well documented, the council's response perhaps less so: within two weeks of the trial, Governor of Assiniboia and President of the Council, Major Caldwell, called a council meeting to consider 'what measures ought to be devised for the prevention of such unlawful assemblages ... and for the restoration of the tranquillity of the Settlement.' Council unanimously agreed that the 'excitement' had resulted from the desire amongst the 'Canadian and half-breed population' for: 1) the immediate removal of Recorder Adam Thom from the settlement; 2) a judge who would address the court in both French and English; 3) rescinding the law on imports from the US; 4) additional French Canadian and Metis members on council; and 5) a free trade in furs. Council responded, apparently also unanimously, that 1) 'the personal liberty of Mr Thom must be held equally inviolable with that of every other citizen'; 2) Mr Thom had just agreed to address the court in both French and English, and this practice should be followed in future; 3) Council will take the matter of imports under consideration; 4) Council cannot appoint new members but will make a recommendation to the HBC Committee; and 5) the matter of free trade must be decided by the Queen and Parliament and Council cannot interfere (Oliver, *Canadian North-West*, 1:352).

Quarterly Court should proceed with the aid of a jury.<sup>75</sup> Juries had of course already been in use in the court, but this affirmation recognized the importance of this local element to the administration of justice.

The General Quarterly Court did indeed resume as scheduled in August 1849 – but with two conspicuous absences: John Bunn had resigned, and Adam Thom had been temporarily suspended. For the next year, until July 1850, the GQC was managed by Governor Caldwell and council members Cuthbert Grant, J.P. Pruden, Alexander Ross, and, for two sessions, Andrew McDermot.<sup>76</sup> In February 1850, Thom made an appearance as the defendant in a debt case (decided in his favour), and then, in July, Thom was back for what would be his final hoorah in court, when he acted as Recorder as well as witness and representation for the defendants in the *Foss vs Pelly* defamation trial.<sup>77</sup> John Bunn was also back – as magistrate and as witness and representation for the

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<sup>75</sup> Oliver, *Canadian North-West*, 1:353–54

<sup>76</sup> Bumsted, in the DMB, says he was ‘*ex officio* [by virtue of his position in society] president of the General Quarterly Court’ from 1849 (after the Sayer trial) to 1851, though he is not designated as such in the records. In the court records, McDermot is only listed as present (and only as Councillor of Assiniboia) for five of those seven sessions. The DMB also says that McDermot resigned his positions on council because he distrusted Major Caldwell. In August 1850, Eden Colvile, then Governor of Rupert’s Land, agreed to assume Caldwell’s position as President of Court and Council in response to a petition by Alexander Ross and Andrew McDermot to get rid of Caldwell as Governor of Assiniboia. Colvile, however, only stayed a year (February 1851–February 1852), after which the GQC was again nominally headed by Caldwell (until Francis Johnson arrived) with magistrates John Bunn, Cuthbert Grant, and William Ross; from 1853, Francois Bruneau, Thomas Sinclair, Robert McBeath (and for a time Thomas Thomas). E.E. Rich, ed., *London Correspondence Inward from Eden Colvile, 1849–1852*, with an introduction by W.L. Morton (London: Hudson’s Bay Record Society 1956): 29. GQC records, 1851–1854.

<sup>77</sup> On *Foss vs Pelly*, see, for example, Gerald Friesen, *The Canadian Prairies* (Toronto: University of Toronto Press 1984): 100–101; J. Bumsted, *Trials and Tribulations: The Red River Settlement and the Emergence of Manitoba, 1811–1870* (Winnipeg: Great Plains Publications 2003): 108–10.

plaintiffs. Bunn's side won the case, and the defendants were fined enormous sums of £300 and £100, respectively.<sup>78</sup> Unlike Thom, Bunn was back for good.

Though Bunn did miss five court sessions before returning for the infamous *Foss vs Pelly* trial, he did not miss a council meeting in that time. He was there when his resignation was presented and again at the next meeting when he accepted a position as Coroner. Council's reaction to Bunn's resignation as magistrate and thus his absence from the courts suggests that Bunn's place there was extremely important at a time when the appointed Recorder's (Adam Thom) authority was more in question than ever before.

Although Bunn is generally regarded as the third Recorder of Rupert's Land,<sup>79</sup> council minutes do not record any formal appointment after Johnson's departure in 1858 until John Black arrives four years later, and only one court session actually recorded his presence with that title – 17 November 1853, midway between Thom and Johnson's terms, when Caldwell, as Governor of Assiniboia, would nominally have been in charge (interestingly, Caldwell, was present at that court session).<sup>80</sup> At the council meeting at which sorrow for Bunn's death was recorded (and council noted 'the efficient manner in which he has for a more limited time discharged the duties of Sheriff and those of Recorder and Coroner'), Governor McTavish announced that the meeting had been called to appoint 'persons to fill up the vacancies caused by the death of the Late Dr Bunn.'<sup>81</sup>

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<sup>78</sup> approximately \$42,000 and \$14,000 CAD (in December 2008)

<sup>79</sup> See, for example, Stubbs, *Four Recorders*; 'Bunn, John,' DCB Online.

<sup>80</sup> 17 November 1853, GQC 2:55. The record also shows that Bunn acted as Recorder in 1852, summing up the evidence and charging the jury in *Public Interest vs John and James Forbister and George Robertson*, 19 August 1852, GQC 2:23.

<sup>81</sup> Oliver, *Canadian North-West*, 1:478

Though it seems to have been generally accepted that Bunn was Recorder at the time of his death, there is no mention of the need to fill his position as such here: James Ross was appointed Governor of the Gaol and Sheriff, Francois Bruneau replaced Bunn as President of the Middle District Petty Court, Henry McKenny (though he had applied for the post of sheriff and governor of the gaol) was appointed one of the magistrates of the Middle District Local Court. The Governor of Assiniboia was also empowered to appoint a coroner for the district, and by November, McTavish appointed Curtis Bird.<sup>82</sup> Replacements were found for Bunn as sheriff, magistrate, and coroner, but no mention was made of seeking a new Recorder.

It seems clear, however, that Bunn acted as the Recorder during the years when the settlement was without an officially appointed Recorder: after Adam Thom's dismissal in 1850 when local confidence in Governor Caldwell was low, and between the official appointments of Francis G. Johnson (1854–1858) and John Black (1862–1870). All three men who filled the official appointments as Recorder had at least some formal legal training and experience; Bunn acted from his knowledge of the community and its local custom and from his years of practical experience as councillor and petty court magistrate. The knowledge and experience Bunn gained when redrafting the local laws in 1851 and from being so consistently present at proceedings of the GQC, as well as his position in the community as doctor and magistrate and in various official capacities as Sheriff, Coroner, and President of Public Works, would have made him a natural choice to lead the General Quarterly Court, and it is Bunn's years at the head of the court that form the focus of this study.

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<sup>82</sup>Oliver, *Canadian North-West*, 1:479–80

## Chapter 2: Violent Acts

The Council of Assiniboia did not pass any laws related to violent crime: the law governing these crimes was the British criminal code,<sup>83</sup> and the court would have been guided by past experience and the procedures outlined in *Burn's Justice*. Violent crime, though, was rare in Red River: in the first twenty years on record, the General Quarterly Court heard just seventeen cases of assault and eight cases of murder or manslaughter, most of which occurred in the first decade (1844–1854);<sup>84</sup> in all, there were just three cases prosecuted for attempted rape. Prosecutions for violent crime decreased steadily after Thom left the Recorder's seat, and with that the number of Aboriginals charged decreased as well; extreme punishments such as flogging and banishment also ended.

### **Murder**

Murder was the most serious capital offence, and conviction could result in a sentence to hang. Between 1844 and 1864, Red River saw eight murder trials.<sup>85</sup> Of the eight defendants, three were women and four were Aboriginal. Additional biographical details

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<sup>83</sup> As of 1670 before 1851, and as of 1837 afterwards.

<sup>84</sup> Six of the murder cases and fourteen of the assault cases occurred between 1844 and 1854.

<sup>85</sup> Here, 'murder' includes charges of manslaughter and infanticide.

about the defendants in these cases are especially difficult to ascertain, since information about women and Aboriginals from the census and other sources is scarce.

After the documentary record begins in 1844, the first three people charged with murder in Red River were Aboriginal men. One was sentenced to hang; the others, both apparently familial disputes, were sentenced to six and twelve months in solitary confinement, respectively. In one of the first recorded hearings of the GQC, *Public Interest vs Keetchipiwaipas*, the defendant was accused of murdering his wife. William Inkster lived near where the victim had died. He testified that he had been awakened by the accused, who told him: 'I have found my wife frozen opposite Mary Kennedy's, come and help me to bring her up.' Once they had brought the body into the house and ascertained that she was dead, Keetchipiwaipas declared that 'Mitchebois has killed her.' In court, Keetchipiwaipas protested his innocence and repeated this allegation. The verdict seems to have turned on the testimony of the fourth witness, Robert Daniel. Daniel testified that he and his sister had been drinking with the accused and his wife that night. He testified that he had seen Keetchipiwaipas grab and hit his wife and then they had left the house together. According to Daniel, Mitchebois and his wife had also been there but had left together a bit earlier. The jury at first brought back a not guilty verdict, but on re-interrogating Robert Daniel they changed their verdict to guilty. Keetchipiwaipas was sentenced to six months in solitary confinement.<sup>86</sup>

The first of just two cases that resulted in a death sentence was that of *Public Interest vs Capennesseweet*. Capennesseweet, a local Saulteaux, was charged with shooting Ta-tunga-O Kay-May, a Sioux, and Apetwaywetungk, another Saulteaux. The same

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<sup>86</sup> *Public Interest vs Keetchipiwaipas*, 20 February 1845, GQC 1:13–18

bullet had apparently hit Ta-tunga-O Kay-May in the back and then continued on to catch the second victim in the side. The incident took place outside Upper Fort Garry as a group of about ten Sioux were heading towards the fort, followed by a crowd of about 150 Saulteaux, Metis, and white men and women. There were a number of witnesses who had been in the crowd that day, among them 20-year-old Metis John Cyre, Marguerite Pepin, and a Saulteaux named Rayome. Each testified that they had heard a shot and looked to see Capennesseweet holding a (literally) smoking gun. The sheriff, Alexander Ross, also testified that after being taken into custody, the defendant had confessed. The jury did not take long to return a verdict of guilty.<sup>87</sup> It seems likely that the death sentence was, at least in part, a result of the lack of contradictory evidence as well as the apparently deliberate nature of the crime; fear of reprisal from the Sioux could also have played a role.<sup>88</sup> Alexander Ross reports that ‘the universal voice called aloud for justice,’ and that more than a thousand people witnessed the hanging in silence. He suggests that swift court action showed local Aboriginal peoples that the law applied to them too and that crime would not be tolerated.<sup>89</sup>

The other case that resulted in a death sentence was that of John Demerrais. In August 1866, Demerrais, a French Metis of between 25 and 35 years of age, was charged with murdering ‘an Indian’ called White Nail. In this case, as well, there were a number of witnesses to the crime and no real variation in their testimony. The stabbing, which

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<sup>87</sup> *Public Interest vs Capennesseweet*, 4 August 1845, GQC 1:28–33

<sup>88</sup> At least, in later years, several *Nor’-Wester* articles indicate that at least some in the community were concerned with what the Sioux might do.

<sup>89</sup> Alexander Ross, *The Red River Settlement: Its Rise, Progress, and Present State* (London: Smith, Elder, and Co. 1856): 331–32. Ross also says the same bullet ‘grazed a white man,’ however, the court records make no mention of such a thing.



took place at Fort Garry, was deliberate and seemingly unprovoked. The two witnesses for the defence could only testify that the prisoner had ‘always appeared to be a quiet man’ and who ‘when sober is civil and behaves himself well [emphasis in original].’<sup>90</sup>

In 1846, Peter Hayden, was charged with the murder of John Gobin. Because Hayden pled guilty, there are very few details in the court record for this case. The records do note, however, that Gobin was shot in the left temple with a pistol (value 40 shillings). Hayden was fined £1 (half the value of his pistol), and a £50 surety for two years’ good behaviour was promised by Hayden and two well-established Red River settlers, Thomas Logan (English Metis, 34) and Charles Larance (French Canadian, 46). Unfortunately, the record provides no explanation for the extraordinarily light sentence. This is the only case in which a murder conviction did not result in imprisonment (most sentences were between six months and two years).<sup>91</sup> Another troubling aspect of the sentence is that, about a year-and-a-half later (short of his two-year probation), Hayden was back in court – this time on four charges of illegally selling liquor to soldiers. Hayden was found guilty and fined £5 in three cases and £10 in one of them.<sup>92</sup> His fines for selling liquor total 25 times the amount he was charged for shooting a man, and there is no word about him having violated his surety for good behaviour.

Two of the three murder cases in which women were charged were for infanticide, or concealing the birth of a child, and both were found guilty.<sup>93</sup> In 1852, Jane

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<sup>90</sup> *Queen vs John Demerrais*, 17 August 1866

<sup>91</sup> *Public Interest vs Peter Hayden*, 19 February 1846, GQC 1:46

<sup>92</sup> *Public Interest vs Peter Hayden*, 18 November 1847, GQC 1:87–90

<sup>93</sup> During a similar period, between 1827 and 1846, the Niagara district court tried three women for murder; two were acquitted and one received six month’s in jail for

Heckenberger, the grandmother of the dead infant, was the 52-year-old Metis daughter of the late HBC district manager William Hemmings Cook and widow of St Peter's labourer Henry Heckenberger. Her daughter, Margaret, was 30 years old and unmarried (the record calls her a 'spinster') when she gave birth to a baby boy, which her mother took from her and then smothered and buried.<sup>94</sup> Heckenberger was charged with murder, and once found guilty by the jury, the only sentence possible (for the crime) was death; however, Governor Caldwell intervened and commuted the sentence to two years in jail. The next woman to be charged for the same crime was charged with 'neglect of infant' and faced six months imprisonment. It is possible that the longer jail sentence for Jane Heckenberger took into account her mature age, the deliberate nature of her act, and the fact that the child was not her own. Two years later, Margaret again gave birth to a baby boy, fathered by Jacob Sinclair; in 1855, a daughter, Isabella, was baptised and registered with no father listed.<sup>95</sup>

Before Eliza Duncan, a 14-year-old Aboriginal girl employed as a servant by Mr and Mrs Hugh Matheson, went to trial in February 1854, the court record shows there was first a coroner's inquest directed by John Bunn at Hugh Matheson's house in

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concealing the birth of a child. That woman was the first in the district to be charged with infanticide since 1917, though other cases were alleged in the press. David Murray, *Colonial Justice: Justice, Morality, and Crime in the Niagara District, 1791–1849* (Toronto: University of Toronto Press 2002): 137–8. For more on infanticide in Canada, see Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Osgoode Society for Canadian Legal History 1991).

<sup>94</sup> *Public Interest vs Jane Heckenberger*, 19 February 1852, GQC 2:9–13

<sup>95</sup> St Andrew's Baptisms, 1845–1859, #461; St Paul's Baptisms, 1850–1878, #115; Sprague, *Genealogy*, Table 1, shows Margaret Heckenberger married to James Sinclair (no date). Sprague also puts Margaret's birth date at 1836, which would make her just sixteen years old when her mother was charged with infanticide, but contradicts the 1849 census, which shows her born in 1822.

November 1853. Mrs Matheson testified that she had suspected Eliza was pregnant but Eliza had denied it. She then ‘found her looking ill and covered with blood ... [and] she no longer appeared pregnant — eventually she found the afterbirth and then the dead body.’ Dr William Cowan examined the infant and found no external injury, but he was unsure whether the infant had been born dead or alive. At this point the jury ‘pressed for a postmortem examination,’ after which Dr Cowan testified that he was of the ‘opinion amounting almost to a certainty that the child has never breathed.’ Despite the doctor’s opinion, the coroner’s jury found that the infant was ‘found dead, from culpable negligence on the part of its mother Eliza Duncan.’ The jury that heard from the same witnesses at the next session of the GQC agreed and sentenced Eliza Duncan to six months.<sup>96</sup>

With reference to a spate of infanticide cases before the courts in 1837, Jennifer Brown has posited that infanticide was occasionally a response to the stresses suffered ‘as many native-born women were placed in new, uncertain, and ambiguous social positions, and as these women faced unfavourable comparisons with their “fairer sisterhood” and developed new anxieties about the legitimacy of their marriages and children.’<sup>97</sup> That we know of only two cases of infanticide to be prosecuted in the following two decades

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<sup>96</sup> Coroner’s Inquest, 21 November 1853, GQC 2:59–62; *Public Interest vs Eliza Duncan*, 16 February 1854, GQC 2:63–64

<sup>97</sup> Jennifer S.H. Brown, *Strangers in Blood: Fur Trade Company Families in Indian Country*. (Vancouver: University of British Columbia Press 1980): 150. Brown quotes James Hargrave that ‘the [Red River] Courts of Justice have of late had full employment in cases of infanticide – a crime which of late has made its appearance to an alarming extent’ (Hargrave Papers, James Hargrave to John Charles).

suggests that its incidence may have been decreasing from the 1840s.<sup>98</sup> From the evidence of these two cases, both mothers were unmarried, one of them quite young, and in less than secure financial positions, dependant in one case on her brother's support and in the other on a domestic servant's wages, which might have been lost had her pregnancy come about. Both also occurred during winter, a time generally of increased scarcity and hardship in the settlement. Concern over appearances might have played a role, but cold economics seem a more likely factor.

The third woman charged with murder was Mary Parks, who was prosecuted in December 1860 for manslaughter, and was the only murder case presided over by John Bunn. According to the *Nor'-Wester*, the case had been deferred from the September sitting because of an absent witness. At that time, the newspaper reported that 'Considerable interest seemed to be felt in the expected trial of Mary Parks ... and the room was well-filled.'<sup>99</sup> Community interest in the proceedings was first suggested in the 14 September issue of the *Nor'-Wester*, which supplemented clerk W.R. Smith's notice of the GQC meeting on 20 September with its own announcement of the upcoming court date at which 'Mary Parks will be tried for manslaughter of an Indian.' Prior to Mary Parks' trial, the court had held an inquest, which ended in a non-unanimous jury decision and Bunn issuing a warrant for her to stand trial for manslaughter at the next court session; she was, however, allowed bail. The inquest was covered extensively in the

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<sup>98</sup> Though only known cases would have come before the court, there is no indication in the later years covered by the *Nor'-Wester* that infanticide was any more common. Two more cases of infanticide occurred in 1866 and 1869, both prosecuted in the GQC with sentences of three and six months being given to the Metis and Aboriginal women (aged 31 and 49, respectively) who were charged.

<sup>99</sup> *Nor'-Wester*, 28 September 1860, 1

*Nor'-Wester*,<sup>100</sup> but was not included in the court records; the actual trial testimony in the court records closely matches that given at the inquest and reported in the newspaper, which explains why the *Nor'-Wester* did not give the actual trial much space. The victim was identified in the newspaper as Antoin Juando, of whom we have no record other than the testimony, which only identifies him as 'an Indian.' All we know of Mary Parks is that she was a servant of John Moyses (son of Royal Pensioner James Moyses and son-in-law of witness James Armstrong). It has not been possible to otherwise identify Mary Parks from the available records, but there was a Joshua Parks who had come to Red River as a Royal Pensioner. Mary Parks' connection to the Pensioners might also explain why Dr James Paxton of the Royal Canadian Rifles, rather than the coroner (Dr Bunn), examined the body of the deceased. It is unfortunate that neither the newspaper nor the court records lists who the jurors were, since, given the practice of representative jury composition, their identities could have provided another clue.

Though the actual testimony in court matches that given in the *Nor'-Wester* account of the inquest, the newspaper does provide a fuller background to the story. It seems that the victim, Antoin Juando, 'an old man,' and his wife had 9 shillings to buy drink and became intoxicated at 'one of the numerous grog shops which have lately sprung up on the Assiniboine.'<sup>101</sup> He was last seen alive at James Armstrong's place, where his son-in-law John Moyses lived and had a spirits license. It was suspected that

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<sup>100</sup> 'Melancholy Death of a Drunken Indian,' *Nor'-Wester*, 14 July 1860, 4

<sup>101</sup> Council minutes record a complaint about Jean Mager, 05 March 1861, from inhabitants on the east side of the Red River directly opposite of Fort Garry (Oliver, *Canadian North-West*, 1:461) – petitioners were advised that sufficient remedy existed in the courts; James Armstrong, in Upper District Court on 16 July 1860, was fined £10 for selling liquor to Indians (*Nor'-Wester*, 28 July 1860), possibly in relation to Mary Parks' case; but neither Armstrong nor Moyses appeared in the GQC on similar charges.

Juando got liquor at Armstrong's and that a blow from Moyses' servant girl was the cause of death. Juando's widow was examined at the inquest ('but not upon oath'): she testified that they could not get liquor at Armstrong's; Parks demanded money but they did not give it. She stated that Parks ran around the house, followed by Juando, and she later found him on the ground, lying by a stick dead and bleeding. She swore they were not drunk, but both 'affected by liquor.' It was then Mary Parks' turn to speak, and her first statement was, 'I do not understand the Indian language.' She then claimed that the old man seemed very drunk, he chased after her but she did not see him fall; she went back into the house and about an hour later saw him lying there. The victim had not asked her for whiskey.

After testimony from the four witnesses who later testified at the trial, Bunn stated that there were three at fault: those who supplied the booze, the girl who threw the stick, and the men who saw Juando die 'without stretching forth a hand to help him.' Not surprisingly, given the conflicting testimony, the 'jury found it difficult to make up their minds,' and after long consultation, they returned a verdict that the coroner (Bunn) could not accept: 'Died from the effects of a stick.' The jury was told to reconsider, after which seven agreed 'That the deceased died from the effects of a stick thrown at him by Mary Parks,' while the other five held that he had died by natural causes. Bunn then issued a warrant for Mary Parks to stand trial for manslaughter. The editors' note at the end of this account agrees with Bunn in at least one of his conclusions: that those who sold the liquor were 'morally, if not legally responsible, for his wretched end.'<sup>102</sup>

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<sup>102</sup> *Nor'-Wester*, 14 July 1860, 4

At the trial, Mary Parks pleaded not guilty. The first witness, James Armstrong, testified that 'the deceased Indian came into my house about 6 o'clock in the evening. When I came home I saw the Indian sitting with a pot of liquor ... Mary Parks was out at the door \_ some time after saw an Indian lying on the ground ... about 1½ hours after went to see this Indian, and about 1 hour before that Bayan Fidler told me not to go, the Indian appeared well in the morning and at 6 o'clock found him dead. Mary Parks was running about outside ... but did not see anyone pursuing her.' His 20-year-old son, Joseph Armstrong, then testified that on 27 June, he 'was on the top of my Father's house looking out for horses \_ saw an Indian running after Mary Park \_ he was drunk with a stick in his hand, the stick fell from his hand and he fell immediately after ... Mary Park threw the stick while running ... could not have been thrown with any great force.'

Cephas Fidler, a neighbour of the Armstrongs in St James, testified that he 'saw Mary Park with a stick in her hand walking \_ And then I saw her running hard and she went in the house and I saw Armstrong run around the house and saw the Indian lying down.'

Due to the dead man's position, he surmised that Mary Park must have encountered him when she was going towards the river. 'Armstrong told me that Mary Park had struck the Indian.' Henry Else corroborated Fidler's testimony exactly, and then Dr James Paxton testified. He had examined the body without knowing anything about the circumstances of his death and thought that the cause of death was apoplexy: the brain appeared previously diseased, there were no external marks (though at the inquest he had mentioned an injury to the nose caused by a fall or blunt object, which, however, was not

sufficient to cause death), and ‘excitement, intoxication and any blow or fall could have “accelerated the predisposition to appoplexy [sic].”’<sup>103</sup>

After the testimony was completed, Bunn summed up the evidence for the jury, but first he censured the men for not helping the victim. Bunn’s summary indicated that there was no evidence of malicious design, therefore the charge was not murder: the jury could decide on manslaughter if the death was caused by the stick, but in that case they would have to ignore or reject Dr Paxton’s testimony. He then presented the jury with all their options and the scenarios that would lead to a decision of first or second degree manslaughter, a finding of not guilty, or one of guilty of causing death without intent. The verdict was Not Guilty. Bunn then addressed the defendant: ‘You are smiling. The jury have brought in a verdict of Not Guilty, but remember that does not fully acquit you. You have escaped the consequences so far as man is concerned but recollect that the all-seeing eye of God is upon you, and if you had any share in the death of the deceased, you will be punished – it may be here – it may be hereafter. Go! Never appear here again.’<sup>104</sup>

### **Sexual Assault**

Attempted rape was the other capital crime that resulted in jail time, and sentences ranged from three to six months in the three cases on record. There were just three cases of attempted rape in the twenty-five years on record, and none at all for rape. In 1847, soldier John Hogan was charged with assault with intent to rape Margaret Cramer, daughter of Charles Cramer. On the advice of her father, Margaret first went to the

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<sup>103</sup> *Public Interest vs Mary Park*, 20 December 1860, GQC 2:167–70

<sup>104</sup> *Nor’-Wester*, 01 February 1861, 3



officers at the garrison with her story. When she received no action in response to her charge, Margaret went to the magistrate to initiate court proceedings. In court, Margaret testified on her own behalf, and endured cross-examination from Lieutenant Mosse, acting for the defence. Her friend, Clarissa Sabiston, and her father, Charles Cramer, also testified as to the state of both victim and accused on the afternoon of the alleged incident. Private Hogan presented four witnesses in his defence: all of them were soldiers who were unable to testify to the events of the day in question. Instead, all tried to discredit the victim by suggesting that she had a loose reputation and poor character, and had been 'rather pleased than otherwise' with the advances of other soldiers in the past. The jury does not seem to have considered this evidence as relevant, and Hogan was found guilty and sentenced to six months in jail, the heaviest sentence given for attempted rape.<sup>105</sup>

In 1854, Joseph Lewes received a three-month sentence for the attempted rape of Mary Corrigan, a 22-year-old English-speaking Metis woman. The jury recommended mercy for Lewes, perhaps because the only witness to testify on his behalf declared that he 'had known the Prisoner since he was a child and considered him deficient in intellect and a silly idiotic boy.'<sup>106</sup> The only other recorded case of attempted rape occurred in 1863, when Jacob Bunn was sentenced to one month in jail (in addition to the three months he had already served while awaiting trial) for assaulting a young girl of about nine years old.<sup>107</sup>

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<sup>105</sup> *Public Interest vs John Hogan*, 19 August 1847, GQC 1:75–80

<sup>106</sup> *Public Interest vs Joseph Lewes*, 16 November 1854, GQC 2:76–77

<sup>107</sup> *Queen vs Jacob Bunn*, 19 May 1863, GQC 3:21–22. There is no evidence, other than his surname, that the defendant was related to John Bunn.

There were no prosecutions for any kind of sexual assault during John Bunn's tenure.

### **Assault**

Of the seventeen cases of assault prosecuted before 1865, four were prosecuted in the public interest. Of the thirteen plaintiffs in the other cases, some biographical information can be traced: plaintiffs were about equally French and English, and most were Metis men over 30, though one was Aboriginal. The defendants included three Aboriginal men (in one case) and five were soldiers from the Royal Pensioners, one was the wife of a Pensioner; otherwise, the defendants tended to come from the same community as the plaintiff. Defendants ranged fairly evenly in age, generally matching that of the plaintiff. As might be expected, most cases for assault involved men; there was, however, one case in which both plaintiff and defendant were women, though it was ultimately dismissed for lack of evidence,<sup>108</sup> and three cases involved a husband suing for an assault on his wife.<sup>109</sup> Two cases resulted in not guilty verdicts, but most of the rest resulted in fines of £10 plus court costs. Two cases resulted in imprisonment.

In the first, *Regina vs William Saunders*, Saunders was found guilty of a 'violent assault on an old man,' and sentenced to three months in jail. The record offers no explicit explanation for the jail sentence; however, the decision was likely influenced by

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<sup>108</sup> *Mrs Doherty vs Mrs Anderson*, 16 August 1849, GQC 1:163. The women were wives of Royal Pensioners James Doherty and George Anderson, who were also in court that day for assault (George Anderson was found guilty and fined 10 shillings plus costs). *James Doherty vs George Anderson*, 16 August 1849, GQC 1:160–163.

<sup>109</sup> *John Stevenson vs William Saunders*, 17 February 1848, GQC 1:95–98; *John Forbister vs John Hodgson*, 18 November 1852, GQC 2:28–30; *Louis Ploofe vs Robert Sandison Jr*, 18 November 1852, GQC 2:30–31.

the violent nature of the crime, and the fact that it was his 80-year-old father he had ‘severely hurt.’<sup>110</sup> The jury may have also taken into account the fact that Saunders had been in court for another assault a year earlier. In that case, John Stevenson, an Aboriginal man about 30 years old charged Saunders, a 42-year-old, English-speaking Metis man, with assaulting his wife. Two women testified that they had seen Saunders hit Mrs Stevenson, and Saunders admitted to the assault, explaining that he’d been drunk. Damages of £4 were awarded to the Stevensons.<sup>111</sup>

The only other case in which jail time resulted occurred six years later, in 1855, when Kanecat, Waywaypus, and Shokin, were charged with two counts of assault stemming from the same incident. In the first case, soldier Thomas McDonald and his wife testified to a lurid scene of the three men battering his door and brandishing sticks. They apparently ‘took hold of the beer keg and shook it,’ struck the husband momentarily unconscious, and groped his wife. Shokin, one of the defendants, was the sole witness for the defence. Via an interpreter, he testified that they had gone to McDonald’s house to buy beer. According to his testimony, Mrs McDonald had admitted them into the house, but then McDonald had tried to turn them out. McDonald had struck him twice before Shokin returned a punch.<sup>112</sup> The second count, for an assault on Thomas Oakes (a private with the Royal Pensioners), featured events that happened immediately after the first. After her husband had been injured, Mrs McDonald had run to Thomas Oakes’ house for help, but the defendants followed her there and she saw them strike Oakes while he was

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<sup>110</sup> *Regina vs William Saunders*, 15 February 1849, GQC 1:134–35

<sup>111</sup> *John Stevenson vs William Saunders*, 17 February 1848, GQC 1: 95–97

<sup>112</sup> *Public Interest vs Kanecat, Waywaypus, and Shokin*, 15 February 1855, GQC 2:81–83

putting on his shoes. The two other witnesses had not been at the scene, but one testified that Oakes came to him for help because ‘the Indians were killing his children,’ though of course the defendants had left (without harming the children) by the time the two men returned to the house. John Gahagan testified that Oakes had also come to his house after the assault, ‘saying he was half-murdered.’<sup>113</sup> Despite the embellished testimony, the jury favoured the testimony of the British accusers over that of the Aboriginal accused, though their sentences were less severe than the two months given to William Saunders: the three men were each sentenced to fifteen days in jail for each count of assault.

Just one assault case came before the GQC between 1858 and 1861 while John Bunn was recorder. In September 1859, John Bourke<sup>114</sup> was charged with assaulting John Turner, 15, and his mother, Ann, the wife of a Royal Pensioner. According to Ann Turner, she and her son had been milking their cows on an evening in late July, when her 6-year-old son jumped over a fence and the defendant struck him: ‘I called to him not to strike the child, when he said he would whip the whole of us, I was sitting down milking, Defendant came over the fence and struck the boy, and struck me, and then challenged my husband to fight but I prevented him, I never heard of any complaints about my children.’ John Turner testified that ‘one of the little boys threw a piece of mud \_ when the Defendant came to me with a whip’ and struck him while he was milking and struck his mother too. George Turner, a 51-year-old private with the Royal Pensioners, testified

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<sup>113</sup> *Public Interest vs Kanecat, Waywaypus, and Shokin*, 15 February 1855, GQC 2:83–84

<sup>114</sup> The defendant, John Bourke, might be the 64-year-old, well-to-do storekeeper who arrived in Red River from Ireland in 1812, but more likely it is his Metis son (since Bourke Sr is usually referred to as ‘John P. Bourke’). At the time of his trial, John Bourke (Jr) is 37 years old and married to Elizabeth Fidler, granddaughter of Peter Fidler and cousin to two of the witnesses for the defence, Cornelius Fidler and Henry Else.

that he had not seen the defendant strike his wife or son, but met his wife as 'she was running away from John Bourk ... Defendant came over to my house and challenged me to fight.' The only non-family member to testify with the Turners was James Rickards, another Pensioner. He had heard the defendant challenge Turner to fight, and testified that the 'Defendant had complained that the children had been slinging stones.'

The first witness to testify in Bourke's defence was Bourke's neighbour and brother-in-law. Charles Stotgale testified that he knew 'nothing of the late quarrel but at Mrs Bourk's on the tenth of last September, Mrs Turner said if ever the Defendant spoke to her she would spit in his face and told her boy "to do so too." I have heard several neighbours complain of them.' Henry Else, also a neighbour and a cousin through marriage, stated that last March he had heard Turner and his wife 'threatening revenge on John Bourke before six months.' He also stated that Turner's children 'are bad children and very abusive to people generally and throwing stones at us while we are scooping for fish and on one occasion fired a gun at us.' Cornelius Fidler, Else's brother-in-law and Bourke's cousin through marriage, testified that he 'was at William Hallett's [another neighbour and relative] one evening and a Turner child threw a rock and injured one of Hallett's cows \_ it is a practice of theirs to throw stones.' Ambrose Jourben [Jobin], who had come from Lower Canada and worked for the HBC as a middleman from 1839 to 1852 but was now, at 42, 'in Defendant's service,' testified that he had seen the Turner children throw mud at Bourke and that 'these children sling stones across the river at my wife.' At this point, Sgt Rickards was 'recalled and warned that his former oath was still

binding.’ He testified that ‘his little girl was once hurt by one of the children of Turner’s who had thrown a stone at it.’<sup>115</sup>

Despite the apparent provocation, no witness for the defence testified that Bourke *had not* hit George Turner’s wife and son, and the jury returned a guilty verdict. The sentence ‘to be fined,’ however, was deferred. There is no record of the case coming up again to set the amount of the fine or see it paid, and it likely never was. Whereas Turner was a Pensioner who had been in Red River for about ten years and had been in court twice before for assault and debt, Bourke was in trouble for the first and only time and was related through his father and his marriage to Elizabeth Fidler to three notable, long-time families of Red River. Deferring the sentence was perhaps a way for the court to avoid penalizing one of their own for actions that could be seen as justified due to provocation. Though both Turner and Bourke had appeared in court before, this trial is the only time their paths crossed before it. At some point, the rowing must have ceased, as neither party returned to court for any similar kind of case, and they all continued to live as neighbours in St James after the formation of the Province of Manitoba.<sup>116</sup>

By the time Bunn took the chair as Recorder in 1858, incidences of assault had decreased dramatically. Whereas Thom had presided over seven, and Caldwell (et al.) over five, Johnson, like Bunn, had seen only one case for assault during his four years on the Bench. *Queen vs John Bourke*, seems at first a more serious case of ‘assault and battery.’ The testimony, however, suggests more of an ongoing feud between neighbours in St James, and also reveals the tensions between Red River families and the Pensioners

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<sup>115</sup> *Queen vs John Bourke*, 15 September 1859, GQC, 2:136–38; Sprague, *Genealogy*, Tables 1–4

<sup>116</sup> Sprague, *Genealogy*, Table 5

who had been sent to Red River to maintain peace in and around the settlement after the regular British troops left in 1848. The force of Royal Pensioners consisted of 56 men, 42 women, and 57 children who lived in the Fort or were allotted land within two miles of the fort.<sup>117</sup> According to Alexander Ross, the Pensioners ‘squatted down as settlers and scattered about,’ and Gerald Friesen reports that the Pensioners ‘were neither awesome nor affluent.’<sup>118</sup> Governor Eden Colvile wrote that ‘we have more trouble with the pensioners than all the rest of the Settlement put together.’<sup>119</sup> Under the local charter enacted in 1851, the Pensioners, ‘to whom has been committed the protection of the Settlement, are partly soldiers and partly citizens. How far they are citizens, and how far they are soldiers, we do not presume to decide; but clearly, so far as they are soldiers at all, they live under a law of their own, with which our local legislature has nothing to do.’<sup>120</sup> However, given the number of court appearances the Pensioners make, it seems clear that council was willing to apply Red River law to them if their actions infringed on local society.

In an early case featuring an assault on a local man by a soldier from the Royal Pensioners, Antoine Ploofe took William Smith to court for ‘assault and use of canoe without permission.’ Smith had apparently tried to take the canoe after Ploofe had refused him permission. In the ensuing altercation, the two men fought with canoe paddles. Smith

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<sup>117</sup> W.L. Morton, ‘Introduction,’ *London Correspondence Inward from Eden Colvile, 1849–1852*, ed. E.E. Rich (London: Hudson’s Bay Record Society 1956): lxxv

<sup>118</sup> Ross, *Red River Settlement*, 379; Gerald Friesen, *The Canadian Prairies* (Toronto: University of Toronto Press 1984): 100–1

<sup>119</sup> Eden Colvile, quoted in Ross, *Red River Settlement*, 366

<sup>120</sup> Oliver, *Canadian North-West*, 1:371

was found guilty and fined £5 plus costs.<sup>121</sup> This case and others involving Pensioners suggest that they also may have caused more trouble than they prevented: soldiers were convicted of a sexual assault in 1847 and five assaults in 1849 and one in 1859. They also seem to have taken enthusiastically to the liquor trade: they testified in a number of other cases in which drink was a factor,<sup>122</sup> and Pensioners, and occasionally their wives, were involved in at least nine cases of illegal sale of liquor between 1849 and 1864. The liquor trade was prosecuted with some vigour in Red River, especially in the first decade of the GQC, and Pensioners were not only prosecuted for the illegal sale of spirits, they became subject to a law prohibiting the sale of liquor to soldiers.

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<sup>121</sup> *Antoine Ploofe vs William Smith*, 17 May 1849, GQC 1:148–49

<sup>122</sup> See, for example, the above cases against Kanecat, Waywaypus, and Shokin for assault and against Mary Parks for manslaughter.



### **Chapter 3:**

#### **Public Interests**

The General Quarterly Court in Red River heard two kinds of cases: the criminal cases prosecuted in the 'Public Interest' and civil cases between two private parties. Cases taken up in the public interest reveal community concerns most important to the government, and depended on local sheriffs, magistrates, and offended citizens to bring the crimes to the attention of authorities. Other than the violent crimes discussed in the previous chapter, crimes pursued in the public interest were the illegal sale of liquor and theft.

#### **Liquor**

Arguably nothing preoccupied Red River's council so much as the production and consumption of liquor – beer, wine, and spirits. Council minutes are full of resolutions, usually passed, and public petitions, usually deferred or dismissed, that sought to regulate who could manufacture, sell, and purchase alcohol and to foster opportunities to create and protect a local industry. In June 1836, one of the earliest measures adopted by council was the prohibition of the sale of beer to Indians, because the 'public tranquillity of the Settlement is greatly endangered, by the sale and traffic of beer to Indians.'<sup>123</sup> The

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<sup>123</sup> E.H. Oliver, *The Canadian North-West: Its Early Development and Legislative Records*, vol. 1, Publications of the Canadian Archives, no. 9 (Ottawa: Government Printing Bureau 1914): 277

1837 minutes reveal that there was still concern, as there would be, at least officially, up through the 1860s, 'relative to the still general practice,' and council ruled that 'informers' would receive up to half the fine levied upon conviction. In 1839, fines for the illegal trafficking of liquor to Red River's Aboriginal population increased fivefold from 20 shillings to £5,<sup>124</sup> and the following year brought more, similar but more explicit, legislation regarding the prosecution of violations, as well as a more expansive definition of 'Indian' to include 'anyone generally recognized as such.' In 1840, all previous regulations were repealed to explicitly forbid 'the sale or distribution in any way of beer or any other intoxicating liquor,' except by ordained clergy or licensed physician or HBC representatives, to Indians (or anyone so recognized), as well as (between June and September) anyone who had previously been convicted of violating the liquor law, though the latter never seems to have been prosecuted. (The seasonal legislation is interesting: these summer months were the busiest for Red River citizens and their employers, and it seems logical that the government would try to curtail anything, like liquor, that would make the labour force less productive; it also perhaps recognized that liquor could help one get through the long, cold Manitoba winter.) Fines increased from the first offence, to the second, to three or more, with the prospect of imprisonment until the fine was paid, and violators were disqualified from holding public office and faced the revocation of their liquor license for one, two, and three years, respectively. A conviction would also result in the guilty party having to pay restitution to the 'victim' for the value of the liquor sold or traded.<sup>125</sup>

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<sup>124</sup> Ibid., 291

<sup>125</sup> Ibid., 294

Five years later, in 1845, council unanimously approved ten new regulations proposed by Recorder Adam Thom regarding ‘The Intoxicating of Indians’<sup>126</sup> that were much more heavy-handed and directed more at regulating the Aboriginal population than those who would sell alcohol to them. If caught ‘in liquor’ and threatening unprovoked violence, a person would need two sureties for good behaviour or face imprisonment for one month or until he prosecuted the one who sold or gave the liquor to him. Although none was ever charged, the law now made any Indian ‘as guilty as anyone’ for furnishing alcohol (or the equipment to make it), and it would be at the court’s discretion to substitute imprisonment for fines. From 1839’s expanded definition of who would be considered an Indian, Thom goes a step farther: ‘any reputed Indian or any member of an Indian nation, shall be held to be a real Indian to the utter exclusion of any evidence of parentage or descent.’<sup>127</sup> For offenders, too, the prosecutorial net was widened to include simple possession ‘in the society or tent or camp of any Indian within the limits of the Settlement’ as equivalent to furnishing alcohol to Indians, though this resolution was explicitly deemed not to ‘affect any householder for possessing, as before, in the society of the Indian members of his own family.’ This exception was undoubtedly for the benefit of the majority of councillors and Red River citizens who were Metis and had ties to their Aboriginal families. The resolution was also deemed to have effect outside the settlement, unless the offender swore an oath that the liquor was for personal

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<sup>126</sup> Ibid., 321–23.

<sup>127</sup> See *Public Interest vs Louis Pruden*, 20 November 1862, GQC 2:237–39, where the discussion of identity does not cast the wide net this law made possible, but rather exempts an Aboriginal man because his dress and lifestyle made him appear Metis. This case is discussed in more detail later in this chapter (Liquor).

consumption only.<sup>128</sup> In 1847, the laws were amended to also prohibit the sale of liquor to soldiers and the sale of liquor on a Sunday.

With these laws, we see the Aboriginal population become less a victim in need of protection and more a co-conspirator in need of punishment for his or her part in the crime. We also see a more definitive social categorization of who is an 'Indian' based on lifestyle, and perhaps class, rather than ethnicity. Place becomes as important as anything in defining who is subject to social regulation – anyone residing in or visiting a tent or camp (inside or outside the settlement) was subject to regulation, but a 'householder' (like any of the council members) was, for the most part, exempt. The 1847 amendment to include soldiers reflects council's attempt to deal with a new element of the settlement's population that, as will be seen, generated more trouble than it helped to solve. The ban on the sale of liquor on a Sunday could have been a concession to the clergy on council and their more vocal parishioners who frequently pestered council with, usually unanswered, petitions about drunken neighbours and makeshift drinking establishments.

It should be noted that the 1845 laws came into being at Governor George Simpson's last meeting with the Council of Assiniboia and, for some councillors, may have been an attempt to prove they could carry out HBC directives without his presence. They also put Adam Thom's stamp on the law of Red River. However, while liquor continued to be an issue that council saw fit for regulation, their attention hereafter turned far more to the licensing of local manufacturers and vendors and the imposition of duties

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<sup>128</sup> This circumstance came up in court only once, in *Public Interest vs James McDermot*, 28 May 1846, GQC 1:56–58. McDermot was found guilty and fined £12; his father, Andrew, was fined £8 for supplying the liquor that was consumed on the trip.

on imported liquors, as well as dealing (or not) with petitions from the clergy and the community. Council was determined to regulate the liquor industry, encouraging native production, setting prices and duties, and agreeing to advertise for tenders from groups of three to six people for erecting a local distillery not under the authority of the HBC (1843).<sup>129</sup> Though a later motion in 1848 resolved that only the HBC and military canteen could sell spirits, this was amended in December of that year to revert to the 1847 laws that allowed council to issue licences, and in June 1858 Bunn moved to repeal the resolution granting the HBC exclusive authority to distil or possess spirits as 'no longer expedient or suited to the wants and circumstances of our area.'<sup>130</sup> The motion does not seem to have actually passed, and, like numerous motions that followed, it was deferred until finally, in March 1861, council agreed only that sellers must be licensed and cannot also be distillers. To other petitions from settlers lobbying for more prohibitive liquor laws, council replied that the existing laws were adequate and any abuses should be dealt with in court.

While the laws passed by council are important, far more so is how they actually carried them out. The records of the GQC show a clear trend, with prosecutions for liquor offences dropping off significantly after Adam Thom leaves. During his tenure, Thom prosecuted twenty-one cases between November 1844 and May 1849, fifteen of which were for selling liquor to Indians, six for selling to soldiers. Only 1848 saw no one

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<sup>129</sup> Council granted such a petition (in French) from Michel Genton dit Dauphiné, Maximillion Genton, and Francois Bruneau. Prices were set at not more than 6 shillings/gallon, including a duty of 1 shilling/gallon; sales were to be in ready money only and purchases distributed as fairly as possible among producers who were neither partners nor servants. Oliver, *Canadian North-West*, 1:307–9.

<sup>130</sup> Oliver, *Canadian North-West*, 1:431

prosecuted for the illegal sale of liquor. In the twenty years following Thom's departure from the court, there were only eighteen prosecutions in total, and eight years passed without any at all. One might conclude that the laws were working, however the petitions to council and testimony from other kinds of cases reveal that the trade in liquor was still very much a fact of life in Red River. The relatively few liquor prosecutions after Thom's excess instead suggest a court whose leaders were more in tune with the bulk of local society than the hierarchical hypocrisy of the HBC or the abstemious clergy.<sup>131</sup> After Thom, the court also seemed less interested in prosecuting people for selling liquor to Aboriginal people, though the laws prohibiting it remained in place. During John Bunn's tenure, just three liquor cases came before the court: one was against a Royal Pensioner for selling to Indians, one was against another Pensioner for selling on a Sunday, and one was against a newly arrived merchant for selling without a license.

In June 1859, Royal Pensioner Joseph Gasden was found guilty of 'Selling Beer to Indians' and fined £10. No Aboriginal testimony is on record. Jackson Smith, a 32-year-old Metis, testified that he 'saw Mr Gasden sell beer to four Indians ... and saw the Indians pay money.' Two witnesses testified for Gasden, one saying that though he 'cannot swear that Gasden did not sell beer to Indians,' he had 'been frequently at the house and never saw any Indians'; the other witness testified that 'I have often heard both Mr and Mrs Gasden tell the soldiers never to give any beer to the Indians.'<sup>132</sup> This is the

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<sup>131</sup> In 1861, council issued an 'address for the Public,' in which they announced that it was impossible to abolish the consumption of liquor, and that their focus was rather to impose higher duties and regulate imports to discourage 'adulterated' liquor from the United States and protect 'native spirits' to prevent 'injurious use' and promote 'public health.' Oliver, *Canadian North-West*, 1:477

<sup>132</sup> *Governor and Council vs Joseph Gasden*, 16 June 1859, GQC 3:130–31

second (and last) time that Gasden was charged with the illegal sale of liquor. In February 1854, three Aboriginal men (Eskee puc e goos, Kak se pas, and Assiniboine), all ‘sworn according to the custom of Indians and interrogated,’ testified that they had gone to Gasden’s house ‘sometime after new year’s day and bought beer from him.’ No other testimony was recorded, and Gasden was found guilty ‘in three cases’ and fined £10 plus £1,12,8 in restitution (this amount was based on the men’s testimony as to what they had paid).<sup>133</sup>

September 1859 found another Pensioner, James Mulligan,<sup>134</sup> in court for ‘selling spirits on a Sunday.’ Earlier, in May, Mulligan had petitioned council to have his liquor license re-instated:

[H]aving obtained privileges by Licence to keep and retail Spiritous Liquors, he purchased a large quantity of Spirits, to the amount of 200 galls. But, unfortunately, being suddenly deprived of his Licence, the whole of this large stock remains unsold, to the great injury of his very large and helpless family. Petitioner ... humbly trusts that they will mercifully consider his case, when he pledges himself to be more guarded in future, and faithfully comply, in every particular, with the laws of the council.

The council replied that ‘Mr Smith [the clerk] inform the Petitioner that this council will not interfere.’<sup>135</sup> Though council refused to reinstate his license, it seems

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<sup>133</sup> *Public Interest vs Joseph Gasden*, 16 February 1854, GQC, 2:65

<sup>134</sup> As will be seen, Pensioner James Mulligan stands out for his appearance in court numerous times between 1858 and 1860 for liquor charges and property disputes. On Mulligan’s history in the court, see this thesis, chapter 4 (Property).

Mulligan tried to sell his surfeit of liquor anyway. From the charge and the testimony, he was doubly negligent: he was charged with selling spirits on a Sunday, and the testimony reveals he was selling it to Aboriginals. Philip Stevenson, a 23-year-old Metis, and Andre Harkness, 69-year-old Metis married to a Sarah Stevenson, testified that they had seen the defendant 'sell whiskey to an Indian.' Stevenson testified that he'd seen him do it on the first of September. Harkness testified, too, that 'this Indian lived with me and he would go and pawn to Defendant his mittens, Belt and I warned Defendant not to do so as he was an Indian. This was 10 mos ago.' The verdict, not surprisingly given that council had previously revoked his license, was 'Guilty and recommended to mercy,' and he was fined £5 for spirits and £5 for beer.<sup>136</sup> Despite the jury's recommendation for mercy, there is no evidence of such in the fine given – these are the usual fines.

The only other liquor case that Bunn prosecuted was in December 1860, against Henry McKenny for selling spirits without a license. McKenny was a merchant and hotel owner, a relative newcomer to Red River who would soon be named sheriff. The complainant, Clinton Geddings, testified that he lived at McKenny's both before and after Christmas and that McKenny had sold him spirits 'by the pint and halfpint for money. I knew that he had no Licence.' Geddings claimed that he 'did not wish to bring this case on, but thought it was only right to bring the case before the authorities. It is true the Defendant arrested me for a Debt.<sup>137</sup> I can swear that at 12 separate times he sold spirits to me.' For his defence, McKenny had the testimony of prominent Scot and fellow

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<sup>135</sup> Oliver, *Canadian North-West*, 1:448

<sup>136</sup> *Public Interest vs James Mulligan*, 15 September 1859, GQC 2:139

<sup>137</sup> See *Henry McKenny vs Clinton Geddings and G. Moar*, 15 March 1860, GQC 2:151, in which the verdict was for the plaintiff by default (debt of £17,15,4).



merchant A.G.B. Bannatyne that, ‘In a conversation with the above witness he heard him say that if McKenny took to court for his debt He could or would bring this action against him [emphasis in original].’ Bannatyne’s testimony was confirmed by a Mr Garrett, who stated that, ‘I have known the first witness for about the last 18 months and ... I should be doubtful of his oath.’ Clearly accepting the frivolous or vengeful nature of the complaint, the jury returned a verdict of not guilty.<sup>138</sup> Given that the testimony suggests the sales took place nearly a year earlier (around Christmas and before McKenny’s March suit against Geddings), this case may have been the instigation for a March 1861 council ruling: ‘That in all prosecutions for the Recovery of Penalties for any breach of the Laws for regulating the Sale of Intoxicating liquors, no action shall lie unless information shall have been given within six months after the commission of the offence.’<sup>139</sup>

While the Council of Assiniboia was busily passing laws to control the sale and consumption of liquor in Red River, it seems clear from the relatively few prosecutions that, by the 1850s, the court and most of the community were not much interested. During Bunn’s tenure, only newcomers were prosecuted for liquor offences, and only those who had previously proven disruptive were found guilty. Rather than prosecuting offences to the fullest extent the law allowed, court officials seem more interested in using the law where necessary to preserve relative peace and tranquillity in the settlement. Another facet of the court’s desire to maintain order can be seen in the cases

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<sup>138</sup> *Public Interest vs Henry McKenny*, 21 December 1860, GQC 2: 173–174

<sup>139</sup> Oliver, *Canadian North-West*, 1:471

for theft that were prosecuted during Bunn's tenure, most of which were also carried out in the 'Public Interest,' and in which liquor also featured predominantly.

### **Theft**

Theft was the only non-violent crime prosecuted in Red River that consistently resulted in a prison sentence. Between 1844 and 1864, the courts prosecuted twenty-nine cases of theft. Defendants tended to be young Metis men, under 35 years of age, often tempted, it seems, by relatively easy access to the freight they were carrying back to Red River. The penalty for theft was usually a prison sentence of between one and three months.

Aboriginal men were prosecuted for theft more than for any other crime,<sup>140</sup> though three of the seven cases in which Aboriginals were charged with theft resulted in a not guilty verdict. Most Aboriginal men who were convicted received sentences that were comparable to sentences given to non-Aboriginal defendants (one to two months in jail), but one case resulted in the relatively severe punishment of six months' imprisonment followed by banishment from the settlement for two years.<sup>141</sup> The court prosecuted six women for theft between 1844 and 1864, and it does not appear to have treated female defendants with any exceptional leniency or severity; their sentences were comparable to those given to the men convicted of theft.

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<sup>140</sup> Seven Aboriginals were prosecuted for theft between 1844 and 1864, six of them before 1854; three were found not guilty. In other charges against Aboriginal people, three men were prosecuted in one case of assault and battery; three men were charged with murder and one woman in a case of infanticide; two for killing livestock; and two in one case of property damage – all were found guilty.

<sup>141</sup> *Public Interest vs Mutche Keesic & Ogema peen ase*, 17 November 1853, GQC 2:57–58

The years during which Adam Thom and Francis Johnson were Recorders were relatively quiet, with only seven cases of theft coming before the courts in their combined ten years; in between, however, and during Bunn's tenure, cases for theft spiked to nineteen in about eight years. Most often, thefts were crimes of opportunity: supplies skimmed from the freight being brought in from York Factory or lifted from the shops in the settlement (both the Company store and those owned by local merchants).<sup>142</sup> More rarely, small personal items were stolen from someone's home (cloth and ribbon, clothing, a mirror).<sup>143</sup> Between 1858 and 1861, most of the cases that Bunn oversaw involved goods taken and consumed en route between York Factory and Red River; five of those cases involved the theft of liquor.

In August 1859, the court held a special sitting (though it was not recorded as such) to hear two cases against Pierre LaDeux, a 51-year-old Metis from Red River. LaDeux was charged with theft of tea and rum from the boats journeying back to Red River from York Factory. (The court may have convened a month early to ensure the defendant's presence: the previous spring, LaDeux had failed to appear in court to face a charge for debt, likely because he was out of the settlement. These were the only times he appeared at the GQC.) Fellow boatsman and neighbour Charles Patneaud, in his only court appearance, was also charged with the theft of rum. Patneaud was 21 years old, born in Red River, and, like LaDeux, the son of a French Canadian father and Ojibwa

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<sup>142</sup> See, for example, *Regina vs Magdeleine Parenteau*, 21 November 1850, GQC 1:228–30; *Public Interest vs Mutche Keesic and Ogema peen ase*, 17 November 1853, GQC 2:57–58.

<sup>143</sup> *Public Interest vs Catherine Parisien*, 19 August 1847, GQC 1:83; *Public Interest vs Kanistre*, 17 November 1853, GQC 2:52; *Queen vs Baptiste Huppee*, 20 December 1860, GQC 2:170

mother. As far as can be known, all witnesses as well as the defendants were Metis, both French and English, between the ages of 20 and 50, and with only a couple of exceptions, this was their first and only time in court.

In the first case, for theft of tea, Francois Demares [Demarais] testified that he had seen Pierre LaDeux rip the cover off a tea chest and take some out with a spoon, using a frying pan under the chest to catch the tea ('at the Holey Lake and Eéche máhmées River and Lake Winnipic'). HBC clerk Magnus Linklater confirmed that he had examined the cargo when the boats arrived and noted holes in the tea chest, which was thirteen pounds lighter than the other chest in the boat. Robert Hourie stated that he never knew when the 'Prisoner took the tea, but got a little from him.' John McKay knew nothing about tea being taken but 'saw tea on the portages scattered about.' The defendant's son, Pierre, provided an alternative but apparently unconvincing explanation for the missing tea: they had 'received this chest at York Factory in a broken state and at the old Fort my Father mended it ... no one could have taken any tea out and I have not seen him in these instances alluded to. I was the steersman.' Louison LaDeux corroborated his testimony, but to no avail. The court found Pierre LaDeux Sr guilty and sentenced him to two months in jail – the average sentence for theft.<sup>144</sup>

Many of the same witnesses testified in the related case for the theft of rum, against Pierre LaDeux again and Charles Patneaud: Francois Demarais testified that he had seen Patneaud pierce the cask and take 'a quart of rum and LaDoux encouraged him in the act'; Thomas Sandison, that he had seen Patneaud with a pot of rum but did not see him take it from the cask; Humphrey Favel, that he had seen Patneaud bore the cask;

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<sup>144</sup> *Queen vs Pierre LaDeux*, 12 August 1859, 2: 132–33

Robert Hourie, that he had seen Patneaud with a pot of rum and ‘told him I would have nothing to do with it.’ John McKay had apparently seen both Patneaud and LaDoux with ‘a pannakin with rum in it.’ Pierre Jr, called upon again in a trial against his father, testified that he ‘was in Robert Hourie’s boat, and when I came back the rum was in the hands of Patneaud and Demarais and as to who took it out or who drank it I cannot swear.’<sup>145</sup> The jury found the defendants guilty, with ‘Old LaDoux more guilty than Patneaud.’ The older LaDoux was deemed the more responsible and sentenced to another two months in jail (there is no indication whether that was to be served concurrent with his previous sentence), while Charles Patneaud was sentenced to one month.<sup>146</sup>

In December 1859, the court heard seven cases, four of them for theft (the others for debt and damages). According to the *Nor’-Wester*, ‘the building was crowded throughout the day, and the liveliest interest appeared to be taken in the proceedings ... Mr James Ross acted as French and Mr James McKay as Indian interpretor [sic].’<sup>147</sup> The first case, *Queen vs Catherine and Mary Daniel*, was ‘for stealing out of the drawer of the shop at Fort Garry.’ The defendants were thirteen and fifteen years old, respectively,<sup>148</sup>

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<sup>145</sup> Oliver, *Canadian North-West*, 1:134–35

<sup>146</sup> *Queen vs C. Patneaud and Pierre LaDeux*, 12 August 1859, GQC 2:134–35

<sup>147</sup> *Nor’-Wester*, 28 December 1859, 4. This is the first issue of the settlement’s first newspaper. It is extremely valuable to have the newspaper coverage available, since it provides details not put down in the court records, allowing one to piece together a fuller version of events, and giving a better sense of the community’s interest in the court proceedings.

<sup>148</sup> D.N. Sprague and R.P. Frye, eds., *The Genealogy of the First Metis Nation: The Development and Dispersal of the Red River Settlement, 1820–1900* (Winnipeg: Pemmican Publications 1983): Table 4, shows the 26-year-old Mary still living with her family at her father’s home in 1870. By this time, Catherine was married to Charles Howard and they had a two-year-old daughter (1870 census, #280).

from an old Metis family,<sup>149</sup> and the girls ‘pleaded Not Guilty for having received the property knowing it to be stolen.’ The only witness was their younger sister, Margaret Daniel, who testified that she had seen ‘Catherine get in at the window and take money out of the drawer.’ Catherine gave her £1, and when the store opened, they went in and spent it. She also testified that Mary was not with them and did not see Catherine get the money, though Catherine had given some to Mary afterwards, saying ‘she had found the money.’ The verdict was that Catherine Daniel was guilty, but Mary was not. Catherine was sentenced to two weeks in jail.<sup>150</sup>

The newspaper account of the trial, ‘The Robbery at the Stone Fort,’ fills in a few details missing from the court record, including that Catherine took £5 or £6, and also that the prisoners did not reply when asked if they had anything to say in their defence. It also provides clear evidence that John Bunn is in charge of the court proceedings at this time, as it recorded his address to the prisoners: ‘Catherine Daniel, after a fair and impartial trial, the jury have found you guilty of felony. The offence you have committed is one of a very serious nature and in any other country you would in all probability have been condemned to seven or perhaps fourteen years’ confinement.’ The court acknowledged her youth and hoped she would never do it again, so they were inclined to be lenient. Apparently, Catherine had already spent three weeks in jail awaiting trial, and though the court thought the sentence should be three months, the Governor thought two more weeks would be sufficient. Bunn also addressed Mary: ‘You, Mary Daniel, are

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<sup>149</sup> Their father, Griffith, was born in 1795. Sprague’s *Genealogy* does not specify his ‘race’ or birthplace, but does list a number of other Daniels as being Metis, dating back to John (b. 1776) and Jane (1778) Daniel (Table 1).

<sup>150</sup> *Queen vs Catherine and Mary Daniel*, 15 December 1859, GQC 2:140–41

discharged: But take care. You have had a narrow escape. There is a strong impression on the minds of everyone present that you have acted dishonestly. Avoid being brought up again; for if you come hither a second time, the evidence which has been given today will tell heavily against you.’<sup>151</sup>

Incredibly, the only person to testify was the girls’ younger sister, i.e. younger than thirteen, without any corroborating testimony from an HBC employee or any other witness who had been around the fort that day (and no indication of how the theft or those responsible for it were discovered). In 1863, the court would accept testimony from another young girl, nine-year-old Henrietta Salter, as well as her younger brother. Then, the girl was the alleged victim, and she and her brother were first ‘questioned as to the nature of an oath’ to determine their competency to give evidence.<sup>152</sup> There is no record of such prior questioning in the Daniels case. Perhaps Margaret Daniel was old enough in the eyes of the court to testify, and perhaps, although neither the court records nor the newspaper account say so, details of the theft were (by that time) common knowledge.

The next three cases were for the theft of brandy and rum from the boat cargo on the trip from York Factory to Red River. The first two cases took place on the same boat: in *Queen vs Robert Sutherland*, the verdict is guilty; in *Queen vs James and William Lewes*, the verdict was not guilty. The *Nor’-Wester* gleefully filled in the details. In the case against Robert Sutherland,<sup>153</sup> he pleaded not guilty before testimony from four

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<sup>151</sup> *Nor’-Wester*, 28 December 1859, 4. Mary Daniel does not appear in court again, though Catherine does (in May 1863 for larceny).

<sup>152</sup> *Queen vs Jacob Bunn*, 19 May 1863, GQC 3:21–22, for attempted rape.

<sup>153</sup> Sutherland was 35 years old, born in Red River to European parents and contracted to the HBC as a labourer from 1851 to 1854; he had been a juror in two cases against Pensioners for illegal sale of liquor back in February 1855; possibly related to

witnesses was heard (at least three, though likely all, were local Metis between 25 and 40 years of age). Andrew Lewes, 25, ‘saw Prisoner take a hatchet and an anvil, which he drove into the puncheon and [took] out some brandy a little below the 18 Mile Island.’ Despite being told not to do so by another man on the boat (to which the defendant had allegedly replied ‘he did not care a Damn’), Sutherland took another pint or so when they reached Poplar Point (partway between Norway House and Red River). Baptiste Courchain, 40, was on the same boat and ‘in Lake Winnipic near to Pointe aux Trembles [Poplar Point], saw him take out about a pint of brandy ... cannot say he was worse for the liquor he drank.’ Pierre George, 35, went to York Factory on the same boat as Andrew Lewes but never saw Sutherland take any liquor at any time. He also testified that he heard Sutherland tell Lewes not to take any rum. Pierre Pepin testified briefly that he never saw Sutherland take any rum. The verdict was guilty, and Sutherland was sentenced to two months in jail.<sup>154</sup>

Under the headline ‘Testing the Cargo,’ the *Nor’-Wester* gave an account of the trial, noting that the testimony of Pierre George and Pierre Pepin for the defence elicited a little bawdy humour: to support his testimony that he had never seen Sutherland take a drink at any time, George stated that he ‘never slept a wink’; Pepin supplemented his testimony with the statement that ‘Oh yes, we were never absent from each other,’ provoking laughter in the courtroom. According to the newspaper’s account, the jury

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Alexander, George, James, John, Roderick, and/or William Sutherland, all of whom had sat as jurors in the GQC at one time or another. These connections, however, do not seem to have helped him. Sprague, *Genealogy*, Tables 1 and 3; GQC records, passim.

<sup>154</sup> *Queen vs Robert Sutherland*, 15 December 1859, GCQ 2:141–42



‘without leaving the box found the prisoner guilty.’<sup>155</sup> Whereas the court records are basically bare-bones, the newspaper account suggests that the testimony in defence of Sutherland was simply not convincing.

The next case reveals the finger-pointing that had gone on when Sutherland was accused. In *Queen vs James and William Lewes*, Pierre George testified again, saying: ‘I know that these two men took Brandy, and that James pierced the cask with a nail and axe, and took about a pint and stopped up the hole with grease. William held the pot.’ Pierre Pepin did not testify in this case, but James Lewes, the defendants’ father, does: he claimed that ‘Pierre Pepin told me that the two witnesses were to swear false.’ Baptiste Courchain testified that he had not seen the young men drunk or with liquor but had heard talk of their having taken brandy.<sup>156</sup> In ‘Another Connoisseur of Rum,’ the *Nor’-Wester* related how John Bunn interrupted Pierre George’s testimony to ask, ‘James was always the tapper and William the receiver – is that it?’ – another bit of double entendre that again provoked laughter in the court. Following the witness testimony, Bunn announced, ‘It is very difficult to illicit [sic] the truth’ because the witnesses can say little without incriminating themselves: ‘I believe it was a “universal drink” from one end of the boat to the other.’ After the jury brought a verdict of not guilty, Bunn discharged the prisoners, saying that ‘although there was not sufficient legal evidence to convict, he was persuaded the Jury were morally convinced of their guilt,’ and he hoped they would appreciate their leniency and not do it again. He finished, to laughter, with: ‘Be off with

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<sup>155</sup> *Nor’-Wester*, 28 December 1859, 4

<sup>156</sup> *Queen vs James and William Lewes*, 15 December 1859, GCQ 2:142–43

yourselves! ... Go and sin no more.’<sup>157</sup> It is likely that the details of both cases were known beforehand, so the verdicts may have been influenced primarily by the prospect of false testimony, and if it was true that Sutherland had elicited it, he was likely more the guilty party than either of the Lewes. The two-month sentence Sutherland received is in line with the other cases of theft from the Company or the freighter cargo.

In yet another case that day for stealing rum and brandy, *Queen vs William Prince*, the defendant and all three witnesses were Aboriginal. The *Nor’-Wester* account does not add much to the court testimony, except to specify that the defendant, William Prince, was Chippewa, to describe John Knott’s testimony as laconic, and to confirm that Thomas Prince was the defendant’s cousin. In any event, after the defendant pleaded not guilty, the first witness, As ee may kee seek (Grey Eyes), 54, testified that when he helped the defendant haul the boat up, he smelled ‘strong of rum and he asked me to drink and I did drink it.’ John Knott, also 54, testified (‘laconically’) that he ‘saw the Prisoner drink and saw some rum in a pan ... [Knott] took the rum and threw it away into the River.’<sup>158</sup> The defendant’s young cousin, Thomas Prince, 15, testified that he had seen Grey Eyes drawing liquor, and ‘he gave me some and I drank it.’ William Prince, 29, was found guilty and sentenced to one month in jail.<sup>159</sup> Recognizing that the cousin’s testimony could be biased, it makes sense that the jury preferred that of the older, non-relatives, especially that of the self-righteous John Knott, who purportedly threw the liquor away. What is unclear is why the sentence was just one month, when just before

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<sup>157</sup> *Nor’-Wester*, 28 December 1859, 4

<sup>158</sup> *Ibid.*

<sup>159</sup> *Queen vs William Prince*, 15 December 1859, GCQ 2:143

that the jury had sentenced another to two months for the same crime; possibly because there was conflicting testimony over who first drew the liquor, but more likely because juries tended to take the defendant's age and degree of responsibility into account when recommending their sentence. This was, however, one case in which the court was more lenient towards an Aboriginal defendant than his non-Aboriginal counterparts.

Also, although all witnesses in the case were Aboriginal, there were none of the usual proceedings about swearing them in 'in the Indian custom.' Possibly this was in recognition of the lifestyle of the individuals: baptized and settled, and engaged in labour common among Metis in Red River.<sup>160</sup> A November 1862 case against Louis Pruden for selling liquor to Indians highlights the importance of appearance and lifestyle: testimony in that case focused on whether or not the 'victims' who had been sold liquor, including Grey Eyes, were 'Indian.' Andrew Mowat (34-year-old farmer and Metis son of independent freighter Edward Mowat) testified that 'These Indians were dressed according to their means, these were dressed in the halfbreed style trousers and shirt'; and Joseph Tait corroborated that 'I know Grey Eyes, I take him for a halfbreed, for the last ten years he has been employed at the [defendant's] in the capacity of a servant farming and working at the ordinary work of a halfbreed.' The jury decided that Pruden was not guilty in the case of Grey Eyes, but found him guilty for selling liquor to 'James, an Indian.'<sup>161</sup>

One year after the cases against Sutherland, Lewes, and Prince, in December 1860, the court heard yet another case for taking rum from a cask between York Factory

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<sup>160</sup> Two lived at the mission in St Peter, one lived in St Andrew, or at least they did in 1870 (Sprague, *Genealogy*, Table 4).

<sup>161</sup> *Public Interest vs Louis Pruden*, 20 November 1862, GQC 2:238–39

and Red River, and this time the Aboriginal witnesses were sworn ‘in the Indian custom.’ In *Public Interest vs Paul Boucher*, the 39-year-old French Metis, who had been a middleman with the HBC 1841–1848 (and possibly fisherman and steersman 1854–1859),<sup>162</sup> Boucher was charged with petty larceny. The case seems to have been decided by the testimony of Alexander Simpson, an HBC labourer between 1861 and 1864. Simpson testified to being on the boat in Lake Winnipeg when he witnessed Boucher take a dram of rum early in the morning and offer the pot to Collin; following a dispute over who should drink first, Boucher did, then Collin. ‘An Indian was wishing to take rum, and Prisoner was willing to give him but Collin would not let him. Collin struck the Indian ... saw and heard all this with my own eyes and ears, but saw them only this once but often saw the crew drunk.’ For the defence, two Aboriginal men, Ne gan ee cah poo and Sabourin, after being ‘sworn in the customary manner,’ testified that they had seen Collin, not Boucher, taking liquor and ‘giving it to the Indians.’ The verdict was guilty, though Boucher was sentenced to just two weeks in jail.<sup>163</sup> There was no charge against Joseph Collin.<sup>164</sup> Perhaps the jury accepted Simpson’s testimony that Boucher had taken the rum; they may also have considered the testimony against Collin as suspect, motivated by revenge for being struck by him.

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<sup>162</sup> Sprague, *Genealogy*, Table 3; the table indicates that it was Paul Boucher Sr that had been fisherman and steersman, but he would have been 74–80 years old during this time, so it seems likely that the table’s ID is mistaken and refers instead to Paul Boucher Jr.

<sup>163</sup> *Public Interest vs Paul Boucher*, 20 December 1860, GQC 2:166–67

<sup>164</sup> HBCA Biographical Sheets have a Joseph Collin employed as a steersman 1841–49, then retired, age 43 in 1860; Sprague, *Genealogy*, Table 1, has a younger Joseph Collin born in 1840.

Finally, the court heard a theft case that involved neither liquor nor the HBC; it did, however, involve that retired Pensioner, James Mulligan. In one of the few cases concerning the theft of personal property in these later years, Mulligan was the complainant in *Queen vs Baptiste Huppee*, for petty larceny. Mulligan claimed that three years earlier, in the fall of 1857, he ‘had the article in question (a small round looking glass) in my possession, but it disappeared from my dwelling, and I spoke to the Prisoner to try and find out who had got it, suspecting the Indians \_ but in conversation with Mr Bruneau, he told me he had seen the article with my name on it, and afterwards I heard that it was in the possession of Mr L. Thebeault.’ Mulligan stated that when asked, Thebeault said he had got it from Baptiste Hupee, and added, ‘Baptiste was well acquainted with the glass and knew it to be mine \_ I had offered to pay him for his trouble in trying to get it back.’ Hupee testified that ‘he had got it from an Indian but could not tell his name as he was a stranger in the settlement and had never seen him before.’ Having admitted his possession of the item, Huppee was found guilty, and the jury gave him the relatively lenient sentence of two weeks in prison. In this case at least, Mulligan could not claim to have not received justice from the courts – although, the sentence was less than the one to two months’ imprisonment that was normally handed out; perhaps because the plaintiff was Mulligan, or possibly because the stolen item was a small one and it had not been proved that he was the original thief.<sup>165</sup>

The preceding cases reveal the disputed evidence juries often needed to sift through, with verdicts revealing their determination of the weight of certain evidence as well as the age and relative responsibility of the accused. The cases also reveal a certain

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<sup>165</sup> *Queen vs Baptiste Huppee*, 20 December 1860, GQC 2:170

even-handedness in the courts, where they are willing to hear evidence in two cases with different defendants for the same crime, and sentences passed are relatively uniform without regard to the ethnicity of the accused. The evidence shows no hesitation by the courts in accepting 'Indian testimony,' with and without a 'custom' swearing-in, and even a flexibility in creating an oath specifically for those who have not been baptised. The *Nor'-Wester* accounts highlight citizens' interest in the court proceedings and reveal John Bunn's role in the administration of justice as he addresses even the defendants who are found not guilty to promote future good behaviour. The humour the court and community found in some of the proceedings does not outweigh the manner of fairness and concern for peaceable behaviour. As will be seen in the next chapter, the fortitude of the court and the juries in weighing evidence and attempting a fair mediation of disputes for a peaceful outcome is nowhere more apparent than in the resolution of cases brought to the courts by private citizens, especially those involving livestock.

## **Chapter 4:**

### **Private Pursuits**

The cases that were prosecuted in the General Quarterly Court by private individuals provide insight into what was of utmost concern not to the legal authorities but to the settlers in general. These cases reveal who made use of the courts as a way to defend their property and secure or improve their personal circumstance. The cases prosecuted by the authorities in the public interest were of three types: violent crime, liquor, and theft. The cases that individuals paid to bring to court involved more quotidian matters concerning livestock, land, and debt that were nonetheless essential to people's livelihood.

#### **Livestock**

Livestock was one of the community's earliest concerns, with regulations dating back to the Selkirk era of the Council of Assiniboia. These concerns were not fleeting, and after the business of appointments to council and the administration of justice in the settlement was taken care of at their first meeting in 1835, the second meeting of the new council dealt with issues closer to hand for most settlers: fires, pigs, and horses. In 1838, council added laws concerning cattle when they passed a resolution in response to 'much inconvenience and great destruction of property [being] caused by cattle breaking

through enclosures.<sup>166</sup> Resolutions passed by council were aimed at curbing the destruction of property by livestock allowed to roam freely and at settling disputes over their ownership. They required a notice of found or 'seized' animals to be posted on church doors. They also set a period during which the animal was to be held before becoming the property of the party who had seized it, as well as a value for the cost to maintain the animal during that time should the owner come to reclaim it. Council set the minimum penalty for horse theft at 20 shillings or 14 days in jail (though in practice, fines and jail terms tended to be much higher), and later added the forfeit of any equipment used to take the horse. They allowed that damages could account for loss of service, time of absence, and the amount of injury to the horse. Early resolutions passed in 1835 and 1838 were affirmed with minor variations in new legislation passed in 1841, 1851, and 1862.

Livestock continued to be a concern for the council, as it clearly was for settlers, whose livelihood was often dependent on their animals: between 1844 and 1869, the court heard thirty-eight cases involving livestock. Individuals took each other to court to determine ownership or obtain compensation for the death or loss of horses (29 cases), oxen (6), and cattle (3). Cases involving livestock were brought before the courts regularly, with a small spike during Bunn's relatively brief tenure as Recorder (nine cases). This was a problem that did not go away, though perhaps the spike during Bunn's tenure shows that people had more confidence in dealing with the courts for such a matter while he was in charge. Both plaintiffs and defendants were predominantly Metis, French

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<sup>166</sup> E.H. Oliver, *The Canadian North-West: Its Early Development and Legislative Records*, vol. 1, Publications of the Canadian Archives, no. 9 (Ottawa: Government Printing Bureau 1914): 1:283 (15 June 1838, resolution 5)



and English, though franco-Metis did appear somewhat more frequently as defendants. These cases were some of the busiest days in the court, with often a high number of witnesses, and sometimes even the animal was brought to the courtroom for the jury to examine.

One dispute between two young French Metis men over a ‘drowned horse in ice hole’ highlights the public safety intent of some of the legislation regarding livestock. In 1841 council had passed a resolution to prevent just such a problem. They declared that whoever made or used a hole in the ice, ‘whether down to the water or not, shall fix and keep fixed a pole of at least six feet above the surface.’ Anyone who removed the pole would be held fully liable for the first twenty-four hours, after which they would be jointly liable with the original party.<sup>167</sup> In this case, witnesses testified on behalf of both parties with conflicting testimony as to whether or not there had been sticks marking the hole. Ultimately, the defendant was found negligent for not properly marking off his fishing hole on the Assiniboine River and was fined £30, a relatively large amount of money that suggests punishment for generally endangering public safety as well as compensation for the horse.<sup>168</sup>

Most cases, however, centred on the contested ownership of livestock and, not surprisingly, nearly all plaintiffs and defendants were men. There were, though, two cases involving women. In the first, Mrs Bird charged 38 year-old Humphry Favel, an English-speaking Metis, with ‘horse taking.’ Favel was found guilty and penalized £20, a comparatively high fine for horse theft that may have reflected Mrs Bird’s status in the

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<sup>167</sup> Ibid., 302 (25 June 1841, resolution 34)

<sup>168</sup> *Baptiste Marcellais vs Louis Ploofe*, 15 May 1845, GQC 1:20–22

community as a member of a prominent English Metis family.<sup>169</sup> Two years later, the same Mrs Bird was also the plaintiff in the only other livestock case involving women. The defendant in that case, over ownership of a heifer, was also a woman, Jane Clouston. The jury again ruled in favour of Mary Bird.<sup>170</sup>

The usual penalty upon conviction was payment of court costs plus damages according to the value of the animal or its return to the original owner. There were, however, three cases that resulted in a prison sentence. In May 1851, a local Saulteaux named Neganecapo was charged with killing an ox belonging to Alex Munro. Witnesses identified property found with the dead ox to belong to the accused, after which he admitted to killing the ox. The jury found Neganecapo guilty, and he was sentenced to public flogging (twenty lashes) and two months in jail.<sup>171</sup> This was the only conviction that was punished by flogging between 1844 and 1869.<sup>172</sup> Two years later the Crown prosecuted Charles Demarais for 'horse breaking and theft.' The 47-year-old Metis man was found guilty and received a six-month prison sentence.<sup>173</sup> The only other conviction

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<sup>169</sup> *Mrs Bird vs Humphry Favel*, 19 August 1858, GQC 2:115

<sup>170</sup> *Mary Bird vs Jane Clouston*, 15 March 1860, GQC 2:151–53. This case is discussed in more detail later in this chapter.

<sup>171</sup> *Public Interest vs Neganecapo*, 15 May 1851, GQC 1:251

<sup>172</sup> Donald Gunn relates an earlier incident of flogging as punishment for theft, the result of a verdict given by the first jury empanelled for Red River's GQC, in April 1836. Given the adverse reaction of the community to the punishment, it is surprising that the court dared to use it again; however, it does suggest the seriousness with which the theft or death of livestock was taken by both settlers and the court. See Donald Gunn, *History of Manitoba: From the Earliest Settlement to 1835; and From 1835 to the Admission of the Province into the Dominion*, by Charles R. Tuttle (Ottawa: Roger Maclean 1880): 292–93.

<sup>173</sup> *Public Interest vs Charles Demarais*, 19 May 1853, 2:42

to result in jail time was *Walter Bourke vs an Indian*, for killing a cow; it was John Bunn's first case involving livestock, and his only one involving an Aboriginal defendant. No evidence was recorded, likely because, according to the record, 'the Indian pled Guilty.' He received four months in prison 'from this date' (sometimes jail sentences took into account the time already served while awaiting trial).<sup>174</sup> The sentence reflects the serious nature of the crime, but also the tendency to incarcerate Aboriginals found guilty even if a fine were the usual sentence, at least partly because Aboriginals may have lacked the currency to pay and partly to more forcefully drive home that the laws applied to everyone.

In March 1860, the court sat with the same five regulars on the bench (Governor William McTavish, John Bunn, Robert McBeath, François Bruneau, and Thomas Sinclair), along with James Ross as the French interpreter, to hear two cases regarding ownership of livestock. (Three debt cases were also settled; they were, as usual, handled quickly.) The plaintiff in the first livestock case was James McKay, a 33-year-old Metis man connected through marriage to the Rowands and the Rosses, both elite Metis families. McKay testified in court on his own behalf, as did his younger brothers George and Angus, but he was represented by Joseph Fortescue (a clerk and Collector of Duties for the HBC; previously, in 1857, Fortescue had successfully represented the HBC as the complainant in two breach of contract suits). The defendant, Alexander Dahl, had been born in the northwest 37 years earlier to Peter Dahl of Norway and his wife, Catherine Murray, one of the Selkirk settlers.<sup>175</sup> Dahl had had some troubles in the past: in 1846,

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<sup>174</sup> *Walter Bourke vs an Indian*, 16 June 1859, GQC 2:131

<sup>175</sup> In 1844, Alexander Dahl had married Elizabeth Vincent, marrying into a local Metis family and settling nearby in the Protestant settlement of St Paul. D.N. Sprague and

when he was 23, he was convicted of ‘criminal conversation’ with Janet [Jane] Folster, the 35-year-old Aboriginal wife of John Folster (35 years her senior); and he had successfully charged two Aboriginal men for damages to his house the following year.<sup>176</sup> Dahl had also sat in court as a juror in two cases (1853 and 1858).

This time, Dahl was being sued for £45 for the loss of James McKay’s ‘very valuable horse.’ The testimony turned on the condition of the horse. According to seven witnesses for the plaintiff, the bargain had been that Dahl would get £7 and 20 bushels of grain to care for the horse over the winter, and the horse was not to be used; it did not appear sick or lame when he got it and was worth between £25 and £35. McKay’s witnesses were relatively young men around 20 years of age, born in or around Red River of both Metis and European ancestry, who either had been present when the deal was struck, had delivered the horse to Dahl, or had been hired by the defendant early on to feed and water the horse. Most testified that the horse was in poor condition with cuts and swelling in the legs when it was returned to McKay (two months before it died). Angus McKay also testified that he ‘was employed to bring the horse back and showed the Letter to Defendant but he refused to give the horse up for the present and kept it 3 or 4 days longer and then returned it, the legs were much hurt by violence of injury [emphasis in original].’ Dahl’s three witnesses (one was his thirteen-year-old son, the other two cannot be traced) testified that the horse was a little poorer after the defendant got him,

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R.P. Frye, eds., *The Genealogy of the First Metis Nation: The Development and Dispersal of the Red River Settlement, 1820–1900* (Winnipeg: Pemmican Publications 1983): Tables 1, 2, 4; Red River Census 1832–33, 1846–47, 1870.

<sup>176</sup> *Public Interest vs Alexander Dahl*, 21 May 1846, GQC 1:50–54; *Alexander Dahl vs Lacord and Nee-oo-Keeshi-weshion*, 18 February 1847, GQC 1:72–73. Alexander Dahl received a month in jail for his adultery, as did Lacord and his brother Nee-oo-Keeshi-weshion for breaking down his door a year later.

but not ‘from disease nor from violence,’ and that the horse ‘was worth £15 only.’ Given the consistency of the plaintiff’s witnesses, and with even the defence witnesses confirming that the horse seemed a bit worse for wear, it is not surprising that the jury returned a verdict for the plaintiff, though with a lesser amount in damages than was claimed. They awarded a relatively low £10 for the horse.<sup>177</sup>

The second case that day was *Mrs Mary Bird vs Miss Jane Clouston* ‘for a heifer.’<sup>178</sup> It is notable in that it was one of the few cases in which either plaintiff or defendant was a woman – indeed, it was the only one of any sort in which both were women; rarer still, the plaintiff in this case was an Aboriginal woman. Though there is nothing in the court records to indicate such, this case had first come before the GQC the previous December. The 28 December 1859 issue of the *Nor’-Wester* contained an account of *Bird vs Clouston* that was deferred until witnesses who could identify the calf could be gathered. From the *Nor’-Wester* account, we know that Mr (Maurice) Lowman (an apprentice clerk with the HBC from 1843 to 1849) represented his mother-in-law, Mary Bird, while Jane Clouston was represented by John Bunn. Bunn, of course, was well-versed in the usual courtroom proceedings. For Maurice Lowman, this was his first and only time in court on record. The case had first been tried in the Lower District Court, but the magistrate had been unable to come to a decision and Mrs Bird refused arbitration, so the case came before the GQC for a decision.<sup>179</sup> Mrs Bird’s recently

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<sup>177</sup> *Joseph Fortescue pro James McKay vs Alexander Dahl*, 15 March 1860, GQC 2:146–50

<sup>178</sup> *Mary Bird vs Jane Clouston*, 15 March 1860, GQC, 2:146–53; *Nor’-Wester*, 28 March 1860

<sup>179</sup> The petty court magistrate is not identified, but at the time Thomas Sinclair had been President of the Lower District Court since March 1859. Both John Bunn, who

deceased husband was James Curtis Bird, retired HBC Chief Factor and Councillor of Assiniboia from 1839 to 1856; Jane Clouston (single in St Paul, according to the 1870 census), aged 33 at the time of the trial, was the sister of James Clouston, a neighbour of John Bunn's (step)brother, William (husband of Magdeleine Campbell, Metis daughter of Chief Trader Colin Campbell).<sup>180</sup> Both plaintiff and defendant, then, had ties to the courts, the fur trade, and Red River's Metis elite.

Although the court heard testimony from many women over the years, neither plaintiff nor defendant was heard from in this case. While these women owned the livestock in question (or at least had a claim on it), its care and management was clearly the domain of their male kin and hired help. Witnesses for the plaintiff included Daniel Wilson, a 56-year-old Orkneyman married to a local Metis woman, who had marked the calf with a piece off the top of the left ear and split down the middle before putting it out to pasture with three others; when only three returned, he found the fourth at Miss Clouston's. According to Wilson, he 'was never offered any reward all that I know is this is the calf that I and George Adams marked.' George Adams then testified that he had held the calf while Wilson marked it as described and had not seen it since. The plaintiff's son, Joseph Bird, also testified: he had been 'called to examine the marks and James Clouston shewed [sic] me an ox whose ear had been froze off of the top ... the ear of the disputed heifer ... "had been cut with a knife"' (the witness here produced a model

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represented the defendant, and the plaintiff's recently deceased husband had also served as magistrates in the Lower District in previous years.

<sup>180</sup> See testimony of Emily Lowman and her mother, Mary Bird, in *James Bird vs Jane Mowat*, 18 February 1847, GQC 1:66–68; for Maurice Lowman, see Sprague, *Genealogy*, Table 3; see also GQC 15 March 1860 2:151–52, *Nor'-Wester* 28 December 1859 and 28 March 1860; Sprague, *Genealogy*, Tables 1, 4.

in paper of the figure of the ear when cut).’ David Taylor, married to Nancy Bird, confirmed that the heifer carried Mrs Bird’s mark and added that he had ‘had some talk with James Clouston and he said that the heifer was not his sister’s mark.’

Testimony for the defence included that of Amable Loucier [Lussier], who testified only that he had been at Miss Clouston’s two years before and ‘constantly saw the heifer from a calf.’ Jane Clouston’s brother, James, attested that the calf ‘belongs to my sister’ and that he knew it ‘at 100 yards.’ James Taylor, possibly David Taylor’s brother and also married to a Bird daughter (Amelia), testified that the calf did not match the description of Mr Lowman’s (Mrs Bird’s) missing heifer. Edward Bird (the plaintiff’s grandson) also testified, ostensibly for the defence: ‘James Clouston came to his place looking for cattle in the fall and took away this heifer. Knows nothing further about it.’ According to the *Nor’-Wester* account of the proceedings, John Bunn remarked that ‘The question, then, is whether the calf’s instincts were unerring (laughter [in the court]). If calves did not sometimes stray, we would not have had the present case to try.’ Following the testimony for the defence, Dr Bunn charged the jury, they retired, and after a few minutes brought in a verdict for the plaintiff. Given the more extensive and convincing testimony for the plaintiff, and despite John Bunn’s influence on behalf of the defendant, the jury, perhaps relying on personal experience with wandering livestock, decided that the calf was indeed Mrs Bird’s and that Jane Clouston was required to return the heifer. The fact that the case had already been deferred for almost a year because the defence witnesses were unavailable may have also been a factor: you can almost hear the jury thinking, ‘We waited for this?’

In the original court appearance, according to the *Nor'-Wester*, Bunn (for Jane Clouston) had objected to an invalid date on the summons, since most defence witnesses were out of the country. He referred, too, to the case having been deferred from the June (petty) court; to which Lowman replied that was because the defence witnesses were away then too. Bunn stated that deferral was a mistake because after too much time, identifying marks disappear. Lowman denied that this was an issue and requested: 'Bring the beast into the Court yard this very minute and I will prove it.' The 'beast' was left where it was, since Bunn said he did not know the calf, and the case was deferred until the next court sitting when defence witnesses could be available.<sup>181</sup>

Despite the attention and criticism that has been turned on Adam Thom for representing a defendant while also sitting as Recorder, no mention is ever made of this instance of the respected John Bunn representing a defendant while also acting as Recorder (and the *Nor'-Wester* does comment that he charged the jury, as per his role as Recorder). While possibly a result of the different feelings in the community towards the two men – and of history's relative silence on John Bunn's court days – it is perhaps more telling of the dynamics in the settlement and courtroom, with articulate men knowledgeable in the law, whatever their position, representing those who were not; of the independence of the jury; and of the role that the other magistrates present played and their ability to temper the authority and discretion of the Recorder.

In June 1860, *Morrison McBeath vs Louis Gladieux* pitted Scottish settlers and their mostly Metis descendants against French Metis over the ownership of a horse. The plaintiff, Morrison McBeath, was 47 years old at the time but a young child when he first

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<sup>181</sup> *Mary Bird vs Jane Clouston*, 15 March 1860, GQC 151–53; *Nor'-Wester*, 28 December 1859, 4; *Nor'-Wester*, 28 March 1860



arrived in Red River with the Selkirk settlers; he was related by marriage to regular jurymen Donald Gunn and by kinship to Robert McBeath, one of the Councillors of Assiniboia presiding over the court that day.<sup>182</sup> Morrison himself had been in court a number of times before, as a juror in fifteen cases (ranging from debt and theft to assault and murder) between 1846 and 1858 and as a plaintiff once before with James McKay (and others) for destruction of lambs; he had also testified as a witness in three livestock cases and three cases for debt, illegal sale of liquor, and starting a fire. He was well-acquainted with the people and workings of the court.

Neighbour and in-law Alexander Sutherland<sup>183</sup> was the first to testify for McBeath. He claimed he was going out to look for his own horses and McBeath had asked him to look out for his; he asked Hugh Ross, who knew the marks of the mare (which he had sheltered for a week) – he had heard the mare was dead now but the foal was alive and about three years old. William Sayer testified that he had borrowed the mare from the defendant and that it was worth about £15. Hugh Ross<sup>184</sup> then testified, describing the mare and stating that ‘Moral Desjarlais [likely a relative of the defendant’s wife, Susanne Desjarlais] thought the mare was his. I gave it up to a person he sent for it.’ Ross agreed the mare was worth about £15 and added, ‘My son never rode her, only once to the church for the purpose of advertising her.’ Hugh Ross’s Metis son, Roderick (31)

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<sup>182</sup> Morrison and Robert McBeath lived next to each other on lots 33 and 34 in Kildonan (Sprague, *Genealogy*, Table 4).

<sup>183</sup> Sutherland, a 52-year-old Scot, was married to Christiana McBeath and living in Kildonan on lots 25–28 (Sprague, *Genealogy*, Tables 1, 4).

<sup>184</sup> Hugh Ross (Scottish, 1793–1863) lived out in St Francis Xavier, near Louis Gladioux’s father, Charles. There is a Donald Ross married to Mary McBeath on lots 16–17 in Kildonan, which might explain Ross’s connection to the plaintiff (Sprague, *Genealogy*, Tables 1, 2, 4).

attested that he was present when the plaintiff described the horse's marks and that the defendant had admitted the horse belonged to McBeath. The mare was 'wretchedly poor' and then dead. Roderick confirmed that his brother had ridden the horse to the church.

Louis Gladieux did not testify on his own behalf in what would be his only court appearance. The first witness for the defence, \_\_\_ Morrison, testified that the mare was taken out of Gladieux's park by Charles Ross (Hugh's 24-year-old son) and that the horse was well then but poor a fortnight later when returned. N. Ledoux also testified for the defence<sup>185</sup> that he had seen the 'mare used by the Ross's [sic], first to go to mass and then lent to a man looking for horses.' Antoine Desjarlais, the defendant's brother-in-law, testified that he was at Mr Lane's fort when he heard that the Rosses 'had a strange mare. I had claimed the mare for my cousins and he had given the mare to L. Gladieux to keep and the colt was to be his for keeping them.' Another witness, Antoine Fidler, stated only that he had seen the mare with Charles Ross.<sup>186</sup>

When you found livestock that was not your own, you were responsible for advertising it so that the rightful owner had a chance to claim it before you could take it as your own. The church (not the fort) was the place people did this – by this time, too, people also used the *Nor'-Wester* to advertise missing or found livestock.<sup>187</sup> According to

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<sup>185</sup> N. Ledoux cannot be positively identified from the available records, but Sprague, *Genealogy*, Table 1, shows a number of Ledoux men married to Desjarlais women, so it is likely that this man is also related to the defendant through marriage.

<sup>186</sup> *Morrison McBeath vs Louis Gladieux*, 20 June 1860, GQC 2:154–57

<sup>187</sup> See, for example, notices in the 12 December 1862 issue of the *Nor'-Wester*: 'A Stray Mare: The Undersigned hereby gives notice that he has at present on his premises a mare which has, for the last three winters wandered about seemingly without owner. He is now keeping in the animal, desires once for all to ascertain, if possible, who is the owner. Parties claiming her must give such details and proofs as will satisfy the undersigned; then, by paying expense of advertising, &c., she may be removed. Peter

regulations passed by the council in 1835, stray stallions over two years of age could be seized and held for fourteen days after posting a notice at the church door (pigs needed to be held for only eight days). If claimed, the owner would have to pay twenty shillings (in 1841, this law was affirmed with six pence per day added for maintenance); if not claimed, the finder was free to use or sell at public auction. The law was reaffirmed in the legislation of 1851 with the provision for public notice omitted (and again in 1862);<sup>188</sup> however, Hugh Ross's testimony and the frequent notices in the *Nor'-Wester* suggest that, whatever the law said, there was an ethical code in Red River to advertise your discovery before claiming it as your own.

Whether because the defendant did not adequately prove his ownership of the mare, or because of the plaintiff's past court experience and well-placed connections on the bench, the jury found for the plaintiff, and Louis Gladieux was required to pay £15 for the horse plus court costs. The *Nor'-Wester* did not cover the case – and, since the editors were openly on watch for instances of corruption in the government,<sup>189</sup> the fact that they do not even mention the case suggests that despite the ease with which the

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Fidler.' Also: 'Who Owns the Heifer? Last spring, a young Heifer came to the premises of Mr John Fletcher, and remains there. The owner is requested to prove property, pay expenses, including this advertisement, and take her away. John Fletcher.'

<sup>188</sup> Oliver, *Canadian North-West*, 1: 275, 20 April 1835; resolution 3 of the first laws passed by the Council of Assiniboia; Oliver, *Canadian North-West*, 1:374, 30 April 1851; resolution 6 of the new local charter designed by Adam Thom, John Bunn, and Louis Lafleche

<sup>189</sup> Indeed, in June 1862, council voted unanimously to remove James Ross from public office because of his agitation against council in the *Nor'-Wester*. Henry McKenny, having first to give up his licence to sell liquor, replaced him as sheriff, and A.G.B. Bannatyne replaced him as postmaster (Oliver, *Canadian North-West*, 1:515).

plaintiff could have curried favour in the court, this was not the case and the jury reached a fair decision supported by the available evidence.

On the morning of 20 September 1860, court started bright and early at 9:30 am, according to a notice in the *Nor'-Wester* a week earlier signed by W.R. Smith, court clerk.<sup>190</sup> The court records show McTavish, Bunn, Bruneau, McBeath, and Thomas Sinclair present as magistrates, joined now by Pascal Breland. This was Pascal Breland's first appearance as a justice of the peace in the GQC, a position he would continue in only until May 1861 (John Bunn's final appearance, too). At the time, Breland was 50 years old; he joined Francois Bruneau on the bench as one of the French Metis community leaders, having first been appointed a Councillor of Assiniboia in September 1857; he had been a magistrate and then Petty Judge in the White Horse Plains district since October 1850, and would become president of the petty court in August 1863.<sup>191</sup>

The court heard three cases regarding livestock that day. In the first, *Angus McKay vs Samuel Bannerman* for £30 in damages for the death of a mare, the young Metis plaintiff (24) stated that Bannerman had taken his mare and worked her in a reaper without his permission. The defendant, a 22-year-old Red River Scot, 'allowed that he had caused the death of the mare, but disallowed the value fixed as too much.'

David Spence, 36-year-old Scot and neighbour to both plaintiff and defendant,<sup>192</sup> testified that he had sold the mare three years earlier for £20; 'the mare was a handsome beast.' John McKay, brother of the plaintiff, testified that he had purchased the mare for

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<sup>190</sup> *Nor'-Wester*, 14 September 1860, 1

<sup>191</sup> Oliver, *Canadian North-West*, 1:69

<sup>192</sup> Sprague, *Genealogy*, Table 4; Poplar Point, lots 61 through 64 were occupied by McKay's father, Spence, and Samuel Bannerman, according to the 1870 census.

£20 and gave her and a foal to his brother Angus in exchange for two horses. He fixed her value at about £25. George McKay agreed that the value was about £25 and claimed that the two horses Angus had given in exchange were worth more than that. Donald Bannerman testified that: 'My son informed me that he was at liberty to use the mare for having found her.' He valued the mare at about £15 and added, 'I consider the Plaintiff due me ... 1 boat sail £6 and for the lend of my reaper for 2 months £10' – in other words, the amounts as he saw them cancelled each other out. The jury did not agree: (after Bunn recapped the evidence for them<sup>193</sup>) they awarded Angus McKay £20 in damages, and the defendant was made to pay £2,0,6 in court costs (the amount of costs matches that set for payment to a witness, in this case, likely to David Spence, the only non-relative to testify). Given the defendant's admission that he had caused the death of the horse and the testimony that the horse had originally been sold for £20, the jury's decision appears clear-cut. Presumably, Donald Bannerman could bring suit against Angus McKay for anything he believed was owed to him – the boat sail and reaper were not relevant to the value of the horse and thus not to this case. As before, they awarded damages more in keeping with the testimony they heard, rather than what the plaintiff claimed.

George McKay was not just in court that day as a witness for his brother: he was also a plaintiff in a suit against Gabriel Dumont 'for the keep and finding of a horse in the Sioux country & bringing him to the Settlement.' He testified that he had found the horse in Sioux City,<sup>194</sup> where someone informed him that it belonged to Dumont. McKay

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<sup>193</sup> *Nor'-Wester*, 28 September 1860, 1. Note: in this issue, reporting of GQC cases moves to page one in the *Nor'-Wester*, suggesting its popularity among the community.

<sup>194</sup> about 800 km south of Red River

brought it back to Red River, kept him for the winter, and then let him out in the Commons. He had asked the defendant to settle with him, but Dumont had refused; McKay claimed £5 'for the expence [sic] and trouble.' Since Dumont did not appear, the case was decided for the plaintiff by default after the constable had sworn to delivery of the summons.

Another case that September was *John Taylor vs Patrice Berland* for damages claimed for the loss of a horse. The plaintiff, John Taylor, a 26-year-old Metis, had relations among the English-speaking fur trade elite Campbell and Inkster families, while the defendant, Patrice Breland, belonged to the French Metis elite, and his father, Pascal, was sitting in court that day as a magistrate. According to a resolution of council, any councillor being party to a case at the General Quarterly Court must 'leave his seat as Councillor while such case is under consideration.'<sup>195</sup> Breland's presence may have been felt, but he could not directly influence the proceedings, and at least the *Nor'-Wester* made no mention of any potential conflict. The plaintiff stated that 'his mare was standing in the track and the Defendant drove up his horse against his mare and hurt it by his [trams]<sup>196</sup> striking his mare.' The first witness was a woman, Annette Comptois,<sup>197</sup> who testified that she was in the house and saw the mare get struck down, after which the mare would not eat or drink and died about a week later; the 'Defendant made no effort to check his horse.' The defendant then testified that his witness 'Francois Jennotte [a

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<sup>195</sup> Oliver, *Canadian North-West*, 1:279

<sup>196</sup> tram: Scottish dialect for leg, limb. *Webster's Third New International Dictionary* (1976), p. 2425

<sup>197</sup> Further identification has not been possible, but her testimony suggests she is a neighbour or servant of the plaintiff.

neighbour] was not in the Settlement at present but he would state that the mare was 50 yards from the stable ... and she kicked at me and at my horse and the push she got could not have hurt any horse, she tripped herself into the snowdrift.’<sup>198</sup>

Interestingly, unlike most other cases for livestock there was no testimony involving the value of the mare. In any event, the jury decided for the plaintiff – he had a witness on his side, and the defendant had admitted to at least pushing the horse – and according to the court records, decided on £6 for the horse, half of what the plaintiff claimed, plus £1,16,6 for court costs.<sup>199</sup> The *Nor’-Wester* account of the trial is virtually the same as that in the court records, with one interesting exception: ‘But when half the jurymen were paid off and had left the Court, the French half announced that they had not concurred in the verdict handed in – their intention was that £6 should cover all. The other jurors not found, the case was thrown over to another sitting.’<sup>200</sup> There is, however, no record in the GQC documents or the *Nor’-Wester* of the case coming back before the court, so any dispute was likely resolved out of court.

In a case regarding the ownership of a two-year-old ox, 62-year-old French Metis Joseph Vandal of St Andrew successfully sued 35-year-old Metis James Taylor of the neighbouring parish of St Paul in December 1860. Vandal testified that he ‘had lost a young ox and both him and his two sons had lost much time in searching for it on the

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<sup>198</sup> Either snow came early to Red River that year (not a remote possibility) or, as with some other cases, this has taken some time to come before the court – likely one or both parties were busy with work (trade, hunt, farming) earlier in the summer (and Taylor would have needed to raise funds to bring suit in the first place); it is also possible that time was taken (either of their own accord or on advice of family or a magistrate) to attempt a resolution out of court or in a lower petty court.

<sup>199</sup> *John Taylor vs Patrice Breland*, 20 September 1860, GQC 2:164–65

<sup>200</sup> *Nor’-Wester*, 28 September 1860, 1

East side of the River.’ The ox had disappeared in the fall, and it had come to his ‘knowledge that the Defendant had crossed to the West side all his cattle, and that he had killed one that bore the marks of my animal. I went and saw the hide and head and identified my animal by the same.’ Vandal’s two sons corroborated this testimony. The witnesses for the defence were more ambiguous: Peter Knight, 34, of St Paul, testified that in November 1859 he had seen an ox ‘matching the hide in question’ in the defendant’s byre. Palm Saunders, 41, of St Andrew, stated that he knew Vandal to be looking for a young ox. The only definitive testimony for the defendant came from his 12-year-old son, George, who testified that he had ‘known the ox since it was calved.’ At this point, as in the case in which the jury traipsed out to examine a horse ‘as it stood at the Court house door,’<sup>201</sup> ‘the head of the animal was here produced.’ The sons of both plaintiff and defendant swore positively that the head belonged to their own ox. James Irvine, 35, Vandal’s neighbour in St Andrew, would ‘not swear positively that the head is belonging to the animal belonging to Vandal but thinks it is.’ The verdict was recorded ‘in favour of Vandal,’ with the ox valued at £2,5,0.<sup>202</sup>

The last livestock case to be settled by the GQC before John Bunn’s untimely death was *William Lane* [for the HBC] *vs Urbane Delorme*. According to the *Nor’-Wester*, the case of *William Lane vs Urbane Delorme* took four hours, and a lack of space prevented the newspaper from giving a full account. The paper does say, however, that ‘the late Dr Bunn conducted the examination with his usual ability and discrimination.’<sup>203</sup>

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<sup>201</sup> *Antoine Morin vs François Richard*, 19 February 1846, GQC 1:49

<sup>202</sup> *Joseph Vandal vs James Taylor*, 21 December 1860, GQC 2:174–76

<sup>203</sup> *Nor’-Wester*, 01 June 1861, 3



Given the testimony recorded in the court book, the trial is an odd one, especially for having taken four hours to get through. The plaintiff (employed by the HBC and posted at Fort Garry 1843–1875) stated that the defendant ‘had come to him claiming a horse which he had in charge belonging to the Hon. HBC.’ Four witnesses testified for the plaintiff, identifying the marks of the horse and stating how long they had known it. James McKay testified that the horse was one he had bought two years ago from Saint Gris for the HBC. The defence testimony is perplexing, since of the five witnesses not one testified that the horse actually belonged to Urbane Delorme – in fact, one even seemed to support the plaintiff, testifying that he ‘knows the horse taken from Mr Lane’s’ and that the longest interval without seeing it was when Delorme had lost it on the plains. Even Urbane Delorme, the defendant, testified only that when the horse was branded, ‘it was not stamped effectually’ – presumably meaning that the stamps were similar if not done properly and thus his horse could be confused for the other. Given all this, it is not surprising that the jury decided in favour of the plaintiff and ordered damages of £8 plus costs.<sup>204</sup> The witness testimony took up four pages in the court record book, yet given the claim that the trial took four hours – even allowing for the possibility that the testimony could have taken longer if it was translated for both parties and the fact that the record, as usual, does not include details of any examination by Bunn or the other magistrates – the record must still represent only the gist of the witnesses’ testimony. However, because of the coverage of trials in the *Nor’-Wester* (and the contemporary reports of the more sensational trials by Donald Gunn), we can surmise that the court record’s accounts of witness testimony is accurate, even if only summary with some direct quotation.

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<sup>204</sup> *William Lane vs Urbane Delorme*, 21 May 1861, GQC 2:193–96

The length of time given over to these livestock cases and the number of witnesses that appeared for plaintiffs and defendants, as well as the court's willingness to defer such cases to allow witnesses to appear, reveals just how important they were to people. The careful weighing of evidence by the juries to the extent of personally examining the animal in question, as well as their tendency to award less exorbitant damages than were claimed by plaintiffs, suggests their intent to settle disputes with fairness and moderation. The testimony reveals the possible mix of French and English, Metis and European men and women as kin and neighbours engaged in the common pursuit of the use and care of livestock. The protection of a major possession intrinsically linked to the livelihood of settlers can be seen as well in the cases the courts heard involving property.

### **Property**

The Council of Assiniboia had early on passed legislation to protect property. At the same meeting in 1835 at which the new council dealt with regulations concerning livestock, the first set of regulations to protect property were also put in place. They prohibited the lighting of fires for any purpose 'beyond their enclosed ground under cultivation' unless ten neighbours could be there to put it out, and they permitted the seizure of any pigs found trespassing on enclosed lands, which could be sold after being held for eight days in case their owner paid to retrieve them. These provisions were intended 'to guard against the destruction of woods, hay, etc ... by neglected fires' and to protect property from damage by roaming livestock.<sup>205</sup> In 1838, council addressed the

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<sup>205</sup> Oliver, *Canadian North-West*, 1:274–75

‘inconvenience and great destruction of property [that] have been caused by cattle breaking through enclosures’ by providing that the injured party must prove first that his fence was sufficient and second that the animal was ‘notorious for breaking fences.’<sup>206</sup> These regulations were affirmed with only minor variations each time the local code was revisited over the next few decades. Council also set the time for cutting hay outside the customary two-mile limit, as well as penalties for breaching the limit or the season and for trespassing on another person’s hay ground. It took until 1859, however, for council to pass any resolution regarding timber. In response to a petition signed by 62 English and 120 French residents asserting the scarcity of timber along the Assiniboine River and requesting measures to regulate its harvest, council resolved that it was unlawful to cut timber on unoccupied land on the banks of the Assiniboine except for local use and public works.<sup>207</sup>

As might be expected in cases of property ownership, plaintiffs tended to be older, with most over 45 years of age, and most were men. One of the plaintiffs was a woman, Mrs LaMalice, and two cases were brought by the HBC. Both French and English-speaking residents went to court to protect or fight for their property, though approximately 65 per cent were English-speakers. Defendants tended to be slightly younger, ranging in age from 17 to 67, but most were also middle-aged, averaging 39. One was a woman, Mme LaSuperieuse. French and English-speaking residents came before the court as defendants in nearly equal numbers, and one case involved two Aboriginal men. Slightly more plaintiffs were British in origin while slightly more Metis

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<sup>206</sup> Oliver, *Canadian North-West*, 1:283

<sup>207</sup> Oliver, *Canadian North-West*, 1:442–43

residents appeared as defendants. In the 1854 and 1859 cases that featured a woman (as defendant and plaintiff, respectively), both Mme LaSuperieuse and Mrs LaMalice won their cases.<sup>208</sup>

The fines imposed were usually £5 or £10, plus return of the property and court costs. The sole jail sentence given for property damage was delivered in an 1847 case in which two Aboriginal men were charged by Alexander Dahl for breaking down the door of his house after they had been refused entry. After Dahl's brother and another witness testified to this story, the accused were found guilty and each was sentenced to one month in prison. There was no testimony on behalf of the defendants, and the scant testimony on record gives no indication as to just why these men were so bent on gaining entry to Dahl's home.<sup>209</sup>

The General Quarterly Court heard twenty cases concerning property in the twenty years between 1844 and 1864. In the first decade of the court records, the disputes centred on the protection of property, and the court heard tales of damage to timber lots and hayfields. In the late 1850s, the property cases brought before the courts began to change in nature, with more disputes over land ownership. The plaintiffs changed too. At first, the disputes had chiefly been among long-time Red River residents protecting their share of available resources. During Adam Thom's time as Recorder, the court heard nine cases involving damages to property; seven of them concerned hay and timber. By the

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<sup>208</sup> *Nicholas Courtelle vs Mme LaSuperieuse*, 17 August 1854, GQC 2:74–75; *Mrs LaMalice vs James Mulligan*, 17 March 1859, GQC 2:124–25

<sup>209</sup> *Alexander Dahl vs Lacord & Nee-oo-keeshiweshiom*, 18 February 1847, GQC 1:72–73

time John Bunn took the chair as Recorder, the cases began instead to involve relative newcomers to Red River engaged in land speculation and asserting their title.

On St Patrick's Day in 1859, the GQC heard a case in which a local woman was fighting to regain her property from Pensioner James Mulligan. Mme LaMalice (née Françoise St Germaine, wife of Paul Boucher dit LaMalice) testified on her own behalf that she 'seeks Defendant to give up her house.' The defendant replied that he had paid £4 to Mme LaMalice and her daughter, Mme Marcellais, in June 1857, and he produced a paper to show that she had given up her house as security for the loan.

The record of witness testimony is relatively sparse: Andre Harkness (an assistant shopkeeper for the HBC, 1833–36) came forward to attest that he had drawn up the mortgage paper, but that Mme LaMalice was not present at the time. James Mulligan (the defendant's son) 'was at Mrs LaMalice's house when she told her daughter Mrs Marcellais to lend her £4 on her house ... he [his father] did not like to have anything to do with it at first, and sent me to enquire if the owner would consent, when I asked the old woman if she consented she replied she did. Then my father made the bargain.' A Mrs McDougall testified that she knew nothing of the bargain, but that 'Mrs Marcellais told me her mother had given her consent to mortgage the house.' Mme LaMalice's older daughter, Mme LaRond, testified that 'my sister Mme Marcellais asked my mother to let her have her house for four months, I know nothing of the bargain.' Her son-in-law, John Cyre, 'was sent in the autumn of 1857 by Mme LaMalice to advertise the Defendant to give up the house as she had only given her consent to her daughter to mortgage her house.'<sup>210</sup>

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<sup>210</sup> *Mme LaMalice vs James Mulligan Sr*, 17 March 1859, GQC 2:124–25

The jury decided in favour of the plaintiff: Mulligan was ordered to give up the house and Mme LaMalice was to return the money. Court costs were divided – usually a sign that the jury considered both parties at least partly responsible, and perhaps believed that the dispute should have been settled out of court. The verdict appears to acknowledge that the plaintiff did not actually sign the mortgage paper and possibly did not realize what she had given her consent to, or to whom, and perhaps also that the house was too steep a price to pay for a loan of £4. It could also be a case of the jury deciding in favour of one of their own. The case is an interesting one, given that it is one of the few in which a woman brought a case to court and testified on her own behalf. The woman was elderly, French, Metis, and like most of the other cases in which the plaintiff was a woman, she was actively pursuing the return of her property. There is no question in the testimony that the house belongs to her. Her husband, Paul Boucher dit LaMalice, may have been away at the time, both when the bargain was struck and when the case came before the courts (he was a fisherman and steersman for the HBC from 1854 to 1859).<sup>211</sup> The case came to court in March 1859; Mrs LaMalice had tried back in the fall of 1857 to get her house back. One might wonder why it took over a year for the case to come before the court: likely other attempts to resolve the issue had been made, informally and/or in the petty court; perhaps, when nothing else could persuade the defendant to give back the house, Mme Lamalice took the last step available to her; perhaps it was John Bunn's lead in the court that persuaded her that her case would be heard fairly.

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<sup>211</sup> Sprague, *Genealogy*, Table 3

The witnesses reflect the possibilities for mixed society in Red River: Metis, European, Canadian, French, and English; the common factor in this case is religion. James Mulligan was a Protestant Irishman married to a Catholic Englishwoman, whose son would later wed Francoise Ducharme, a French Catholic Metis woman from Red River. There are a couple of possible identities for Mrs McDougall, but if we assume that she was about the same age as Mme Marcellais, then she was likely Margaret McDonald, a Catholic Metis woman about 39 years of age, married to Duncan McDougall, a Catholic Metis man originally from Lower Canada who had served the court as a juror and interpreter and was, at the time, a police constable. Both Mme LaMalice and her husband were French Catholic Metis; one daughter was married to Louis LaRond, a non-Metis from Lower Canada fifteen years her senior, another to Jean-Baptiste Marcellais, a Metis man born in the northwest about the same time she was.<sup>212</sup> John Cyre, the witness sent by Mme LaMalice to try to get her house back, was married to another daughter of Mme LaMalice, Marie; they were about the same age, and he too came from a local Metis family.

This was Mme LaMalice's first and only time in court, though her daughter, Mme Larond had appeared a decade earlier claiming damages for timber taken off her land. John Cyre had been to court twice before, both times as a witness. The witness for James Mulligan, Andre Harkness, the HBC clerk who had prepared the mortgage document, had at that time been a witness in one other case and a juror in three cases. Of them all, though, the defendant, James Mulligan had been to court the most often, and by the end of 1860 he had been in court a total of eleven times. He was a juror in two cases in

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<sup>212</sup> Sprague, *Genealogy*, Table 1

August 1858 (along with five other Pensioners), and in the autumn of 1859 after he lost the case with Mme LaMalice, he was found guilty of selling spirits on a Sunday. He was the plaintiff six times, but was successful only twice: the verdict went against him in two of three debt cases, his case was dismissed in another land dispute, and he lost one of two trespassing cases. In 1860, he successfully charged a native man with stealing a small, round looking-glass from his home. In fact, James Mulligan was in court for nine of the thirteen sessions from February 1858 through September 1860. One sees a pattern of litigiousness here that is not present among the others, nor at all common in Red River – just five other citizens would be in court five times or more as plaintiff or defendant during these two decades, and only two of them matched Mulligan’s number of appearances; as will be seen, his behaviour made him less than favoured by the court.

December 1859 found James Mulligan back in court. This time, Mulligan was suing Daniel O’Brian, a bugler with the Royal Canadian Rifles<sup>213</sup> who was employed as a servant at Fort Garry, for £15,18,0 in damages. Mulligan claimed that he had sold an old house to O’Brian for 30 shillings, but ‘the Defendant’s people’ had taken the wrong one, which was worth considerably more, and had removed fencing in the process so that his pigs had trampled the garden and destroyed a crop of potatoes. The record indicates that the ‘Plaintiff failed to bring any proof that the house was not the one sold to Defendant or that the fencing had been removed by Defendant’s party ... Case dismissed [emphasis in original].’<sup>214</sup>

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<sup>213</sup> The Royal Canadian Rifle Regiment (120 officers and soldiers) was sent to Red River in 1856 and remained for four years; George F.G. Stanley, *Toil and Trouble: Military Expeditions to Red River* (Toronto: Dundurn 1989).

<sup>214</sup> *James Mulligan vs Daniel O’Brian*, 15 December 1859, GQC 2:144



The *Nor'-Wester*, however, carried a fuller account of the case, noting that 'the case turned on the point whether the plaintiff had defined the house which he had sold so clearly that a man of ordinary comprehension could not have been well mistaken.' The newspaper also recorded testimony from James Armstrong (likely also a Pensioner), who testified that he had helped to take the house and had been told by the plaintiff that it was the little house with the blue door and not the big house with the white door, but the defendant had objected. At this point, although the witness seems to be supporting the plaintiff's story, the paper records that 'the plaintiff submitted the witness to a severe cross-examination,' which John Bunn interrupted: 'Have you done harrowing this man Mr Mulligan?' An exchange followed in which Mulligan grew angry that Bunn 'insulted him,' to which Bunn replied '(with provoking coolness): "I am not in a passion ... But I submit to your rebuke Mr Mulligan."' (laughter).' John Moyses, a 23-year-old who had come to the settlement from Scotland with his father, then testified that he had been employed by the defendant to take down the house that Mary Robillard<sup>215</sup> lived in, that the big house was worth about 15 shillings, and that the smaller house was 'nothing but a pig's-sty standing on a high bank.' A neighbour, Andre Harkness again, spoke of damage to the fence and to the crop because of the pigs escaping.

According to the *Nor'-Wester* account, James Mulligan then wanted to call his wife to the stand, but Bunn replied that English law did not allow a wife to give evidence for her husband. In reply, Mulligan cited a case at the GQC where a mother had given evidence for her daughter, 'and he taunted the Bench with having taken evidence of that witness in spite of her having proved herself a perjured witness.' The following exchange

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<sup>215</sup> There is no indication who Mary Robillard was, or how the house was transferred from her to Mulligan for him to sell off to another soldier from away.

is interesting for its rare glimpse into participation from jurors and councillors on the Bench and the dynamics of the courtroom:

Mulligan: 'I have never received justice in this Court.'

A Juryman: 'You come here far too often.'

Mulligan goes on to complain about injustice in another case and says: 'You are on the strong side; whilst a poor man from the old Country is on the weak side.'

Governor: 'It was the jury which gave against you [in the other case].'<sup>216</sup>

Mulligan: 'No, it was the HBC – they sold my land twice over. There is no redress here. Everything rests with the Bench ... it is not at all creditable to the HBC; and I can prove it Governor.'

Governor: 'You offered to prove it and you failed entirely.'

Robert McBeath: 'Why do you complain? You have as respectable a jury as are to be found in Her Majesty's dominions.'

After a bit more skirmishing, the case adjourned until the next day so that Mulligan's other witness could be found. The plaintiff 'marched out of Court triumphant if not victorious.'<sup>217</sup> He had had his say and been given another chance to prove himself. Given the evidence in the court records, however, he could not. The complaint against the court is from a relative newcomer to Red River, brought as part of a force to protect HBC interests and maintain the peace in the settlement. He complained that the court was biased against him in favour of local interests, but the court reminded him that it was the

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<sup>216</sup> See case discussed later this chapter; *Nor'-Wester* account of *Barron vs Mulligan*, 28 March 1860; also *Mme LaMalice vs Mulligan*, 17 March 1859, GQC 2:124–25.

<sup>217</sup> *Nor'-Wester*, 28 December 1859, 4

jury, not the councillors on the Bench, who made the decisions about guilt or innocence. If anything, the court – and the juries – were biased against puffed-up, litigious newcomers. Another interesting aspect of the trial, as described in the *Nor'-Wester*, is how the plaintiff represented himself, examining the witness and addressing the Bench. It is unfortunate that the court records do not indicate this back and forth, only setting down summaries of evidence given with some direct quotes from witnesses but without any of the interventions from the Bench that might help to show how testimony was directed, how juries might have been influenced to make the decisions they did, and how the court proceeded in general.

However unfair James Mulligan believed the court to be, he kept coming back. In September 1860, the GQC heard the case of *James Mulligan vs Pierce Barron*, which had been deferred from the June 1860 session because the 'Defendant had not put in his proofs from the acknowledged surveyor.' This case appears to be a continuation of the two Irishmen's fight over land title that the *Nor'-Wester* first recorded in March 1860. The *Nor'-Wester* entitled its account of *Barron vs Mulligan*, 'Debatable Ground,' and its lengthy and detailed reporting suggests interest in the spectacle the proceedings presented. In it, Barron charged that about a year earlier Mulligan had taken possession of three chains of land that Barron, the plaintiff, had had buildings on for eight years, and that Mulligan had cut down and removed fencing. Barron claimed to have purchased the land from Mulligan for £13, but after a disagreement, Mulligan had gone to the Company's office and registered his own name to the land. Mulligan then testified that he

‘speculated a good deal in land’:<sup>218</sup> he had bought it from Isadore Boucher last winter and a survey found that Barron’s buildings were on it; Barron had refused his offer to sell him the parcel. At this point, the *Nor’-Wester* reported that ‘the case became so mystified, owing to the contradictory assertions’ that a plan of the land was sent for and a jury was empanelled to hear the case.

M. Dumais testified that he had seen Fidler cut fencing on Barron’s land. Charles Fidler admitted that Mulligan had hired him to cut about 525 pieces of fencing, 300 of it on Barron’s lot (valued at about 2 shillings/100 pieces). HBC clerk Joseph Fortescue testified that Mulligan had asked about land to buy, and he had said yes to the three chains at the end of Barron’s byre, which Barron had registered but did not want to pay for. Laughter arose in the courtroom when Mulligan interjected, ‘Yes, exactly so; his money is his God.’ Fortescue continued that he had let Mulligan have the land and left it to the two parties to work it out for themselves. According to the *Nor’-Wester*, Bunn asked: ‘Were you aware that Barron had previously purchased the three chains [66 yards] in dispute from Mulligan?’ Fortescue replied, ‘Not till lately,’ and that he now believed the disputed land had been part of that purchased by Barron from Mulligan. The jury decided in favour of Barron, and Mulligan was ordered to pay a farthing (1/4 penny) in token damages for taking possession, plus 6 shillings for the 300 pieces of fencing that he had removed.<sup>219</sup> The dispute did not end here, however, as Mulligan was back in court in

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<sup>218</sup> This statement would appear to be true: according to the 1870 census, Mulligan lived in St John, lots 2–4; lands occupied by him and recognized by the Government of Canada between 1875 and 1877 include one lot in St Charles, four in St Boniface, and one in St James, totalling an area of 530 acres. ‘Vacant’ lands claimed by him between 1872 and 1876 include another in St Charles, four in St Boniface, and four in St James, totalling an area of 668 acres. Sprague, *Genealogy*, Tables 4, 5.

<sup>219</sup> *Nor’-Wester*, 28 March 1860, 3

September, claiming that ‘the Defendant has kept forcible possession of a part of his lot.’ Duncan McDougal (a constable and, apparently, the ‘acknowledged surveyor’) testified that he had measured the sites and ‘found 93 yards by the river and 96 by the fence and I think ... 10/ [shillings] would make it all fair to both.’<sup>220</sup> According to the *Nor’-Wester* Pierce Barron admitted the charge, but stated that ‘Mulligan had been for many years on his [Barron’s] land.’<sup>221</sup> The jury finally decided in Mulligan’s favour, but awarded damages of just 6 pence (half a shilling), a far cry from what the surveyor had suggested would be fair.

When the Council of Assiniboia first passed its regulations aimed at protecting property, their primary concern was to safeguard public resources from excessive or exclusive use and protect private resources from negligence. There were no laws to deal with the kind of land speculation that James Mulligan was engaged in, and the juries were left to mediate disputes and decide which party was the most wronged. What seems clear from outcomes of these cases is that jurors were determined not to let Mulligan use the court to bully his way onto other people’s property. The increase in cases of land speculation marks the beginning of a change in the court’s dealings from local to newcomer people and pursuits that can also be seen in the marked increase in prosecutions for debt that took place in the 1860s.

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<sup>220</sup> *James Mulligan vs Pierce Baron*, 20 September 1860, GQC 2:165

<sup>221</sup> *Nor’-Wester*, 28 September 1860, 1

## **Chapter 5:**

### **Commercial Concerns**

Perhaps the least sensational cases to come before the courts in Red River were those for debt. Nonetheless, an initial quantitative analysis suggests that they are perhaps the most significant. For one, from 1844 to 1869, there were 176 suits for debt – or about 40 percent of all cases. More significant, perhaps, is the marked increase in such cases during the 1860s. Between 1844 and 1854, there were just 7 suits compared to 57 in the next decade, and 112 in the five years between 1865 and 1869. The increase reflects a growing population and a corresponding increase in commercial activity, as well as a society that was increasingly familiar with the workings of the legal system and willing to seek redress in the courts. It also reflects the changes in Red River's population in the later 1860s.

When known ethnicity and age are quantified, more patterns emerge. Perhaps the most significant is the ethnicity of plaintiffs – plaintiffs were overwhelmingly English: 119 (about 68 per cent) were English-speaking while just 34 were French; in contrast, defendants were nearly evenly split among the French and English communities. Eight of the defendants and two of the plaintiffs were Aboriginal. Four cases were against corporations, including the HBC and the Board of Public Works. Notably, the native Metis population was well represented in court as plaintiffs for debt, although later in the

1860s, the pecuniary interests of more newly arrived Canadians meant that that population was overly represented in debt cases relative to their rather small population.

Another striking fact of these cases is how young most of the participants were. Defendants tended to be younger – though ages ranged from 19 to 75, nearly 70 per cent were under 40. Plaintiffs were usually slightly older, though about 60 per cent were still under 40. Clearly, this was a new generation engaging in the commercial and litigious activity that led to these suits. Five plaintiffs were women (none of the defendants were) – one sued jointly with her husband, but the other four represented themselves: Mrs Doolan, Mary Gowler, the Widow Que-we-since, and Angelique Bourassa.

Unfortunately, details in the court records are scarce regarding the circumstances in which the debt originated. Often, the record simply indicates the sums owed, the decision for or against the plaintiff, and the arrangements made for payment. Some cases do provide a bit more information, though, and as might be expected, debt could originate with commercial credit, shortfalls in trade transactions, or advances not repaid, as well as personal loans. Cases for breach of contract are here included with debt cases, since they sought money alleged to be owed, usually the return of an advance paid as well as costs to replace labour not performed.

By the end of Bunn's recognized tenure as Recorder in 1861, cases of debt had increased forty-fold – from just one during Thom's five years on record to twenty-two during Bunn's two-and-a-half years – and they continued to be more and more frequently the reason Red River citizens ended up in court, with 141 cases coming to the courts over the next eight years. The pattern of increasing instances of debt, and who was prosecuting whom, corresponds with the changes in Red River's population and economy over these

years. Many of the cases for debt to come before the courts during the 1860s were prosecuted by Canadians newly arrived in the settlement and earning a living as merchant or 'banker.' Most of those prosecuted for debt were Metis labourers who found themselves in a transitioning economy in which the HBC was no longer the sole employer and buffalo were becoming scarce. During Bunn's tenure, glimpses of these changes can be seen, however, most of the cases of his era still showcase disputes among the Metis population and Red River's traditional economy of the hunt and the fur trade.

John Bunn's first appearance in court as Recorder, in December 1858, saw two cases for debt and breach of contract. Both disputes were decided for the plaintiffs, supported by witness testimony. The first, a case of breach of contract, featured independent freighter Edward Mowat, an elderly Orkneyman who had been in Red River since he retired from the HBC in 1833 but who had been in court just twice before (once as a juror for the Sayer trial and the four other cases that day, and once as a grand juror in the 1845 murder case against Keetchipiwaipas).<sup>222</sup> Mowat had charged Alexander Sabiston with deserting his boats en route to York Factory. This was first and only time the middle-aged French Metis Sabiston appeared in court. Mowat attested that the damages he sought were the costs to engage another man at Norway House (£6) and again at York Factory (£4). Sabiston claimed that he did not intentionally desert the boats: he had gone in search of his blanket and the boats had left without him, 'and although he strove to overtake them he could not.' The jury found in favour of the

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<sup>222</sup> 20 February 1845, GQC 1:11; 17 May 1849, GQC 1:145–49. Mowat (1786–1862) was an elite in Red River and head of one of its leading Metis families; Norma Hall, 'Master List: Asset, Investment, and Status Comparison' (n.p.: 2002). He would die four years after this suit in a boating accident on the Red River.



plaintiff for £5.<sup>223</sup> It appears that the court agreed it was Sabiston's responsibility to follow through with his bargain, but in recognition that £10 was perhaps too steep a price to pay if he had the intent to go but simply missed the boats, the jury split the difference and fined Sabiston half of what Mowat had asked. There is nothing in the record to indicate Mowat produced a contract for the court, though Sabiston's testimony implies there was one.

A year earlier, in September 1857 – one month after the GQC heard two breach of contract cases brought by the HBC, John Bunn had presented a motion to council that would require a written contract between freighters and their tripmen, signed by both parties and witnessed, 'in order to prevent, for the future, any misconception of the relations between freighters or owners and their boatmen.' According to the resolution, which passed with the agreement that two weeks' public notice would be given, 'if any boatman, after having signed such agreement, but not otherwise, shall neglect or refuse to join the boat he has engaged to serve in ... it shall be lawful for any justice of the peace, upon complaint being made on oath by the master or owner of such boat, who shall produce his contract, to apprehend the said boatmen, and in case such boatman cannot give any sufficient reason for such absence..., may commit the said boatman to jail for any period not exceeding thirty days.'<sup>224</sup> Such apprehensions would have gone unrecorded in the GQC records, and it is unknown whether any actually occurred;

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<sup>223</sup> *Edward Mowat vs Alexander Sabiston*, 16 December 1858, GQC 2:120

<sup>224</sup> E.H. Oliver, *The Canadian North-West: Its Early Development and Legislative Records*, vol. 1, Publications of the Canadian Archives, no. 9 (Ottawa: Government Printing Bureau 1914): 427

however, it seems reasonable that freighters instead preferred to pursue a civil case at the courts in an attempt to reclaim any losses.

The debt case that followed Mowat's suit was for damages of £30. It was the first and only time that the two French Metis men, plaintiff Joseph St Aneau and defendant Jerome Beauchamps, appeared in court. St Aneau testified that he had lent the defendant an ox and cart (with rope) plus £2,10,0 and in return defendant was to bring him two cows 'w/ skins intact.' The nine witnesses who testified appear all to be French Metis men, and those whose identities can be traced were about thirty years old, save for Charles Goulet who was about 64. Four witnesses for the plaintiff attested to being present when the deal was made and the defendant took the ox, and three of them added that they 'have not seen it since.' One told that two quarts of liquor were included in the deal (given to defendant), and another related that he had helped the defendant to unharness the ox and 'it was not difficult to handle.' Two of the plaintiff's witnesses valued the goods at £13 and £15–16, respectively. Five witnesses testified on behalf of the defendant: one helped to harness the ox and valued the goods at £13, claiming that the ox was not lost but at Felix Letraille's place; one simply affirmed the deal that was made and another that the ox was 'as wild as a Buffaloe'; Moyes Goulet 'knows nothing of the bargain but knows ox was wild, Defendant told me he must leave ox as he could not handle it, gave him to Felix Latraille'; C. Goulet added that Felix was to bring the ox to Red River.

Witnesses for both plaintiff and defendant confirmed the loan of ox and cart in return for two cows. The defendant did not testify, but his witnesses seemed to say that though the bargain was struck, he was unable to follow it through because the ox was

unruly and he had given it to someone else to bring back to Red River. Since Beauchamps had not fulfilled his part of the deal, the jury awarded damages of £20 to the plaintiff and charged the defendant the court costs. The damages were lower than what plaintiff demanded, but slightly higher than the value of goods according to witnesses.<sup>225</sup>

As with the previous case for breach of contract, the jury decided that this was an unfulfilled obligation and awarded damages to the plaintiff but at what they considered to be a more reasonable amount than was claimed. The above two cases reflect common lifestyles in Red River at the time: an independent freighter with a younger Metis man in employ, and non-HBC Metis men contracting to share resources for and yields from the buffalo hunt. They also reflect the tendency of Red River juries to weigh the evidence and award less extravagant damages than what the plaintiff requested.

In June 1859, there were five cases for debt. Three of these were decided 'by default,' with the plaintiffs 'sworn to correctness of his account' and a constable 'sworn to delivery of summons.' In the first, the plaintiff was Albert Sargent, aged 33 from the US; the defendant was Baptiste Savoyard, about whom we know nothing. No witnesses are on record, and because the defendant did not appear, the decision was made for the plaintiff by default.<sup>226</sup> Since 1839, when the Council of Assiniboia passed thirty resolutions relating to local legislation and the administration of justice, it was the law that any defendant who did not appear after being 'duly summoned in writing by a sworn Policeman' would be found guilty by default if the plaintiff could establish his claim.<sup>227</sup>

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<sup>225</sup> *Joseph St Aneau vs Jerome Beauchamps*, 16 December 1858, GQC 2:120–23

<sup>226</sup> *Albert Sargent vs Baptiste Savoyard*, 16 June 1859, GQC 2:128

<sup>227</sup> Oliver, *Canadian North-West*, 1:289

Though not so restricted by the council's resolution, the decision by default was only ever applied in debt cases. In 1853, John Bunn had put forward four resolutions to council to clarify when a debtor who was out of the settlement could be considered truly 'absent.' The resolutions sought to ensure that a debtor's assets in Red River could only be given up to creditors when he was absent for more than a year or with no intention to return thereby protecting settlers who were only temporarily absent, either for the hunt or other work.<sup>228</sup>

The second case that day featured 55-year-old Narcisse Marion as the plaintiff. Born in Lower Canada, a blacksmith for the HBC from 1827 to 1835 and a miller and storekeeper in Red River, Marion was married to a local Metis woman and had become one of Red River's elite.<sup>229</sup> He was well-known to the court, having acted as a juror fifteen times between 1845 and 1855 and would be a grand juror in three 1863 cases, serving on both the Sayer and Corbett trials, two of Red River's most notorious and volatile trials. He had been a plaintiff in one other debt case before this (but not after), and once he had been called as a witness in a theft case. In this case, he pursued a debt of £22 from Joseph Favel, a 31-year-old native whose mother was Aboriginal and father had been born in the northwest. Again, there is no record what the debt was for, no witness testimony was recorded, the defendant did not appear, and the decision was for the

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<sup>228</sup> Oliver, *Canadian North-West*, 1:395–96

<sup>229</sup> D.N. Sprague and R.P. Frye, eds., *The Genealogy of the First Metis Nation: The Development and Dispersal of the Red River Settlement, 1820–1900* (Winnipeg: Pemmican Publications 1983): Table 3; Alexander Ross, *The Red River Settlement: Its Rise, Progress, and Present State* (London: Smith, Elder, and Co. 1856): 121; W.L. Morton, 'Introduction,' *London Correspondence Inward from Eden Colvile, 1849–1852*, ed. E.E. Rich (London: Hudson's Bay Record Society 1956): lxix; Hall, 'Master List'

plaintiff by default with court costs of one shilling.<sup>230</sup> Two years earlier, Favel had also not appeared at court when he was sued by the HBC for breach of contract. In that case, Favel had actually already repaid his advance after he had missed the boats, but the HBC still sought £10 damages for the loss of his services. The court settled on £2 in damages (and no court costs), with ten days' grace to pay.<sup>231</sup>

In another debt case that month between two French-Canadian farmers, Nichol Courtelle and Louis Thibeault, the case was dismissed after the Bench found insufficient cause to go before a jury and recommended settlement by arbitration.<sup>232</sup> There are no other details for this day, but this case does provide some insight into the workings of the court: Councillors of Assiniboia are always recorded as present at the beginning of each court session, but although they were intended to advise on the proceedings as necessary the court record almost never contains any indication of their participation.<sup>233</sup> In this case, we have some indication that the councillors did decide on the merit of a case before it proceeded to trial, much like the grand juries that were called for more serious cases. In any event, it seems they misjudged: Courtelle and Thibeault were back in court three years later, with Courtelle still pursuing his case for breach of contract.<sup>234</sup> This time

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<sup>230</sup> *Narcisse Marion vs Joseph Favel*, 16 June 1859, GQC 2:130

<sup>231</sup> *HBC vs Joseph Favel*, 20 August 1857, GQC 2:100

<sup>232</sup> *Nichol Courtelle vs Louis Thibeault*, 16 June 1859, GQC 2:130

<sup>233</sup> From the *Nor'-Wester* accounts during the 1860s, we know that they did participate at least occasionally.

<sup>234</sup> Courtelle had appeared in August 1854, unsuccessfully seeking return of property from Mme LaSuperieuse. Thibeault had been a juror in five cases between 1849 and 1855, after which he appeared in these two cases and as a defendant in an 1855 case of damages for loss of horses (he lost, to Benjamin Lagimodiere).

seventeen witnesses were called to testify about the events beginning in 1856 that had led up to the court action. It seems that Courtelle had been contracted to work 'at hay in the summer and attending cattle in the winter' for Thibeault, but had been let go because he 'scarcely ever worked.' The record does not indicate how much the suit was for, but presumably Courtelle was suing for what he thought were wages owed. Witnesses differed on whether Courtelle was always 'ready and willing to work,' only performed 'light work,' 'would not work,' or 'worked well [the first year] but after that he scarcely ever worked'; one offered, 'I have seen him work and I have seen him doing nothing.' Since arbitration had failed, there was nothing for the jury to do but decide the case, and their verdict likely satisfied neither party: Thibeault was 'obliged to fulfil his engagement' and Courtelle was 'obliged to work as he is able,' and court costs of £3,13,0 were divided equally. The testimony sheds some light on the labour situation in Red River at the time, not only what work people were doing, but the circumstances of their employment. One witness, Maximilian Genthon,<sup>235</sup> testified that he 'was one of those appointed to appraise the property he (the Plaintiff) had given over to the Defendant when he gave himself up' (it amounted to £66,15,0).<sup>236</sup> Similarly, when Courtelle had lost his house to Mme LaSuperieuse in 1854, he testified that he 'had given himself up to Defendant with all his property, to be Boarded and Lodged etc etc during his life,' but Mme LaSuperieuse had turned him out. In that case, Rev. Louis Lafleche, on behalf of the defendant, produced a written contract that contradicted Courtelle's claims, and the

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<sup>235</sup> Genthon (aged 72, originally from Lower Canada) had been a Councillor of Assiniboia since 1857, and a magistrate in the petty courts 1850–1860. Oliver, *Canadian North-West*, 1:70

<sup>236</sup> *Nichol Courtelle vs Louis Thibeault*, 21 August 1862, GQC 2:233–35

jury decided for the defendant.<sup>237</sup> Apparently, Courtelle then moved on to Louis Thibeault's and again gave himself and his property over to Thibeault in return for work and board. An interesting facet of all of this is that Courtelle, without much security or status, felt he could use the court (twice) to his benefit to defend his position.

Finally, a case in which John McBride sued John Inkster for £9 provides more details about what debt cases might be pursued for and about labour situations in Red River. McBride, in his first and only court appearance, had signed on to work at Inkster's flour mill upon arriving in Red River but left, according to one witness, 'without a minute's warning,' and was now seeking payment of wages. Witnesses attested, however, that the promise to McBride, and the general practice at the mill, was to provide board only, with wages to come if and when the mill was up and running and out of debt. Interestingly, the three witnesses for the plaintiff and the three for the defendant (as indicated in the records) all have similar testimony about the conditions of employment at the mill. Alexander Sutherland testified that 'when the mill was fit to run, that he [the plaintiff] should have the first chance of being the Engineer.' After hearing the witness testimony, the court dismissed the case because the plaintiff was 'non-suited.'<sup>238</sup>

The six witnesses, at least three of whom were employed at the mill, ranged between 29 and 51 years of age and were Scottish, English, and anglo-Metis from Red River.<sup>239</sup> John Inkster (1799–1874), the miller, was an Orkneyman who had come to the

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<sup>237</sup> *Nicholas Courtelle vs Mme LaSuperieuse*, 17 August 1854, GQC 2:74–75

<sup>238</sup> *John McBride vs John Inkster*, 16 June 1859, GQC 3:128–30

<sup>239</sup> The 1870 census has a John McBride listed as a non-Metis born in Red River in 1821; however, witness testimony has McBride arranging for work upon arriving in the settlement. It is possible, though, that he was born in Red River and returned to the settlement after being away for work or education or some other reason.

west as a stonemason for the HBC, though he soon left the Company to farm in Red River, and later became a trader and merchant. He had been appointed a Councillor of Assiniboia in 1857 and was present at fifty-four council meetings during his tenure. From 1857 until his resignation in 1868, he was a magistrate in the Lower District petty court.<sup>240</sup> At the General Quarterly Court, he was a juror in ten cases between 1844 and 1863, but appeared as a magistrate, in his role as Councillor of Assiniboia, for just one court session (August 1857, the first after his appointment). At the time that he is sued by McBride, Inkster has been a councillor and petty court magistrate for about two years, so he is clearly well-known to the GQC magistrates. McBride on the other hand, appears to be new to the settlement. The cards seemed to be stacked against him, even if the witness testimony had not so clearly favoured his employer.

It does appear that the mill was in trouble. A month earlier, in May 1859, the Council of Assiniboia had heard a petition from ‘inhabitants of Red River,’ that the steam mill that ‘has been of immense benefit to the Public of this Settlement, in various ways, will, in a very short time, be totally unfit to carry on work, on account of the dilapidated state of the boiler, caused by the incompetency [sic] of the first engineers.’ The petition went on to say that the mill company had already spent £1600 to get the mill started and couldn’t afford to purchase another boiler. Therefore, they requested £100 ‘from the Public Funds’ of the £200 required for a new boiler, especially because ‘the Wind and Water Mills ... are altogether inadequate to meet the pressing demands for grinding,’ which the steam mill could fulfil. The vote split six to five between the English- and French-speaking members of council and was deferred because it was not unanimous.

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<sup>240</sup> J. Bumsted, *Dictionary of Manitoba Biography* (Winnipeg: University of Manitoba Press 1999): 118–19; Oliver, *Canadian North-West*, 1:69



Another vote was taken at the next meeting (February 1860), this time with John Harriot and Robert McBeath joining the French vote against the proposal so that the motion failed.<sup>241</sup> Later that same meeting, a short letter from merchant and councillor Andrew McDermot was read to council. The letter stated that ‘if the public funds is [sic] to be distributed for the purpose of raising steam for the lower Settlement exclusively, I would respectfully request your Honourable Council would allow me an equal portion for the same purpose for the Upper Settlement as I am bringing a Steam Mill this Spring ... and I cannot see why one part of the Settlement should be preferred to the other. I have to pay this week £76 for duty, and I should be sorry to see it turned over for the above purpose without getting a share of it merely for the same use.’<sup>242</sup> This letter certainly may have influenced the decision of council not to pay at all, rather than pay to both parties. As well, it must be noted the way McDermot thought he could use his ‘status’ as a taxpayer to influence how those taxes might be spent.<sup>243</sup>

September 1859 found Andrew McDermot in court as the plaintiff in two debt cases. McDermot was notable in Red River. Born in Ireland, he was recruited for the HBC by Lord Selkirk in 1812 but retired and settled in Red River in 1824 as a merchant and independent trader;<sup>244</sup> he was appointed to the Council of Assiniboia in 1839 and

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<sup>241</sup> Oliver, *Canadian North-West*, 1:448–51

<sup>242</sup> Oliver, *Canadian North-West*, 1:453. The letter was ‘Ordered to lie on the Table.’

<sup>243</sup> Inkster’s steam mill did ultimately fail, after which he built a water mill, with a dam that was ‘perhaps the most substantive in the country,’ which began operations in the summer of 1862. *Nor’-Wester*, 30 April and 9 July 1862. See also Barry Kaye, ‘Flour Milling at Red River: Wind, Water and Steam,’ *Manitoba History* 2 (1981).

<sup>244</sup> Bumstead, *DMB*, 151–52; Oliver, *Canadian North-West*, 62, gives his birth date as 1789; Sprague, *Genealogy*, Table 1, as 1793

appeared in court five times as a Councillor of Assiniboia (1849–1851), twice as a witness, and once a defendant.<sup>245</sup> McDermot's first suit for debt was against 54-year-old Metis Louison Marcellais and was decided by default. The second was against 35-year-old Englishman Charles Stotgale. Though the records do not indicate what the suit was for, it was presumably another debt case, since the only cases McDermot pursued as a plaintiff were for debt (six) or breach of contract (two).<sup>246</sup> The court record gives no details, only that the case was 'referred to arbitration.'<sup>247</sup>

In December 1859, after considering four criminal cases for theft, the court proceeded to the civil cases for debt. The first, *Andrew G.B. Bannatyne vs Wapoose LaPine*, was settled quickly and by default because the defendant did not appear.<sup>248</sup> This was the first of eight debt cases to be pursued against an Aboriginal defendant (four of them after 1864), all but one of which were decided by default because the defendants did not appear. As was usual in such a case, Bannatyne swore to the correctness of the account (£2,8,0 – the newspaper informs us that this is the balance of a £6,8,0 debt) and

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<sup>245</sup> Oliver, *Canadian North-West*, 1:62

<sup>246</sup> In 1847 he was the plaintiff in a case for cutting timber on an HBC land grant. He was also president of the lower petty court for less than a year (October 1850–May 1851).

<sup>247</sup> *Andrew McDermot vs Charles Stodgel*, 15 September 1859, GQC 2:139

<sup>248</sup> Bannatyne (aged 30 at this time) was an independent trader and merchant with long ties to the fur trade elite, though he had arrived in Red River only about a dozen years earlier. Nephew of Chief Factor John Ballenden, son-in-law of Andrew McDermott, and brother-in-law of Governor McTavish, Bannatyne joined the HBC when he was 14 but quit the service so he could marry Annie McDermott). He became an independent trader and merchant in the settlement. At 32, he was appointed a magistrate in 1861 and named to the Council of Assiniboia in 1868 (attending 12 meetings); he was a grand juror in three cases in 1863 (including Corbett's trial), plaintiff in one other debt case, and witness in five cases. See Bumsted, DMB, 14–15; 'Bannatyne, Andrew Graham Ballenden,' DCB Online; Oliver, *Canadian North-West*, 70–71.

the constable swore he had delivered the summons. The *Nor'-Wester* next gives an account of a case between Bannatyne and Bernard for a debt of \$32.90 plus interest brought by Bannatyne on behalf of parties at Little Falls, Minnesota. The case does not appear in the court records, likely because, according to the paper, it was settled out of court; however, it does provide some indication of the confidence of the GQC in their assessment of what fell within their jurisdiction. When the defendant<sup>249</sup> questioned the court's jurisdiction, Bunn stated that there was no doubt: 'if the defendant did not pay the money, they would clap him in prison. Men who signed notes of this description put their hands to very dangerous pieces of paper, and he (the learned Doctor) was afraid that in this settlement there were many persons who before long would get their fingers burnt by indulging in such practices.' Presumably, Bernard paid up: the matter was 'settled out of court.'<sup>250</sup> Whether or not the court did actually have jurisdiction to hear the case is of less importance here than that they believed they had the right to hear it. Bunn at least clearly felt that it was important: this was a period when more and more debt cases were coming before the courts, and Bunn was adamant that it was not in the best interests of any settler to enter into such agreements if they were not able to pay up in the end.

In March 1860, the court heard five cases: three for debt and two cases regarding ownership of livestock. As before, the debt cases were handled quickly: in the first, the defendant acknowledged debt; the other two went by default. Notable among these debt cases is that one was the first of six debt cases that Henry McKenny (a new arrival from

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<sup>249</sup> Presumably Bernard lived in Red River at the time (Sprague's *Genealogy* does not list a Bernard, but there are two generations of Berards native to Red River/the northwest at the time).

<sup>250</sup> *Nor'-Wester*, 28 December 1859, 4.

Upper Canada, later to be named a magistrate for the Middle District Local Court and then sheriff in 1862) would pursue over the next few years, and among the growing number of debt cases brought forward by newcomers from Upper Canada. The other debt cases were between local Metis men. Since no description is given, it is unknown what the debts were for, though presumably McKenny's suits related to his merchant activities.<sup>251</sup>

McKenny was back in court in December 1860, though this time he was the defendant. The plaintiff was W.G. Fonseca, another merchant even more newly arrived than McKenny,<sup>252</sup> seeking to recover a debt of £4,6,7 plus damages of \$10. According to Fonseca's testimony, he had agreed with McKenny to travel and camp together from St Paul's to Red River, but along the way there were disputes over the provision of supplies and costs for the care of McKenny's cattle. Three other witnesses testified, but none seemed to know anything of the agreement Fonseca said had been struck. The court found the case non-suited, suggesting a lack of evidence for much of anything, other than, perhaps, a (petty) personal dispute.<sup>253</sup>

In another case for debt that December, also involving livestock and a dispute that had occurred on a trip between Red River and St Paul's, Jean Mark Mager charged Henry

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<sup>251</sup> McKenny was a merchant who arrived in Red River and opened the first hotel (1859). He also traded furs and operated a general store at what would become Portage and Main (DMB, 161)

<sup>252</sup> Bumsted, DMB, 83: Fonseca (1823–1905) came to Red River in 1860 from the West Indies via New York and Minnesota. 'He had a shop in a building owned by his father-in-law, Thomas Logan. He lectured on the West Indies and was regarded highly enough to be considered for the post of American consul that went to Oscar Malmros. In 1869 he was carting and freighting ... He later became a prominent Winnipeg businessman, land speculator, and local politician.'

<sup>253</sup> *W.G. Fonseca vs H. McKenny*, 20 December 1860, GQC 2:171–72

Joichim with a debt of £37,6,0. The origin of the debt is not described, but testimony focused on the tallies in an account book kept for the journey. Apparently, the care of Mager's horse on the way to St Paul's 'caused a great deal of contention,' and one witness testified that 'I saw the horse going to St Pauls and saw the Defendant taking care of it ... that deserved to be paid for ... when I saw the account between them there was a balance of \$17 or 18 in favour of Mager.' The jury decided that Henry Joichim's outstanding debt was £2,12,0.

The last case heard in December 1860, though not reported in the *Nor'-Wester*, was *HBC vs Ah ne choi ol ning and Car a ne gun e gan* for debt and desertion, one of only six cases in which the HBC was explicitly named the plaintiff. John McTavish, 'accompt' to the HBC, swore that Ah ne choi ol ning had been engaged and advanced £11,7,0 on account and Car a ne gun e gan for £13,1,0. Baptiste Bruce, HBC guide, 'swore these two Indians had deserted at Grand Rapid at [the north-west end of ] L[ake] Winipic.' Neither defendant appeared in court, so the judgment went by default after Constable Corrigan swore to delivery of the summons. The above-named sums were 'sought to be paid and for desertion 1 month imprisonment,' though whether this was or could be enforced is definitely questionable.<sup>254</sup> If the defendants were looking for a ride upriver with a bit of money in their pockets (or at least the equivalent in goods, since their advance was 'on account'), they had found a way to do it! In May 1861, the court would again hear a case by the HBC against 'an Indian,' and again the case went unreported in the newspaper. The proceedings were brief because the unidentified defendant 'acknowledged the debt' of £9,11,0 for advances. However, because he was

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<sup>254</sup> *HBC vs Ah ne choi ol ning and Car a ne gun e gan*, 21 December 1860, GQC 2:172-73

unable to give security for the debt, he was imprisoned. This is the only time that the records show a defendant was imprisoned solely for an unpaid debt.

There were three cases before the GQC in March 1861; none of which, unfortunately, was covered in the *Nor'-Wester*. Two were for debt, one for damages: of the first, *Joseph Langevin vs Stephen Green*, the records say only that 'judgement was given that Defendant on or before two months from this date pay the sum sought.' Given his connections, it seems likely that Green was a member of the Royal Pensioners, but there is no biographical record to otherwise identify the men. (Green, though, it seems, was no stranger to debt: he would be successfully charged with debt again in 1862 by L.B. Martin & Co. and would testify at a larceny trial about how he had borrowed money from the defendant.)

In the second case, *Charles Morin vs St Matt Paullette*, the dispute centred on a bargain agreed on for the buffalo hunt. No information can be found about the defendant, but the plaintiff was a 23-year-old native of Red River.<sup>255</sup> Charles Morin testified that the defendant had agreed to take two of Morin's carts to the plains hunt and 'was to give for the same 2 Toros, 1 Bale of meat and 3½ cows fresh meat, provided there was cattle in the plains,' and the defendant was to get a cart horse in return. The defendant testified

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<sup>255</sup> Morin was recorded as living on lot 210 in St Francis Xavier in the 1870 census with two young children, a lot for which he secured a patent and claimed in 1885 though it had been deemed vacant; see Sprague, *Genealogy*, 34. Sprague, *Genealogy*, Table 1, indicates he is Metis, with an Aboriginal father and mother, though his mother's parents are both recorded as Metis – unless there is a mistake in the transcription of information, it appears that somewhere along the way census takers or church officials, depending on the records from which Sprague took the information, confused 'race' with appearance, place of residence, and/or lifestyle. This of course brings into question a lot of the available data on ethnicity in Red River. Perhaps factors such as birthplace, length of residence in the settlement, and connections – personal/kinship, habitual/residence, business, or political – remain the best way of understanding community dynamics. With the exception of kinship, these are, however, more difficult to ascertain.

that he had given Morin '2 Bulls, 2 Toros, 1 Bale of meat, and asked for the horse but was refused under the excuse of something more to be paid for it.' Pierre Falcon and Pierre Paul both testified to being present at the bargain. Falcon added that 'if his (the Defendant's) horse had been better he could have killed cows although cows were not numerous.' The jury decided for the plaintiff, but for £5, less than half of the £12 claimed.<sup>256</sup> It seems two bulls were not a sufficient substitute for 3½ cows.

The other case heard that day (March 1861) also related to an agreement struck for the plains buffalo hunt – and it is a prime example of 'ordinary' Red River citizens making use of the legal institutions available to them. It is notable in that the plaintiff was a woman, a young Metis women, who testified on her own behalf – and won her case. Angelique Bourassa was born in the northwest in 1830. She would marry Pierre Desnoyers, whose first wife had died in 1859 (Desnoyers himself would die in 1866), but given the nature of her bargain with the defendant and her identification by her maiden name in the court records, it is most likely that she was unmarried (or possibly previously widowed, since she had young children) when she took her case to court. This is all the more noteworthy because it was the first and only time she appeared in court, and the only record of familial court experience is the appearance of her maternal uncle and

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<sup>256</sup> *Charles Morin vs St Matt Poullette*, 21 March 1861, GQC 2:181–82

grandmother as witnesses in two 1849 cases.<sup>257</sup> Nor were her witnesses previous visitors to the court.<sup>258</sup> This was also the defendant's first and only time in court.

Angelique Bourassa was seeking £6 when she took Jollibois (age 38 of Red River) to court over 'four buffalo [cows] and loss of blanket,' after he failed to hold up his end of an agreement in which he was to turn over one buffalo for every four that he killed in return for her processing the hides, meat, and pemmican for him.<sup>259</sup> Bourassa testified that 'I was to take my own carts and oxen to bring home fresh meat for myself.' She stated that she did not get her four animals and that on the trip to find one that the defendant had killed (with her 'little children' in the cart), she had lost an axe and a blanket. John McKeaver and Antoine Vennette both testified that they had been present 'at the bargain.' McKeaver confirmed Bourassa's description of the agreement, but Vennette added that he had heard the 'Defendant complain that Plaintiff had used his mare badly.' Antoine Vandal testified that he heard the defendant discharge the plaintiff and her son, and that 'the carts were loaded before he discharged her and on the way home.' In his defence, Jollibois stated that he 'had discharged the Plaintiff for negligence of duty and ill treatment to his mare.' Baptiste Primeau testified that Bourassa had got two animals and that he was present 'when she took his heifer.' Another witness added only that 'both parties related to me the bargain they had made with each other,' which

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<sup>257</sup> Her grandmother testified in the seduction case *Pellon vs Delorme* (November 1849), and her uncle in a case for illegal sale of liquor against Pensioner William Smith (May 1849).

<sup>258</sup> An Antoine Vandal would appear once more as a witness to a case of theft in 1863, and an A. Vandal had appeared twice as a constable in 1858 and 1859, but their identities are uncertain.

<sup>259</sup> *Angelique Bourassa vs Jollibois*, 21 March 1861, GQC 2:178–81



suggests an attempt to resolve the dispute prior going to court. Without resolution, Angelique Bourassa took Jollibois – an older man and possibly employer – to court. She did not receive the full £6 claimed, but the jury did decide in her favour and awarded her £2,10,0.

Like Mme LaMalice fighting James Mulligan for her house and Margaret Cramer fighting the garrison soldiers for her honour, Angelique Bourassa, with little to back her, took a stand in the courtroom to fight for what was rightfully hers. That she did so suggests that the General Quarterly Court was perceived as a place where redress could be sought and obtained, and not just by the men of means, who by simple virtue of having goods and money to lend came to dominate the court with debt cases in later years. Bunn, especially, was apprehensive about what would happen if more and more settlers fell into debt, and he urged caution. Though these cases hint at the transition to a cash economy and the attendant increase in cases for debt, as well as the shift in who was prosecuting whom, the sharing and exchange of labour and resources is still evident in these cases for debt and breach of contract.

## Conclusion

In the 1850s and 1860s, the Red River Settlement was past the strife of its origins and only just beginning to sense the possibilities of strife that would come at the end of the decade. Its government, while still appointed by the Hudson's Bay Company, was more representative than ever before, and had recently consolidated local legislation with John Bunn's guidance. Native sons had taken the reins in the courts as magistrates and jurors. The Metis of Red River in these years had a robust and independent sense of their place in the world. In the courts, violent crime had dropped to next to none, and there was none of the discord marked by defamation suits that had been seen in earlier years. The concerns over the conduct of Aboriginals that had been evident in zealous prosecutions of illegal sale of liquor had dissipated. That the community was still engaged in traditional pursuits of hunting and agriculture is evident in the regularity with which livestock cases came before the courts; that the community was engaging more and more in commercial activity is evident in the increasing frequency with which debt cases came to the GQC. Early evidence of the land speculation that would come full-force to Red River in the next decade prompted ordinary citizens into the courts to defend their property. The records of the General Quarterly Court between 1858 and 1861, when the court was led by Red River's first native judge, John Bunn, provide a valuable window through which to glimpse the realities of Red River citizens in their daily lives and in the sometimes extraordinary circumstances that brought them to court.

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