

prosecuted these treason cases with vigour. With him there were no extenuating circumstances; the accused was either guilty of treason, or he was not.⁷ The Solicitor-General was ably and strenuously assisted by Allan Napier MacNab a comparatively young practitioner; he was called in 1826; but an old soldier—he had fought in 1812—and one who had done magnificent service to the Loyalist cause during the ill-timed, ill-considered, ill-fated rebellion. He had in January, 1838, been created the first Queen's Counsel for Upper Canada and was to live to be knighted and to become Prime Minister of the United Canadas.

The men of Eramosa (and others) had engaged Miles O'Reilly, a young lawyer practising in Hamilton; he had been called in 1830 and had a high reputation for ability and eloquence⁸—and they paid him a fee of "\$10 each or \$70 for the job."⁹

By the Statutes of 7 Will. III, c. 3, and 7 Anne, c. 21, the accused were entitled to receive ten days before arraignment a copy of the indictment, a list of the witnesses and of the jury summoned, and this they did; but not only the three who were in Hamilton Gaol but also the four who had come from Eramosa to answer according to their recognizance were compelled to stay in gaol until the day set for the trial.

The tremendous indictment was read;¹⁰ they were all charged with conspiring to subvert the Government, to levy war against the Queen and to put her to death, and such like wicked and traitorous compassings, imaginings and intentions; they were false traitors, etc., etc. Of course they pleaded not guilty.

The evidence was very contradictory. William Campbell, of Eramosa, told of all the accused being present at the meeting and that Benham had spoken saying that Lower Canada was in possession of the rebels and that "we should keep in favour with the Lower Province and do the best we could for ourselves;" that the Reformers were in possession of Toronto, and such like. There is considerable insinuation but nothing that can be called evidence of treason in this testimony. Walter King was the next witness; his evidence, if believed, was almost conclusive; he said that Benham said that "Canada should throw off her allegiance to the British Crown;" that the meeting was called because of the news that Mackenzie had taken Toronto and to assist Mackenzie in the insurrection, all but five or six

⁷In an article in the *Guelph Weekly Mercury and Advertiser*, Aug. 2, 1906, James Peters says: "The late Sir Allan McNab and the Solicitor-General, afterwards Judge Draper, were Queen's Counsel, and if we did not get our necks stretched it was not their fault."

⁸Draper became Solicitor-General 1840, Puisne Justice of the Court of Queen's Bench 1847, Chief Justice of the Court of Common Pleas in 1856, Chief Justice of the Court of Queen's Bench and President of the Court of Error and Appeal in 1863; he died in 1877.

⁹Miles O'Reilly, Q.C., succeeded William Leggo (of Leggo's Chancery Practice and Forms) as Master at Hamilton, 1872; this office he held until 1890; he was a Benchet, 1871-1875; he had a respectable practice when at the Bar.

¹⁰The language of Mr. Peters in the article mentioned in Note 7.

¹¹A copy is set out in the article referred to; those interested will find a form in Chitty, Criminal Law, 2nd Edit., 1826, Vol. II, pp. 67-84.