

III.

Prosecution and Execution

In order to better understand and analyse events and conditions of Riel's life and struggles, a brief review of the judicial process which terminated his life, is necessary.

On May 15, 1885, Riel voluntarily surrendered to Canadian government scouts. He was then taken to Major-General Frederick Middleton, who had written him a letter promising protection upon surrender and until the Government had decided his case.³ General Middleton then provided Riel with an armed guard until he was delivered to the North West Mounted Police Compound in Regina, on May 23, 1885.⁴ It is to be noted that Middleton's original intention was to transport Riel to Manitoba, but that he received directives to the contrary.⁵

The Court that conducted Riel's trial assembled on July 20, 1885, and proceeded to arraign the prisoner. The following indictment was read out:

Sixth day of July, in the year of Our Lord 1885, at the Town of Regina in the Northwest Territories;

Before me, Hugh Richardson, one of the stipendiary magistrates of the Northwest Territories, exercising criminal jurisdiction under the provisions of the Northwest Act, 1880.

Louis Riel, you stand charged on oath before me as follows:

The information and complaint of Alexander David Stewart, of the City of Hamilton, in the Province of Ontario, in the Dominion of Canada, chief of police, taken the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-five, before the undersigned, one of Her Majesty's stipendiary magistrates in and for the said Northwest Territories of Canada, who saith:

1. That Louis Riel being a subject of our Lady the Queen, not regarding the duty of his allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our said Lady the Queen, and wholly withdrawing the

³Desmond Morton, *The Queen v. Louis Riel*, 1974, at 184-185.

⁴*Ibid.*, at 185.

⁵*Ibid.*, at viii.

allegiance, fidelity and obedience which every true and faithful subject of our said Lady the Queen should and of right ought to bear towards our said Lady the Queen in the year aforesaid, together with on the twenty-sixth day of March divers other false traitors to the said Alexander David Stewart unknown, armed and arrayed in a warlike manner, that is to say with guns, rifles, pistols, bayonets, and other weapons, being then unlawfully, maliciously and traitorously assembled and gathered together against our said Lady the Queen at the locality known as Duck Lake in the said the Northwest Territories of Canada and within this realm, and did then maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the constitution and government of this realm as by law established, and deprive and depose our said Lady the Queen of and from the style, honor and kingly name of the Imperial Crown of this realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in the like case offending, contrary to the duty of the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided and against the peace of our said Lady the Queen, her Crown and dignity.

2. And the said Alexander David Stewart further saith: That the said Louis Riel, being a subject of our Lady the Queen, not regarding the duty of his allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our said Lady the Queen, and wholly withdrawing the allegiance, fidelity and obedience which every true and faithful subject of our said Lady the Queen should and of right ought to bear towards our said Lady the Queen, on the twenty-fourth day of April in the year aforesaid, together with divers other false traitors to the said Alexander David Stewart unknown, armed and arrayed in a warlike manner, that is to say, with guns, rifles, pistols, bayonets and other weapons, being then unlawfully, maliciously and traitorously assembled and gathered together against our said Lady the Queen, most wickedly, maliciously and traitorously did levy and make war against our said Lady the Queen at the locality known as Fish Creek in the said the Northwest Territories of Canada and within this realm, and did then maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the constitution and government of this realm as by law established, and deprive and depose our said Lady the Queen of and from the style, honor and kingly name of the Imperial Crown of his realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in the like case offending, contrary to the duty of the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

3. And the said Alexander David Stewart further saith: That the said Louis Riel being a subject of Our Lady the Queen, not regarding the duty of his allegiance nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a traitor against our said Lady the Queen and wholly withdrawing the allegiance, fidelity and obedience which every true and faithful subject of our Lady the Queen should and of right ought to bear towards our said Lady the Queen, on the ninth, tenth, eleventh and twelfth days of May in the year aforesaid, together with divers other false traitors to the said Alexander David Stewart unknown, armed and arrayed in a warlike manner, that is to say with guns, rifles, pistols, bayonets and other weapons, being then unlawfully, maliciously and traitorously assembled and gathered together against our said Lady the Queen, most wickedly, maliciously

and traitorously did levy and made war against our said Lady the Queen at the locality known as Batoche, in the said the Northwest Territories of Canada and within this realm, and did then maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the constitution and government of this realm as by law established, and deprive and depose our said Lady the Queen of and from the style, honor and kingly name of the Imperial Crown of this realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, contrary to the duty of the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

4. And the said Alexander David Stewart further saith: That the said Louis Riel, then living within the Dominion of Canada and under the protection of our Sovereign Lady the Queen, not regarding the duty of his allegiance nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our said Lady the Queen, and wholly withdrawing the allegiance, fidelity and obedience which he should and of right ought to bear towards our said Lady the Queen, on the twenty-sixth day of March in the year aforesaid, together with divers other false traitors to the said Alexander Stewart unknown, armed and arrayed in a warlike manner, that is to say with guns, rifles, pistols, bayonets and other weapons, being then unlawfully, maliciously and traitorously assembled and gathered together against our said Lady the Queen, most wickedly, maliciously and traitorously did levy and make war against our said Lady the Queen at the locality known as Duck Lake, in the said the Northwest Territories of Canada and within this realm, and did then maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the constitution and government of this realm as by law established, and deprive and depose our said Lady the Queen of and from the style, honor and kingly name of the Imperial Crown of this realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, contrary to the duty of the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

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the Imperial Crown of this realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, contrary to the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.

6. And the said Alexander David Stewart further saith: That the said Louis Riel, then living within the Dominion of Canada and under the protection of our Sovereign Lady the Queen, not regarding the duty of his allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our said Lady the Queen, and wholly withdrawing the allegiance, fidelity and obedience which he should and of right ought to bear towards our said Lady the Queen, on the 9th, 10th, 11th, and 12th days of May in the year aforesaid, together with divers other false traitors to the said Alexander David Stewart unknown, armed and arrayed in a warlike manner, that is to say, with guns, rifles, pistols, bayonets and other weapons, being then unlawfully, maliciously and traitorously assembled and gathered together against our said Lady the Queen, most wickedly, maliciously and traitorously did levy and make war against our said Lady the Queen at the locality known as Batoche, in the said the Northwest Territories of Canada and within the realm, and did then maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the constitution and Government of this realm as by law established, and deprive and dispose our said Lady the Queen of and from the style, honour and kingly name of the Imperial Crown of this realm, in contempt of our said Lady the Queen and her laws, to the evil example of all others in like case offending, contrary to the duty of the allegiance of him, the said Louis Riel, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her Crown and dignity.⁶

The presiding Judge was Lieutenant-Colonel Hugh Richardson, a stipendiary magistrate for and in the Northwest Territories as provided for under the Northwest Territories Act, 1875.

A stipendiary magistrate was a barrister of at least five years' experience who served as a part-time judge in the Territories, was paid a stipend for the time he so worked, was appointed by the reigning political powers in Ottawa and continued in office at their pleasure. He was, consequently, a servant of the party in power; moreover, Richardson was the legal advisor to the Territorial Governor.⁷

Although no reference is made to Richardson's Orange connection in the current research by our Association, there is a strong statement to this effect made by Auguste Tremaudan in his *History of the Métis Nation in Western Canada*.

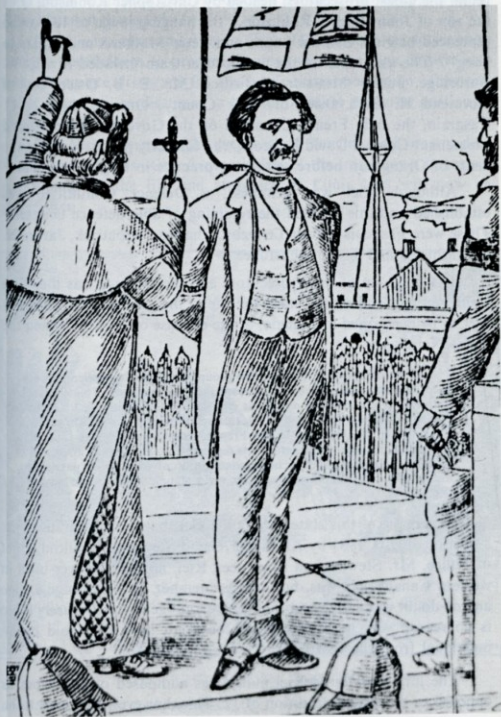
Richardson's Orangeist affiliations as well as those of Justice of the Peace, Henry LeJeune (French in name only), were well-known.⁸

It is also to be noted that the Federal Government endeavored to

⁶*Ibid.*, at 3-7.

⁷Howard, *Strange Empire*, 1974, at 507-508.

⁸A. Tremaudan, edited by H. Adams, *The History of the Métis Nation*, at 142.



A drawing depicting the execution of Riel — Source unknown.

retain the ablest prosecutors, headed by Christopher Robinson, Q.C. the son of John Beverly Robinson, "the hanging judge of 1838, who sentenced patriots Samuel Launt and Peter Mathews and others to hang".⁹ The assistants on the prosecution team included Mr. E. W. Burbridge, Junior Minister of Justice, Mr. B. B. Osler, son of Reverend H. Bath Osler of York County, Ontario, Mr. T. C. Casgrain, the only French-Canadian on the Government team, and Lieutenant-Colonel David L. Scott, who formerly practised law in the heart of Orangeism before setting up practice in Regina in 1882.

Although Riel was penniless, a Defence Committee was established and this enabled the retaining of able defence counsel.¹⁰ These were Francois-Xavier Lemieux, Charles Fitzpatrick, James N. Greenshields and T. C. Johnstone.

The make-up of the Prosecutors and the Defence was therefore emblematic of and set the stage for one of the greatest political trials ever to be performed in Canada, at the expense of Louis Riel and the Métis Nation.

In the composition of these two groups of lawyers were elements of race, religion, and politics which were radically opposed. This trial of native by white involved numerous contrasts: East versus West; Upper Canada versus Lower Canada; Ontario versus Quebec; Orangeism versus Catholicism; Anglo-Saxon versus French; Conservative versus Liberal. In other words, the whole nation was represented and intensely interested in this debate. Never before had a situation occurred in which passions, antipathies and even hatreds had been given complete freedom to expose themselves.¹¹

In support of this statement is the fact that the information was sworn on July 6, 1885 by Alexander David Stewart, Hamilton Chief of Police. Mr. Stewart had never seen Riel, nor had he ever been in western Canada. He was, however, a member of the Orange Lodge and no doubt was acting on behalf of the Orange Lodge.¹² Surely there is no reason why the information could not have been laid by an individual from the Northwest Territories.

The jury that found Riel guilty was composed of six jurors as opposed to the British tradition of 12. This, however, was held to be

⁹Dr. P. Charlebois, *The Life of Louis Riel*, 1975, at 220.

¹⁰George F. G. Stanley, *Louis Riel*, 1963 at 343.

¹¹*Supra*, note 8, at 144.

¹²*Ibid.*

valid by the Manitoba Court of Queen's Bench¹³, with an appeal to the Privy Council denied.¹⁴

There were also other areas of contention such as not enough time for the defence to prepare, hearsay evidence, bias, hostile jury and a complete disregard for the jury's recommendation of mercy. These issues will be discussed in greater detail in the latter portion of the submission.

This, then, represents the events which have become most widely known about Louis Riel. A description of the less known historical background of the life and struggles of Louis Riel will now be undertaken.



THE FIGHT AT SEVEN OAKS, 1816

From *Seven Oaks* by C. W. Jefferies.

¹³*The Queen v. Riel* (1885-93) 1 Terr. Law Reports 20.

¹⁴*R. v. Riel* (1884-85) 10 A.C. 675.

IV.

The Historical Facts

A. EVENTS LEADING TO THE 1869-70 DISTURBANCES

The Métis people trace their ancestry back to the early French explorers and to the Indians of the Plains. According to Tremaudan, their ancestry can be dated 200 years prior to the events at the Red River. They had become an important force in the fur trading empires, of first the Company of New France and later the North West Company. As the Hudson's Bay Company moved further inland they also became an important force in this company's activities. They provided the main labour force for these far-flung trading operations. They were the guides, the interpreters, the traders, the freighters, the procurers of food supplies for the forts (buffalo hunters), the clerks and the general labourers.

By the early 1800's they had achieved a certain degree of prominence in the councils of these companies, and they provided some semblance of law and order under the direction of Métis leaders such as Cuthbert Grant. During this time they participated in and encouraged the competitive fur trade between the North West Company and the Hudson's Bay Company. At this there were a few who had taken up agriculture, some on a full-time basis, others to supplement their natural food supply.

This period also saw an attempt to bring in non-native settlers. The Métis resisted this introduction of Scots settlers by Selkirk, since this was seen as a threat to their traditional lifestyle based on hunting, trapping, fishing and the gathering of wild fruit.

When the two companies amalgamated in 1821, many found themselves in a surplus labour force. They were subsequently encouraged to settle in the Red River area and pursue agriculture. Some settled in areas further to the west on the Qu'Appelle, and the North and South Saskatchewan Rivers and in other suitable locations. The bulk, however, migrated to the Red River where they established

a substantial Métis settlement which became the center of commerce, culture and education for this new people, who looked upon themselves as a nation, and along with the Indian tribes, as the possessors of the soil.¹⁵

By the mid 1840's, they chafed under the monopolistic trade of the Hudson's Bay Company. They were subjected to low prices for their furs, imprisonment if they sold elsewhere; and they had to pay high prices for company goods often of inferior quality. The Métis, with the help of their priests and an educated élite such as Alexander Kennedy Isbister, organized to resist the monopolistic controls imposed by the Hudson's Bay Company. They petitioned directly to the British Crown; A. K. Isbister, who was established as a practising lawyer in England, presented their petitions and argued their case before a hearing established by the British Colonial Office.¹⁶ Although this Committee investigation did not find the charges of abuse of their Charter and of the people by the Company substantiated, they did recommend that the Company's trade monopoly be ended.

Prior to this, in the latter 1840's, the British sent in two military forces to ensure the stability of the Hudson's Bay Company's authority. The first force of 347 men was brought in during 1846 and returned to England in 1848. A second force of 70 pensioners was brought in during 1848 to remain as a more permanent police force.¹⁷

One of the most influential leaders among the Métis of the Red River at the time was Jean-Louis Riel, father of the more famous Louis Riel. He directly challenged the Hudson's Bay Company's right to try and convict a young Métis for illegally trading in furs. Riel and his followers challenged the court proceedings and as a result the trader was set free.

The whole question was brought to a head in 1849, when Guillaume Sayer and three others were arrested and imprisoned for trafficking in furs. Although convicted by a jury of his own selection, Sayer was merely dismissed with an admonition, in view of the hostile manifestations of the

¹⁵For a more comprehensive historical review the following sources should be read: George F. G. Stanley, *The Birth of Western Canada*, 1936; A. Tremaudan, *The History of the Métis Nation; Report From the Select Committee on Aborigines (British Settlements) with Minutes of Evidence and Appendix and Index*, Vol. 2, Session 1837.

¹⁶See Hudson's Bay Company (Red River Settlement). Copies of Memorials and related material; ordered by the House of Commons and printed April 23, 1849.

¹⁷Charles Napier Bell, The Historical and Scientific Society of Manitoba, *The Old Forts of Winnipeg (1738-1927)*, May 1927, at 33.



A Métis Farm — From publication Tawow.

Métis, three hundred of whom, led by the fiery "miller of the Seine," Louis Riel père, and armed with rifles and buffalo guns, surrounded the Court House. The Metis hailed the decision as a virtual victory for their cause and greeted the break-up of the court with a "feu de joie" and shouts *liberté*." The Council of Assiniboia discussed the half-breed demands a few days later, but the control of events had been taken from their hands, and henceforth the fur trade was carried on openly, and in increasing amount by private parties.¹⁸

Other changes were manifested at this time. It was decided that future magistrates for the area must speak both French and English. In 1850, eleven new magistrates were appointed, five of whom were Métis or French. By 1857, the Métis had three of their members on the Council of Assiniboia. They had not only achieved commercial freedom, but protected as well their language, culture, freedom of worship and educational system, along with achieving a direct role in the decisions of government and in the administration of these

¹⁸F. G. Stanley, *The Birth of Western Canada*, 1936, at 47.

decisions.¹⁹ As a consequence, when the charter of the Hudson's Bay Company came up for renewal in 1857 and hearings were held, the Métis did not object, being satisfied with the state of affairs in the Northwest and with the Hudson's Bay Company rule. Canada, however, protested and set forth its case, claiming the complete area under the Hudson's Bay Company Charter.²⁰

There was also at this time a threat of American intrusion into the Red River area. During 1856, the Americans established their presence in the area by sending a military force of 200 men to Pembina. This was coupled with a declaration forbidding the Métis from crossing the 49th parallel for the purposes of hunting or trapping.²¹ The Hudson's Bay Company, fearing the American force as a possible prelude to an annexation attempt by the United States, persuaded the British Government to send in a third military expedition. In 1857, a company of regulars arrived.²²

For the next ten years peace continued to exist in the Red River with the Métis being satisfied with the current state of affairs. Prices for furs were good because of competition from American traders. Buffalo meat was in demand by the growing population and the hides were in demand in the United States. The United States also provided some outlets for other products such as fish and agricultural produce. It also provided a source of cattle, seed and machinery to develop the growing agriculture of the area. The agricultural units, however, were based on the concept of the self-sufficient farm (producing for the needs of the family) and not on export. Only the small surpluses were sold or exported and this provided an additional cash flow in the economy.

Although these events were rather favourable to the Métis, they seriously damaged the profitability of the Hudson's Bay Company trade. By the early 1860's, the Company recognized that changes must come in its trade and commerce in the Northwest if bankruptcy was not to result. The British also found that sending military forces to the area was expensive. Further, with the decline of Hudson's Bay Company profits, the revenues realized directly by the British from this trade also diminished. As a result, when Canada and Britain began to

¹⁹*Supra*, note 15.

²⁰*Supra*, note 16.

²¹*Supra*, note 17.

²²*Ibid*.

discuss the establishment of a federated British Commonwealth in North America, they included the transfer of the Northwest and Rupert's Land in these discussions. By the time Britain and Canada had reached an agreement with the Canadian provinces and colonies on the shape of early Canada, the British Government and Canadian authorities had practically reached an agreement on the transfer of Rupert's Land and the Northwest to Canada.²³

Senior shareholders of the Company had participated in these discussions and had also agreed on the concept of giving up their claim to the area and to the transfer of the area to Canada. *The British North America Act* of 1867 by section 146 provided for transfers of land to Canada.²⁴

The only obstacle to overcome now, as far as the Hudson's Bay Company was concerned, was the agreement as to terms of transfer. The shareholders, however, do not appear to have involved the senior employees of the Company in these discussions or decisions.²⁵ This, of necessity, precluded the participation of the two governing bodies of the territory under Company rule.

The Council of Rupert's Land consisted of four chief factors and three chief traders. The Council, however, was presided over by the Governor of the Company who was appointed by the committee of directors and shareholders. This Council met yearly and made the important decisions affecting trade and commerce in the area.²⁶ This Council included Peter Dease, Donald Ross and Richard Grant, all of whom had close connections with the Métis community.

Under this Council, operating as a provincial government, was the Council of Assiniboia. The Council of Assiniboia functioned under its own Governor and was responsible for matters of local concern, including inter alia, law and order, justice, religion, education and civil law.²⁷

The records show no evidence that either of these bodies were in any way consulted about the question of transfer or in particular about the terms of the transfer of Rupert's Land. In addition, the Métis people, who saw their victory over the Hudson's Bay Company twenty

²³*Rupert's Land Act*, 1868, 31-32 Vic., c.105 (U.K.), s.5.

²⁴30-31 Victoria, c.3 (U.K.).

²⁵*Supra*, note 18 at 42.

²⁶H. C. Knox, *One Hundred Years Ago*, Public Archives of Manitoba.

²⁷*Ibid.*

years earlier as recognition of their nationhood and of their right to say in how the country would be run, were never consulted.

Initially the people did not react to the news of the impending transfer. They probably would not have reacted even after the terms of the transfer agreement were negotiated, if the Canadian government had not initiated a number of disturbing and illegal acts in 1869. First, they began work on a road from the lakehead to the Red River, an act which had not been sanctioned and was objected to by the Hudson's Bay Company. Second, they began conducting surveys in the Red River area. Since the survey system was the Torrens system, it cut across existing land-holdings of the people and led to a confrontation between some settlers and the surveyors. Finally, William McDougall was appointed Lieutenant-Governor of Rupert's Land in September 1869, and was dispatched to the Red River to establish his authority.²⁸

The appointment of McDougall and his subsequent Proclamation on December 1, 1869, were clearly illegal, as the transfer was not finalized until July of 1870, having been provided for by the Order of Her Majesty in Council admitting Rupert's Land and the Northwest Territories into the Union, on June 23, 1870.²⁹

B. THE PEOPLE OF THE RED RIVER REACT

Shortly after Canada made its claim to the territory under Hudson's Bay Company rule, a small number of Canadians from Ontario settled in the Red River area. One of the earlier arrivals was Dr. John Schultz, an Orangeman dedicated to the cause of joining the Northwest to Canada.

Dr. Schultz was always an active, energetic member of the Orange Lodge. Through his lodge activities he met numerous provincial and federal government officials whom he was able to draw upon for willing assistance. He used these connections to influence even the political decisions of fellow lodge members MacKenzie Bowell and Sir John A. Macdonald.³⁰

He and several other Canadians who came with him brought a printing press and started to publish a newspaper, the *Nor'Wester*.

²⁸See generally, Dr. P. Charlebois, *The Life of Louis Riel*, 1975 at 30 to 36; Macdonald Papers, Letters of September 29, 1869 and November 23, 1869 to Carroll and Captain Cameron respectively; *Sessional Papers* (No. 25), 32 Victoria 1869, letter from Cartier & McDougall to Sir F. Rogers, January 16, 1869.

²⁹R.S.C. 1970, No. 9, at 257.

³⁰*Supra*, note 9, at 27.



Riel stops the survey at Red River — Source unknown.