

On the bench he displayed considerable vigour of mind, united with an almost feverish eagerness to keep pace with the business brought before him. In the delivery of judgments he displayed an impetuosity which led the late Mr. Ritchie to playfully style him the "Aurora Borealis." Withal, he continued to be a close student and a prodigious reader, and his judgments were not rendered without anxious consideration.

The learned judge had some foibles, innocent enough, which sometimes afforded amusement to the bar. One of these was the use which he made of scraps of paper. As he read through a case, he jotted down his impressions and conclusions on anything which came in his way—corners torn from sheets of foolscap, envelopes, even the backs of visiting cards, were pressed into service, and were afterwards pieced together, or fastened with a pin, and did duty as notes of judgment. This characteristic was also hit off by the late Mr. Ritchie, who dubbed him "scrap iron." His diction, though scholarly, was likewise peculiar, and his letters to journals, in which he was fond of indulging on all sorts of subjects, more especially after his retirement from the bench, could always be detected by those acquainted with the oddities of his style.

These were petty eccentricities, hardly worthy of mention except to complete the portrait of the man. In essentials, Mr. Justice Mackay was actuated by an exalted sense of honor, a high regard for the dignity of the Bench, and an abhorrence of all dubious practices. His opinions were usually sound, and dictated by an ample knowledge of the subject, as well as a profound insight into human nature. In his retirement from the judicial office, a rock upon which abler men are sometimes shipwrecked, he was unusually fortunate. Fond of art, fond of literature, fond of travel, keenly interested in public affairs, the five years of leisure and seclusion were among the happiest of his life. He even retained a lively interest in the law, and in judicial decisions, which, we think, is somewhat unusual on the part of retired judges. His own ample library was generously presented to McGill University; but he continued to receive the new issues of legal

publications, and worked sedulously upon a treatise on the law of fire insurance, a subject of deep interest to him, but the results of his labours he seems to have abstained from producing. He was always a diligent reader of the *Times* Law Reports, and was in the habit, for some years back, of sending to us clippings of such matters in these reports as he deemed of interest. Even while travelling he did not cease to read, and it was no uncommon thing to find in the mail from England a little packet of clippings addressed to the editor of the *Legal News*. His health was usually excellent. Before his retirement he had an attack of vertigo, after having been engaged for many days in a keenly contested election case. The attack came on suddenly while he was walking out. He fell, and was so badly disfigured that his own servant, when he was carried to his residence, failed to recognize him. A return of this ailment cost him his life. He had left his house in the evening to go a short distance, and perceiving the symptoms of an attack, sat down in the snow, until he had somewhat recovered, and was able to return home. But the chill brought on congestion of the lungs, under which he sank, after about a fortnight's illness. Apart from this weakness, his health was very good, and as President of the Art Association and in other ways he kept himself in constant activity. In private his relations were honorable and happy, and his life without stain or reproach. The disappearance of his tall figure and dignified presence leaves another blank, besides those which we have too often had to lament during the past few years.

#### CIRCUIT COURT.

MONTREAL, March 5, 1888.

Before DOHERTY, J.

FOUCHON v. ONTARIO & QUEBEC RAILWAY Co.  
*Railway Company—Neglect to fence—Damages.*

Held:—1. *That Section 13 of the Railway Act respecting the responsibility of a Railway Company for damage done to cattle through neglect of the Company to fence its line, only applies to proprietors owning property abutting on or crossed by the railway line,*