

THE LATE CHIEF JUSTICE MOSS.

cedent failed to be relevant, and wherein it was distinctly in point; nor did he ever rest until he had satisfied himself that the principles he enunciated rested upon an irrefragable basis. In marshalling facts, conflicting and involved, he has hardly been excelled on the Canadian bench; and in unravelling skillfully wrought webs of fraud he was equally successful. His judgments, as recorded in the reports, are always marvels of clearness; indeed they are so generally convincing from that lucidity which attracts non-professionals who mistake deep intuition and sound knowledge of law for what it is the fashion to term "common-sense" decisions—judgments readily evolved from the inner consciousness. Chief Justice Moss never yielded to the temptation to indolence, or for a moment substituted, even in thought, his inner light for the *lex scripta* of the statutes and the books.

Some of the principal cases in which the learned Chief Justice delivered judgment may be noted for reference. In *Fisken v. Brooke*, 4 App. R. 8, will be found an admirable exposition of the law relating to equitable execution. It was a case of joint ownership, and Moss, C. J., urged that to permit the execution creditor, in effect to administer the estate, would be contrary to any principle of justice or equity, where the defendant was merely a beneficiary under the will, and owned no estate in the land. In *Yeomans v. Wellington*, 4 App. R. 301, the reciprocal rights of municipalities and property-owners are defined, and the decision affirmed that if a highway be constructed so as to injure property, the owner is entitled to compensation. That judgment is chiefly notable for its exhaustive review of all the precedents in point, both English and American. *Rice v. Bryant*, 4 App. R. 542, discloses a wonderful power in analyzing and co-ordinating facts. It also illustrates the keen penetration which the Chief Justice possessed in diving down into the heart of concealed fraud. In *Fitzgerald v. G. T. R. Co.* 4 App. R. 609,

he delivered a judgment of great importance to the mercantile community and to railway corporations. The case was one in which the Company's agent had agreed to send petroleum by covered cars; he neglected to do so, and the Company pleaded that the words "at the owners' risk" covered them from responsibility. "The correct rule," said the Chief Justice, "seems to be to pay regard to the degree of diligence which the situation assumed by a person demands, rather than to his carelessness. The words 'at the owners' risk' do not free the carrier from all liability for negligence." The verdict of the jury was therefore left undisturbed. A railway case of a different kind may be noted in *Erb et al. v. G. W. R. Co.*, where an agent had given a fraudulent bill of lading which had been negotiated. The judgment of the Chief Justice is remarkable for its ample discussion of conflicting views—"opposite and irreconcilable" as he proved them to be. He had the candour to admit he had not after all succeeded in banishing doubts from his mind. More than usual pains were bestowed upon this judgment, since the view adopted by the Chief Justice and Mr. Justice Burton was at variance with opinions given by brother judges of age and experience. *Re Lincoln Election*, 2 App. R. 324, decided a question relating to defective description of a voter's qualification, and was decided in favor of the elector. In *Inglis v. Beatty*, 2 App. 324, he delivered a most exhaustive judgment extending over forty pages. The case turned upon the liability of trustees, and especially to the question whether compound interest should be charged to a trustee under the circumstances. In *Wiley v. Smith*, 1 App. R. 191, another case in mercantile law arose on the important question of stoppage *in transitu*. Here the Chief Justice held, after a thorough sifting of the authorities, that the *transitus* had come to an end. The case of *Stratford and Huron Railway Co. v. Perth*, 38 U. C. R. 112, may be also noted as governing the matter of bonuses granted by