

THE HON. ARCHIBALD McLEAN.

to him, as he had to act in opposition to his own personal and political friends. He was violently assailed in the House of Assembly by Mr. Hagerman, then a member of the Government, for his conduct in this matter; but neither the withering language of the eloquent and impassioned speaker, nor the persuasions of his friends could prevent him taking the course which he considered right.

When the Court of Common Pleas was constituted in 1849, the late Sir James Macaulay was made Chief Justice, and Judge McLean and Judge Sullivan puisne judges of that court, by commission dated 15th December, 1849. He continued in this court until the resignation of Chief Justice Macaulay and the appointment of Judge Draper to the vacant office.

This appointment of his junior, which he looked upon as a slight, was a blow to the old judge which he felt acutely, and the consequence was, that in Hilary Term, 1856, he took his seat in the Queen's Bench. The step, however, was considered a judicious one by the profession as well as by the Attorney General, J. A. McDonald, though he, as well as others, expressed and felt much regret at the pain caused by the course which it was considered advisable to take, and all were well pleased to see Mr. McLean made Chief Justice of Upper Canada in the place of Sir John Robinson, who resigned his seat in the Queen's Bench and accepted the Presidency of the Court of Error and Appeal. Upon the death of the latter in January, 1863, Chief Justice McLean, then in failing health, again took his place, which he held till his death.

As a judge, though not perhaps possessing the brilliancy or application of some of his brethren, his opinions were always received with the respect and attention which his experience, and his character for unblemished impartiality and integrity claimed. His views generally coincided with those of his old friend Sir John, in whose judgment he placed the most unbounded confidence, and for whose character he had the greatest admiration. He joined with him when these two dissented from the rest of the Court of Appeal in the well known case of the *The City of Toronto v. Bowers*,—the decision, however, of the majority was upheld on an appeal to England.

The judgment of Judge McLean, in opposition to the opinion of Sir John Robinson and

Judge Burns, in the celebrated *Anderson* case, is the most prominent feature in his judicial career, and deserves more than a passing notice. The facts of this case are familiar doubtless to most of our readers; they will be found reported in full in 20 U. C. Q. B. 124. Judge McLean took the broad ground, that in administering the laws of a British Province he was not bound "to recognize as law any enactment which could convert into chattels a very large number of the human race," and that a man endeavouring to effect his escape from slavery was entitled to use any means necessary for that purpose, even to taking the life of his pursuer, and that the crime with which Anderson was charged, even if it had been clearly made out, did not come within the Ashburton Treaty. Nor could he "recognise the law of slavery in Missouri to such an extent as to make it murder in Missouri, while it is justifiable in this Province to do precisely the same act."

Whatever may be the strict law of the case, and there are many even amongst lawyers who think that Judge McLean was right, one cannot help admiring the free British spirit so characteristic of the man, whose feelings doubtless were shared by his brethren, but by them kept subject to the rigid dictates of severe and calm judgment.

The manner of the late President of the Court of Appeal upon the Bench was dignified and courteous. Unsuspecting and utterly devoid of anything mean or petty in his own character, his conduct to others was always that which he expected from them.

The profession generally, the young student as well as the old practitioner, will long remember with affection his courtesy and forbearance in Chambers and on the Bench. Others will think of him as an entertaining and agreeable companion and a true friend; whilst others still will call to mind the stately form of the old judge, as he approached and entered St. Andrew's Church, where he was a constant and devout attendant, rain or sunshine, until his last illness, which terminated in death.

Archibald McLean was a man of remarkably handsome and commanding presence; tall, straight, and well formed in person, with a pleasant, handsome face, and a kind and courteous manner, he looked and was, every inch, a man and a gentleman. He belonged